Before the Wisconsin Elections Commission

In the Matter of:	)	
	)	
Nomination Papers Filed by Kanye West	)	**Findings and Order**
	)	
	)	
Joseph R. Santeler,	)	
	)	
Complainant,	)	
	)	**Case No. EL 20-30**
	)	
and	)	
	)	
Kanye West,	)	
Candidate for President of the United States of	)	
America	)	
	)	
Respondent.	)	
	)	

Pursuant to Wis. Stat. §§ 5.05(1)(e), 5.06(6), 8.30 and Wis. Admin. Code EL § 2.07, the inherent, general, and specific authority of the Wisconsin Elections Commission (hereafter "Commission"), upon consideration of the submissions of Joseph R. Santeler (complaint) and Kanye West (response), the testimony of counsel for the Complainants and Respondents, and the submissions and recommendations of Commission staff, the Commission makes the following Findings and Order:

FINDINGS

1. Kanye West is an Independent candidate for President representing BDY (The Birthday Party).

2. Independent candidates for President and Vice President shall submit not less than 2000 nor more than 4000 signatures on nomination papers. Wis. Stat. § 8.20(4).

3. Based upon the record of proceedings held before the Commission on August 20, 2020, on August 4, 2020, after the "not later than 5 p.m." statutory deadline to file nomination papers had passed, representatives of Candidates West appeared at the Commission's office to submit nomination papers.

4. Based upon the record of proceedings held before the Commission on August 20, 2020, on August 4, 2020, after the "not later than 5 p.m." statutory deadline to file

nomination papers had passed, Commission staff took possession of the nomination papers presented by representatives of Candidate West.

5. Notwithstanding the late filing, Commission staff conducted a facial review of the nomination papers submitted and determined 2422 signatures had been submitted by Candidate West.

6. On August 7, 2020, the Complainant filed a signed and verified nomination paper challenge complaint alleging that all nomination papers filed by Candidate West failed to state his residence, Candidate West failed to file his nomination papers timely with the Commission, and the circulators of 24 pages of Candidate West's nomination papers failed to state their full residence address.

7. On August 10, 2020, the Respondents filed a signed and verified response to the challenge complaint that responded to the allegations contained in the complaint.

8. On August 20, 2020, the Commission held an open meeting to decide the complaint filed against Candidates West. The virtual meeting was broadcast live and recorded by Wisconsin Eye and can be found here: https://wiseye.org/2020/08/20/wisconsin-elections-commission-special-teleconference-meeting-10/

9. Mr. Santeler appeared on his own behalf and provided testimony to the Commission.

10. Attorney Michael Curran of Curran and Pfeil appeared on behalf of the Respondent and provided testimony to the Commission.

11. A point of order was raised by Mr. Santeler. He argued that the complaint was only filed against Mr. West and the written response to the challenge was not signed and verified by Mr. West, and under Wis. Admin. Code EL § 2.07, the response should be disregarded as the allegations are unrebutted. Commission unanimously denied the point of order.

12. Commission staff provided written recommendations to the Commission (Ballot Access Challenges Memorandum – Independent Candidates for President/Vice-President, pages 1-7) which are attached and incorporated herein as if stated in full.

13. As part of the record of proceedings held before the Commission on August 20, 2020, Commission staff also presented sworn testimony and additional arguments in support of the analysis and recommendations contained on pages 1-7 of the Ballot Access Challenges Memorandum – Independent Candidates for President/Vice-President.

14. Based upon the record of proceedings held before the Commission on August 20, 2020, the sworn testimony of Commission staff members corroborated the finding that the nomination papers were not filed timely, as the representatives of Mr. West and Ms. Tidball had not entered the building housing the Commission's office until after 5:00 p.m.

15. Based upon the record of proceedings held before the Commission on August 20, 2020, the sworn testimony of Commission staff members corroborated the finding that the nomination papers were not filed timely as the representatives of Mr. West and Ms. Tidball had not entered the Commission's office on the 3rd floor building housing the Commission's office until 5:01 p.m.

16. Based upon the record of proceedings held before the Commission on August 20, 2020, the sworn testimony of Commission staff members corroborated the finding that the nomination papers were not filed timely because the representatives of Mr. West and Ms. Tidball had to organize and number the pages of the nomination papers in the office prior to filing the papers with the Commission.

17. Based upon the record of proceedings held before the Commission on August 20, 2020, the sworn testimony of Commission staff members corroborated the finding that the nomination papers were not filed timely because the representatives of Mr. West and Ms. Tidball had not transferred possession of the papers to the Commission to complete the filing until several minutes after 5:01 p.m.

18. "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." Wis. Admin. Code EL § 2.07(3)(a). The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence." Wis. Admin. Code EL § 2.07(4).

19. "Each candidate shall include his or her mailing address on the candidate's nomination papers." Wis. Stat. § 8.20(2)(b). "In the case of candidates for the office of president and vice president, the nomination papers shall contain both candidates' names; the office for which each is nominated; the residence and post-office address of each; and the party or principle they represent, if any, in 5 words or less." Wis. Stat. § 8.20(2)(c).

20. The statutory deadline for Independent candidates for President and Vice President to file nomination papers with the Commission is "not later than 5 p.m. on the first Tuesday in August preceding a presidential election." Wis. Stat. § 8.20(8)(am). For the 2020 presidential election, the deadline was August 4, 2020.

21. "The certification of a qualified circulator stating his or her residence with street and number, if any, shall appear at the bottom of each nomination paper …" Wis. Stat. § 8.15(4)(a).

22. At the August 20, 2020 Commission meeting, the Commission passed the following motions:

> **Motion:** The Commission rejects the challenge to Mr. West's nomination papers because the complainant has not established by clear and convincing evidence that 3202 Big Horn Ave., Cody, WY 82414 is not Candidate West's "residence and post-office address" as required by the statute. (6-0)
>
> **Motion:** The Commission rejects the challenges to the signatures contained on Pages 1, 2, 5, 6, 7, 8, 19, 20, 23, 24, 25, 26, 27, 28, 33, 34, 161, 162, 220, 223, 225, 236, 292, and 334, because the Complainant did not indicate the reason why such papers and signatures were insufficient. (6-0)
>
> **Motion:** Based upon the record of proceedings held before this Commission today, including the testimony of the Wisconsin Election Commission staff members, the Commission sustains the challenge to all nomination papers submitted by Mr. West because they were not filed timely in accordance with Wis. Stat. § 8.20(8)(am), therefore his name shall not appear on the 2020 November General Election ballot as an Independent candidate for President in Wisconsin. (5-1)
>
> **Motion:** The Commission directs staff to draft Findings and an Order consistent with these motions. (6-0)

23. On August 21, 2020, Commission staff provided notice of the Commission's actions at its August 20, 2020 hearing to the Complainant and Respondent's attorney and a true and correct copy of that correspondence is attached to these Findings.

24. Pursuant to Wis. Stat. § 5.06(1), Wis. Stat. § 8.30 and Wis. Admin. Code EL § 2.07 the Commission has jurisdiction to review the Complaint filed by Joseph Santeler.

25. Pursuant to Wis. Stat. § 5.05(1)(e), by the Commission's specific delegation of authority to issue an order under Wis. Stat. § 5.06 and the Commission's specific action on this matter, the undersigned has authority to issue an order in this matter.

ORDER

Pursuant to Wis. Stat. § 5.06(1), Wis. Stat. § 8.30 and Wis. Admin. Code EL § 2.07 the Commission has jurisdiction to review the Complaint filed by Joseph Santeler.

Pursuant to Wis. Stat. § 5.05(1)(e), by the Commission's specific delegation of authority to issue an order under Wis. Stat. § 5.06, and the Commission's specific action on this matter, the undersigned has authority to issue the following order:

1. The Commission rejects the challenge to Mr. West's nomination papers because the complainant has not established by clear and convincing evidence that 3202 Big Horn Ave., Cody, WY 82414 is not Candidate West's "residence and post-office address" as required by the statute.

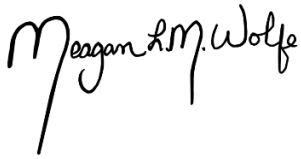
2. The Commission rejects the challenges to the signatures contained on Pages 1, 2, 5, 6, 7, 8, 19, 20, 23, 24, 25, 26, 27, 28, 33, 34, 161, 162, 220, 223, 225, 236, 292, and 334, because the Complainant did not indicate the reason why such papers and signatures were insufficient.

3. Based upon the record of proceedings held before this Commission today, including the testimony of the Wisconsin Election Commission staff members, the Commission sustains the challenge to all nomination papers submitted by Mr. West because they were not filed timely in accordance with Wis. Stat. § 8.20(8)(am), therefore his name shall not appear on the 2020 November General Election ballot as an Independent candidate for President in Wisconsin.

Pursuant to Wis. Stat. § 5.06(8), parties may appeal this Order to circuit court within 30 days of issuance of the Order.

Dated this 9th day of September, 2020.

Wisconsin Elections Commission



Meagan Wolfe
Administrator

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

MEMORANDUM

DATE: For the August 20, 2020 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Administrator

Prepared by:
Nathan W. Judnic, Staff Attorney

SUBJECT: **Ballot Access Challenges – Independent Candidates for President/Vice-President**

This Memorandum summarizes Commission staff's review of challenges that have been filed to nomination papers of independent candidates for President/Vice-President for the 2020 General Election. Three challenges were filed against two sets of 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 for the Commission's consideration.

1. Joseph R. Santeler Complaint against Kanye West
Case No. EL 20-30

Signatures required for office: 2000
Signatures challenged: All Signatures

This complaint alleges that all nomination papers filed by Candidate West failed to state his residence, Candidate West failed to file his nomination papers timely with the Commission, and the circulators of 24 pages of Candidate West's nomination papers failed to state their full residence address.

The Challenger's Complaint and Candidate's Response, can all be found at:
https://elections.wi.gov/node/7024

Correcting Affidavits:
The deadline for candidates to file affidavits to correct errors on their nomination papers that were committed by either the circulator or the signer was August 7, 2020. Wis. Admin. Code EL § 2.05(4).

Candidate West did not submit any correcting affidavits.

Supplemental Signatures:
Candidate West did not file any supplemental signatures by the August 4, 2020 deadline.

Challenge to all nomination papers: Nomination papers fail to state Respondent's residence

The complainant alleges that Candidate West did not list his "residence and post-office address" as required by statute when he listed 3202 Big Horn Ave., Cody, WY 82414 in the header of all nomination papers filed with the Commission. The complainant alleges that a 'stricter' requirement in the statute for address information of presidential candidates exists and is mandatory.

The complainant alleges that 3202 Big Horn Ave in Cody, WY is zoned as a commercial property. To support this allegation, the complainant provides a "true and correct copy" of data obtained from the Park County Wyoming MapServer service (August 7, 2020), which is described as a local governmental service that provides tax, zoning and assessment data on Park County real estate. The information provided "indicates that 3202 Big Horn Ave., Cody, WY is classified as a 'Commercial' property." Additionally, the complainant provides a media article published in the Cody Enterprise which provides various descriptions of the 3202 Big Horn Ave. property that was purchased by Candidate West that leads the complainant to believe that Candidate West does not reside at 3202 Big Horn Ave. and therefore the address listed on the nomination papers is not his "residence and post office address" as required by statute.

The complainant requests that the Commission determine that the nomination papers be declared insufficient, declared not in conformance with the statute, be stricken, or any other relief the Commission deems warranted.

Candidate Response:

Respondent states that the complainant mistakenly argues that Wis. Stat. § 8.20(2)(c) requires two different addresses to be listed, one for residence and another for the post-office address and that a clear reading of the statute and supporting caselaw shows that this information is typically achieved by a single address. To support this assertion, the response states that 3202 Big Horn Ave., Cody, WY 82414 is the address where the campaign, Kanye 2020 is incorporated, the Articles of Incorporation were attached to the response, which contain this address. The response asserts that this address "is where Mr. West receives mail" and therefore this is his post-office address as required by Wis. Stat. § 8.20(2)(c).

Respondent states that Wis. Stat. § 8.20(2)(c) does not ask for the residential address, it asks for the "residence and post-office address", which is entirely different than a residential address. Respondent argues that the term "residence," when unaccompanied by the qualifier "address" does not require a full street address, but simply a general geographical location where the individual resides. The response uses examples to demonstrate this: Mr. West is a Wyoming resident, or, Mr. West is a resident of Cody, Wyoming. Candidate West cites several Wisconsin Supreme Court cases that discuss "residence" in the general sense of the word. Candidate West also cites to the Commission's sample nomination paper form that provides a single line for the

candidates to provide an address. Respondent also states that it is important to note that the term "address" as used in Wis. Stat. § 8.20(2)(c) is singular, not plural which would imply two addresses. Respondent cites the Commission's "Common Nomination Paper Challenges" manual to support the argument that when a municipality is listed for a candidate for mailing purposes, it is presumed that the municipality is the same for other required purposes.

Finally, Respondent argues that in the event the Commission determines that two addresses are required, the information provided substantially complies with the law under Wis. Admin. Code EL § 2.05(5).

Commission Staff Analysis and Recommendations

The statutory requirements for nomination papers filed by independent candidates are contained in Wis. Stat. § 8.20. Wis. Stat. 8.20(2)(a) states that each nomination paper shall have substantially the following words printed at the top:

> 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)) or (representing the principle(s) of (statement of principles))] 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 the (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.

"Each candidate shall include his or her mailing address on the candidate's nomination papers." Wis. Stat. § 8.20(2)(b). "In the case of candidates for the offices of president and vice president, the nomination papers shall contain both candidates' names; the office for which each is nominated; the residence and post-office address of each; and the party or principle they represent, if any, in 5 words or less." Wis. Stat. § 8.20(2)(c).

"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." Wis. Admin. Code EL § 2.07(3)(a). 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 recommends the Commission reject this challenge because the complainant has not established by clear and convincing evidence that 3202 Big Horn Ave., Cody, WY 82414 is not Candidate West's "residence and post-office address" as required by the statute. At best, the complainant has provided some evidence that the address listed is on property that is zoned commercial and has provided a news article that describes aspects of the property. The Commission staff does not believe that establishes that the information provided on the nomination paper is not Candidate West's "residence and post-office address."

Challenge to all nomination papers: Respondent failed to meet statutory deadline

The complaint alleges that Candidate West failed to meet the statutory deadline for filing nomination papers with the Commission to obtain ballot access as an independent candidate for President. The complaint cites Wis. Stat. § 8.20(8)(am) and Wis. Admin. Code § EL 2.05(2) as the applicable statutory and administrative code provisions that provide the deadline and procedure for filing the nomination papers.

Wis. Stat. § 8.20(8)(am) provides that "[n]omination papers for independent candidates for president and vice president … may be filed not later than 5 p.m. on the first Tuesday in August preceding a presidential election." Wis. Admin. Code § 2.05(2) states: "In order to be timely filed, all nomination papers shall be in the physical possession of the filing officer by the statutory deadline." The complaint states that the language from these sections are mandatory, in that the nomination papers "may not" be filed later than 5 p.m. on the first Tuesday in August, and that the nomination papers "shall" be filed by the statutory deadline.

The complainant states that it "has been widely publicized that Respondent's attorney delivered Nomination Papers to the Commission shortly after 5:00 p.m. on August 4, 2020." The complainant attaches an August 7, 2020 article from Wisconsin Public Radio which states that a representative of Candidate West "delivered the petitions shortly after 5:00."

The complainant states that he is mindful that the COVID-19 pandemic has created temporal and logistical obstacles to virtually every facet of public and private life, but states that such changes have existed for months and states that Candidate West and his counsel have had adequate time to adjust their behavior and find a way to comply with Wisconsin's election laws, especially in a matter as significant as a presidential race.

The complainant cites to *State ex rel. Stearns v. Zimmerman*, a 1950 Wisconsin Supreme Court case to support the argument that nomination papers must be tendered to the filing officer not later than 5 p.m. or else the tender comes too late. In this case, the candidate was not allowed on the ballot because he attempted to file his papers at 5:02 p.m. on the deadline day.

The complainant requests that the Commission determine that the nomination papers be declared late filed, declared not filed in conformance with the statute, be stricken, or any other relief the Commission deems warranted.

Candidate Response:

[Candidate West filed a joint response to Mr. Santeler's complaint and the complaint of Brent, et al. v. West and Tidball (EL 20-31) on this issue. A summary of Mr. West's response to allegations that the nomination papers were not filed timely is contained in the "Candidate Response" section of the Brent, et al., v. West and Tidball matter contained in this memorandum. To the extent it is applicable to the challenge filed by Mr. Santeler, that summary is incorporated herein.]

Specifically, in response to Mr. Santeler's complaint, the respondent argues that the evidence presented regarding the proposition that the nomination paperwork was filed late is hearsay and therefore insufficient.

Commission Staff Analysis and Recommendations

Wis. Stat. § 8.20(8)(am) provides that "[n]omination papers for independent candidates for president and vice president … may be filed not later than 5 p.m. on the first Tuesday in August preceding a presidential election." Wis. Admin. Code § 2.05(2) states: "In order to be timely filed, all nomination papers shall be in the physical possession of the filing officer by the statutory deadline." "Nomination papers … shall not be considered filed with the filing officer until the signed original of each nomination paper … [is] received in the offices of the filing officer." Wis. Admin. Code § EL 6.04(2).

For a challenge to be successful, Mr. Santeler must establish that Mr. West did not timely file his nomination papers with the Commission by the statutory deadline. Mr. Santeler provided a news article that reported Mr. West's representative "delivered the petitions shortly after 5:00." A news article, stating that a candidate's papers were not timely filed, simply does not meet the burden of proof here to sustain the challenge filed by Mr. Santeler on this issue.

As such, Commission staff recommends the Commission reject this challenge because the complainant has not established with the evidence provided, by clear and convincing evidence, that Mr. West did not timely file his nomination papers with the Commission.

Challenge to individual nomination papers due to a failure of circulators to state full residence address

The complaint alleges that 24 of Mr. West's nomination papers contain a certification of circulator that does not state a residential address that complies with Wis. Stat. s. 8.40, and therefore the signatures contained on those pages should be stricken. The complaint alleges that Pages 1, 2, 5, 6, 7, 8, 19, 20, 23, 24, 25, 26, 27, 28, 33, 34, 161, 162, 220, 225, 233, 236, 292, and 334 contain this defect. The complaint also makes the general allegation that to "the extent any other pages not listed herein fail to state an address that does not comply with the statute, those pages and all signatures contained thereon should be stricken.

The complainant requests that the nomination papers identified above be stricken and any other relief the Commission deems warranted.

Candidate Response:

Candidate West responded directly to the address challenges set forth by Mr. Santeler's complaint (starting on Page 15 of the joint response). Respondent asserts that Mr. Santeler does not meet his burden of clear and convincing evidence that the circulator information was incomplete. Respondent asserts that Mr. Santeler fails to properly raise the issued, "let alone prove the noncompliance by clear and convincing evidence."

Alternatively, Respondent states that Mr. Santeler references the wrong statutory section and that even if the proper statutory section was referenced and applied, the statute only requires their residence to include "street and number." Additionally, Candidate West asserts that the nomination papers should be accepted as complete "if there has been substantial compliance with the law." Wis. Admin. Code EL § 2.05(5). Candidate West argues that since the street and number are listed for each of the challenged papers, the Commission should find substantial compliance.

Finally, Respondent argues that information on additional pages circulated by the same circulators should be able to be consulted as it is readily ascertainable. He also argues that some of the challenged papers contain a zip code, which he states should be more than sufficient to indicate the residence of the circulator.

Commission Staff Analysis and Recommendations

"The certification of a qualified circulator stating his or her residence with street and number, if any, shall appear at the bottom of each nomination paper …" Wis. Stat. § 8.15(4)(a). Mr. Santeler incorrectly identified Wis. Stat. § 8.40 as the statute which sets forth the circulator certification requirements (§ 8.40 is titled "Petition requirement") for a nomination paper. Practically speaking, in the Commission staff's opinion, despite the large number of pages "challenged" by Mr. Santeler, only seven signatures on Page 233 are in question, as all other signatures contained on the other pages were previously struck for failure of the circulator to include the name of their municipality in the certification.

Respondent asserts that the complaint does not properly raise the issue and fails to meet the burden of proof required to sustain the challenges to the referenced pages. Commission staff agrees with this assessment, as Mr. Santeler makes no attempt to assert what information is missing from the certification. The fact that he does not provide the proper statutory citation to support his assertion also supports the recommendation that he has not met his burden of proof.

Commission staff recommends rejecting the challenges to the signatures contained on Pages 1, 2, 5, 6, 7, 8, 19, 20, 23, 24, 25, 26, 27, 28, 33, 34, 161, 162, 220, 223, 225, 236, 292, and 334, because Mr. Santeler did not properly raise the issue and failed to indicate the reason why such papers should be struck – however no changes to the original signature total are required because signatures on all pages, with the exception of Page 233, were previously struck because the circulator failed to include their residence <u>with</u> their street and number. Respondent incorrectly reads the statute to only require a street and number. Commission staff have previously determined that the circulator's "residence" should include the name of their municipality for it to substantially comply with the statutory requirement, and the Commission has approved this recommendation in previous cases. See Nomination Paper Challenge Manual (dated January 2018), accessed here: https://elections.wi.gov/publications/manuals/common-nomination-paper-challenges Additionally, information about a circulator on one nomination paper cannot be transferred or referenced or used to rehabilitate other pages for which that same circulator was used.

Recommended Motions:

1) **The Commission rejects the challenge to Mr. West's nomination papers because the complainant has not established by clear and convincing evidence that 3202 Big Horn Ave., Cody, WY 82414 is not Candidate West's "residence and post-office address" as required by the statute.**

2) **The Commission rejects the timeliness of filing challenge because the Complainant has not established by clear and convincing evidence, that Mr. West failed to timely file his nomination papers with the Commission by the statutory deadline.**

3) **The Commission rejects the challenges to the signatures contained on Pages 1, 2, 5, 6, 7, 8, 19, 20, 23, 24, 25, 26, 27, 28, 33, 34, 161, 162, 220, 223, 225, 236, 292, and 334, because the Complainant did not indicate the reason why such papers and signatures were insufficient.**

4) **The Commission directs staff to draft Findings and an Order consistent with these motions.**

2. **William Brent, III, Richard C. Hughes, Keith Smith, Lauren Steven Complaint against Kanye West and Michelle Tidball**
Case No. EL 20-31

Signatures required for office: 2,000
Signatures challenged: All Signatures

This complaint alleges that Candidate West and Candidate Tidball (collectively referred to as the "Candidates") failed to timely file nomination papers and declarations of candidacy with the Commission; multiple circulators misrepresented the nature, meaning, and purpose of the nomination papers when presented to signers; multiple circulators did not provide their correct residential address as part of the certification signed on those papers; signers of the nomination papers provided an address different than the address at which they are registered to vote; 187 signatures are not accompanied by a printed name, 65 signatures are not accompanied by the signer's municipality and 47 signatures are not accompanied by a full date; several signatures are "patently invalid" which include signatures of individuals that signed the nomination papers more than once and individuals that used fake names.

The Challenger's Complaint, Candidate's Response can all be found at:
https://elections.wi.gov/node/7024

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 August 7, 2020. Wis. Admin. Code EL § 2.05(4).

The Candidates did not submit any correcting affidavits.

Supplemental Signatures:
The Candidates did not file any supplemental signatures by the August 4, 2020 deadline.

Challenge to all nomination papers: Candidates failed to timely file nomination papers and declarations of candidacy with the Commission

The complaint states that the Commission cannot place a candidate's name on the ballot if the candidate fails to timely file a declaration of candidacy and/or fails to file the required number of valid elector signatures nominating that candidate for the office he or she seeks. Wis. Stat. § 8.30(1), 4; Wis. Admin. Code § EL 2.05(6). The complaint cites the statutory deadline for

independent candidates for president which is "not later than 5:00 p.m. on the first Tuesday in August preceding the presidential election and that declarations of candidacy must be filed no later than the latest time provided for filing nomination papers. Wis. Stat. §§ 8.20(8)(am), 8.21(1). The complaint sets forth the Commission's Administrative Code provisions that address timely filing of nomination papers, which provides that, "[i]n order to be timely filed, all nomination papers shall be in the physical possession of the filing officer by the statutory deadline." Wis. Admin. Code § EL 2.05(2). "Nomination papers … shall not be considered filed with the filing officer until the signed original of each nomination paper … [is] received in the offices of the filing officer." Wis. Admin. Code § EL 6.04(2).

The complaint sites to three Wisconsin Supreme Court cases for which the complainant asserts are still good law and "require that these filing deadlines be strictly observed." The complaint cites to:

State ex rel. Conlin v. Zimmerman, 245 Wis. 475, 478, 15 N.W.2d 32 (1944) involved a prospective gubernatorial candidate who tendered his nomination papers for filing two hours after the filing deadline and the Wisconsin Supreme Court denied him a place on the ballot. Because the candidate "failed to tender his nomination papers for filing before 5 P.M. on" the deadline date, "his tender came too late and the Secretary of State correctly refused to accept them."

State ex rel. Stearns v. Zimmerman, 257 Wis. 443, 444-46, 43 N.W.2d 681 (1950) involved a prospective candidate for the United States Senate. The candidate entered the filing office after 5:01 and presented his nomination papers to the secretary before 5:02. The Wisconsin Supreme Court held that the candidate failed to meet the statutory deadline and was, therefore, properly denied a place on the ballot. The Court noted that "the time limit set by the legislature for the filing of nomination papers must be strictly observed" and that "if a candidate or his representative fails, as here, to reach the office until later than the time specified the tender comes too late." The Court held that in this situation, the "nomination papers were corrected ejected as not being filed within the time designated by the statute."

Ahlgrimm v. State Elections Board, 82 Wis. 2d 585, 592, 263 N.W.2d 152 (1978) (per curiam) involved a judicial candidate that initially filed his nomination papers in the wrong place, submitting them to the county clerk rather than the State Elections Board. This error was not discovered until 17 days after the filing deadline had passed. The Wisconsin Supreme Court held that, where "nomination papers are not timely filed, the proposed candidate is not entitled to have his name on the ballot." The candidate argued that he had substantially complied with the requirement and should be on the ballot, but the Court disagreed, finding the statutes governing the time and place of filing nomination papers "to be mandatory," such that "[f]ailure to timely file the papers in the proper place prevents the candidate's name from being placed on the ballot." The Court noted that the statutory scheme "does not…permit the [Elections] Board to ignore untimely or improper filing of [nomination] papers." The Court held that "regulations governing the time and place of filing nomination papers must be strictly enforced," and, where a candidate fails to meet those regulations, "his name cannot appear on the ballot" no matter how "unfortunate and regrettable [] this result might be."

Based on these cases, the complaint states that any candidate who misses the statutory filing deadline-by minutes, hours, or days-must be excluded from the ballot.

To support the allegation that the Candidates' nomination papers and declarations of candidacy were not timely filed, complainants included a sworn affidavit from Devin Remiker which included an exhibit. The exhibit is an iPhone video that Mr. Remiker states he recorded on August 4, 2020 just outside the front door of the building that houses the Commission. Mr. Remiker indicated that due to the closeness of the approaching 5:00 p.m. deadline, he felt it important to record what he was witnessing.

Mr. Remiker's affidavit states that while he waited outside of the WEC building, at approximately 4:55 p.m., a car approached and parked on the street in the front of the building, where a woman got out of the car and approached the building, where she approached the door and then returned to her vehicle. The affidavit states that the woman remained in her car until after 5:00 p.m., and states that he knows this to be true as he brought his Apple Watch into the frame of the video to show that she was still in the car a 5:00 p.m. The affidavit notes that this occurred at the 3:00 minute mark, and at the 3:03 mark on the video, a TV station cameraman (WISN) says "it is 5 o'clock." The affidavit states that at least several seconds after 5:00 p.m., the woman exited the car and walked into the building. A second woman exited the driver's side of the car carrying papers in a folder and entered the building after the first woman. The affidavit states that after the women entered the building, he stopped recording, but stated that the women appearing to go into an elevator as they had crossed the lobby and gone down a short hallway to the elevators. Mr. Remiker believed the two women he observed and recorded were the individuals that submitted the nomination papers in question.

Candidate Response:

In addition to the arguments set forth below, the Candidates provided: 1) an affidavit from Ms. Lane Ruhland who indicates that she was one of the individuals who delivered the Candidates' nomination papers to the Commission on August 4, 2020, and 2) a copy of the nomination paper receipt provided by the Commission staff.

Respondents' nomination paperwork was timely filed.

<u>The Nomination Paperwork was filed "not later" than 5 p.m.</u> The response cites the applicable statute, Wis. Stat. § 8.20(8)(am), which states that the nomination papers in question may be filed not later than 5 p.m. on the first Tuesday in August preceding the presidential election. Citing Ms. Ruhland's affidavit, the response states that the "Commission alleged that the nomination paperwork was filed at 5:00:14 p.m." The response then asserts that "[e]ven if this is true, the nomination papers were filed "not later" than 5 p.m."

The response states that the statutory provision does not distinguish between minutes and seconds, and that "[f]or the average observer, arriving before 5:01 p.m. is arriving "not later" than 5 p.m." The response states that the phrase "not later" is particularly instructive in that it indicates the presumption that the seconds from 5:00:00 to 5:00:59 are inclusive to 5 p.m. as the statute states "5 p.m.", for something to be filed later than "5 p.m." it would have to be filed at 5:01 p.m. Finally, the respondent argues that the Legislature could have made a law that stated the nomination paperwork should be filed not later than 5:00:00, or similarly, the Legislature could have stated that the paperwork must be filed "by" 5 p.m. The respondent argues that the Legislature took neither of these paths and instead the Legislature codified the common

conception of time which is that if a filing is made by before the expiration of 5:00 p.m., it is filed at 5 p.m.

The Complainants' evidence is insufficient to overcome their burden of proof. The response asserts that there is no official timekeeping mechanism for the filing of nomination papers with the Commission and there is no official paperwork or timestamp demonstrating that the nomination paperwork was filed late. Again citing Ms. Ruhland's affidavit, the response states that the Commission staff indicated that "it was 14 seconds after 5 p.m." but there was nothing provided by the Commission staff to verify that information and that given that seconds were "obviously critical in this situation," it is vital to know and evaluate the precise timepiece used by Commission staff in accepting the filing.

The nomination paperwork was present in the Commission's office before 5 p.m., which is sufficient under Wisconsin law. Respondent states that the Wisconsin Supreme Court has interpreted the deadline for filing to be "present in the office" where the filing is supposed to occur by the appropriate deadline, citing *State el rel. Stearns v. Zimmerman*. The response quotes directly from that case: "If the candidate or someone in his behalf [is] ***present in the office*** where the filing is required "to tender the nomination papers not later than 5 o'clock p.m. central … time [the agency] would have been obliged to accept them; but if the candidate or his representative fails, as here, ***to reach the office*** until later than the time specified the tender comes too late." (emphasis added).

The response asserts, citing Ms. Ruhland's affidavit, that the individuals who delivered the nomination paperwork to the office, reached the office before 5 p.m. Ms. Ruhland's affidavit states that "[w]hen I left the car with the paperwork, it was 4:59. I believe I was in the Commission's offices before 5 p.m." ¶ 7. The response further asserts that "[i]f one assumes that the time of 5:00:14 p.m. given by the Commission staff is correct, then it is plausible, depending on when the "clock stopped" that the individuals who were delivering the nomination paperwork were in the office before 5 p.m." Additionally, citing Ms. Ruhland's affidavit, the delivery of the nomination paperwork was obstructed by multiple individuals while in the office, which resulted in a delay by obstructing the person carrying the remainder of the nomination papers to the elevator. ¶¶ 12-13.

The Commission ratified the filing as timely once it was accepted for filing. The response states, "[e]ven assuming arguendo, that the nomination paperwork was actually filed at 5:00:14 – and that 14 seconds after 5 p.m. is in fact late pursuant to Wisconsin law – the act of the Commission in accepting the filing ratified the filing as timely." The response cites several sections of the Commission's Administrative Code related to nomination paper filing: Wis. Admin. Code EL § 2.05(3) which states that the filing officer shall review all nomination papers filed with it … to determine the facial sufficiency of the papers filed and Wis. Admin Code EL § 2.05(4) which states that papers filed with the Commission are given the presumption of validity.
The response cites to three cases[1] in which he states "collectively show that when a state agency declines to accept a filing as late, the Wisconsin Supreme Court will accept the agencies declining to accept the filing (backed by appropriate evidence)."

Timely delivery was prevented by Commission procedure and other outside actors.

[1] *State ex rel. Conlin v. Zimmerman*, 245 Wis. 475, 476 (1944), *State ex rel. Stearns v. Zimmerman*, 257 Wis. 443, 443-44 (1950), *Ahlgrimm v. State Elections Board*, 82 Wis. 2d 585, 587 (1978).

The response states that while the general rule is that time limits set by the legislature "are strictly observed," citing the *Stearns* case and *Manning v. Young*, 210 Wis. 588 (1933), the Wisconsin Supreme Court will, if necessary, "construe [the statute] to discover the intent of the legislature in the situation presented." Candidate West attempts to analogize the current fact situation with the situation that occurred in *Manning*, which was that a filing deadline fell on a legal holiday, and the Court allowed filing to occur the next day because the statute did not account for filing on legal holidays.

Ms. Ruhland's affidavit describes her recollection of arriving at the Commission's building at or near 4:57, getting out of the car to view the phone number to call, calling the Commission to notify staff that she was there, gathering the petitions in her car, checking the clock in her car which said 4:59, walking to the door, entering the building, and meeting a Commission staff member who opened the interior door to the building. ¶¶ 3-9. Based on Ms. Ruhland's description of events, the response asserts that "[b]ut for the locked doors, the nominating paperwork would have arrived before the 5 p.m. deadline."

The response also asserts, based upon Ms. Ruhland's affidavit, that once the Campaign staff delivering the papers entered the building, "they were immediately delayed by an overly aggressive media as well as a Democratic operative." ¶12. The interference of which "likely resulted in the loss of time-depending on when the timekeeper stopped the clock." The response asserts that it "simply cannot be the rule that third parties can-either willingly or accidently-be the direct cause for the delay that results in a candidate not being placed on the ballot."

The Commission violated the Campaign's and Mr. West's rights to freely associate under the First Amendment and to Equal Protection under the Fourteenth Amendment

The response asserts that if the Commission does not place the Candidates' names on the November ballot, the State will have violated the Campaign's and Mr. West's rights under the Free Association Clause of the First Amendment because the State: 1) failed to have a consistent approach to time keeping, and a lack of standards for how such time should be kept-including who should keep it; and 2) Commission kept the door to a public building locked on a filing day with a deadline fast approaching that directly caused the filing to be late (if it was late in the first instance).

The response premises part of these claims on information and belief, that the two major party candidates had already filed their nomination paperwork before the deadline. The response claims that failing to have the door of the building open on a filing deadline so that representatives of his campaign could "make it quickly through the doors and into the office" and the lack of security or crowd management could contribute to a violation of the right to free association and equal protection against Mr. West and his supporters. The response also claims the Commission's lack of "an official timekeeping device, timekeeping strategy, and/or timekeeper" also violated Mr. West and his campaign's rights under those provisions as well. The response asserts that a lack of a common clock or common timekeeper violates the Equal Protection Clause, because without it, the Commission can use one clock for favored candidates and a different clock for disfavored candidates.

Commission Staff Analysis and Recommendations

Wis. Stat. § 8.20(8)(am) provides that "[n]omination papers for independent candidates for president and vice president … may be filed not later than 5 p.m. on the first Tuesday in August preceding a presidential election." The declaration of candidacy shall be filed with the officer or agency with which nomination papers are filed no later than the latest time provided for the filing of nomination papers. Wis. Stat. § 8.21(1).

"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." Wis. Admin. Code § EL 2.05(1).

Wis. Admin. Code § EL 2.05(2) states: "In order to be timely filed, all nomination papers shall be in the physical possession of the filing officer by the statutory deadline." "Nomination papers…shall not be considered filed with the filing officer until the signed original of each nomination paper … [is] received in the offices of the filing officer." Wis. Admin. Code § EL 6.04(2). "The filing officer shall review all nomination papers filed with it…to determine the facial sufficiency of the papers filed." Wis. Admin. Code § EL 2.05(3).

The Commission has the statutory authority to refuse to place a candidate's name on the ballot if the "nomination papers are not prepared, signed, and executed as required under this chapter." Wis. Stat. § 8.30(1)(a).

<u>Commission staff recommends that the Commission find that the nomination papers submitted by Mr. West and Ms. Tidball were not filed timely in accordance with Wis. Stat. § 8.20(8)(am), therefore their names should not appear on the November General Election ballot as Independent candidates for President and Vice-President.</u>

1) Commission staff does not believe the statutory language permits the filing of nomination papers after 5:00 p.m., and anything filed after 5:00 p.m. does not comply with the "not later than 5 p.m." language of the statute.

In Commission staff's opinion, the arguments presented for reading Wis. Stat. § 8.20(8)(am) to mean that a filer of nomination papers really has until 5:01 to submit their nomination papers are unpersuasive, not backed by any cited caselaw, and the Commission and its predecessor agencies have never interpreted the statute to allow filing beyond 5:00 p.m. The respondent argues that the Legislature could have distinguished between minutes and seconds or used different language than "not later than" and substitute it with "by" which in the respondent's opinion would have been clearer or more instructive on when the papers had to be filed. Commission staff do not believe such a tortured interpretation of the statutory language here is necessary, and have always applied the statute to mean that if the clock has struck 5:00 p.m. on the filing deadline day, and nomination papers have not yet been "tendered" to the Commission by the candidate or their representative, those nomination papers are not timely filed. Commission staff would argue that this is the more common and common sense reading of the statute. Nothing presented by the parties persuade the Commission staff to recommend a different reading of this statute and allow candidates to file nomination papers up until the clock strikes 5:01.

2) The evidence presented is clear and convincing that the nomination papers were not filed timely.

The "time of filing" cited throughout the response and within Ms. Ruhland's sworn affidavit of 5:00:14 is the approximate time that Ms. Ruhland proceeded through the interior glass entry door on the first floor of the building. That time was noted by the Commission staff member assigned to wait by the glass interior door to allow any individual into the building wishing to file nomination papers on the deadline day and escort them to the Commission's office on the 3rd floor. The time was noted by the Commission staff member looking at the clock on his Apple iPhone. Such timing is corroborated by Exhibit A to the Devin Remiker affidavit filed with the complaint, which shows Ms. Ruhland leaving her car seconds after the Apple iWatch that was in frame turned to 5:00 and another individual in the video audibly stated that it was 5 o'clock, which a person would reasonably conclude that they were also viewing a clock that had turned to 5:00. The recorded video shows it taking approximately 14-20 seconds from the time Ms. Ruhland exits the car until she enters the building, which explains the 5:00:14 time that is cited. However, as discussed below, simply reaching the front door of the building that houses the Commission does not mean nomination papers have been filed, and also discussed below, there is clear and convincing evidence that Ms. Ruhland was not even in the building prior to 5:00, which makes it impossible to be in the Commission's office on the 3rd floor prior to 5:00.

Ms. Ruhland was provided a "nomination paper receipt" that indicates who the candidate is, the election for which the individual is running, the election date, the office, party (if applicable) the dates upon which certain ballot access documents have been received, and the approximate number of signatures and pages that have been turned in (estimated by the candidate at the time of check in). The nomination paper receipt is a document generated from the Commission's election administration system that tracks candidate filings and is not a document that is issued instantly when a person arrives at the counter. The information that appears on that document must be entered into the system, checked for accuracy, printed, and then presented or emailed to the candidate.

Under the Commission's procedures, the nomination paper receipt is not a document that would receive any sort of time stamp or other indication of the precise time something was received, so it is not unusual that such a document was issued the way it was. Candidates traditionally do not wait to file nomination papers where documentation of seconds is necessitated, and in this instance, Commission staff believed the filing was not timely because the papers were not in their possession prior to not later than 5:00 p.m. as the statute required. Clear and convincing evidence exists that the nomination papers were not timely filed, even if a timestamped document (which is not normally provided as part of this procedure) was not provided to the Ms. Ruhland. "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." Wis. Admin. Code § EL 2.05(1).

3) The nomination paperwork was not present in the Commission's office before 5 p.m.

Respondent states that the Wisconsin Supreme Court has interpreted the deadline for filing to be "present in the office" where the filing is supposed to occur by the appropriate deadline, citing *State el rel. Stearns v. Zimmerman*. Candidate West quotes directly from that case: "If the candidate or someone in his behalf [is] ***present in the office*** where the filing is required "to tender the nomination papers not later than 5 o'clock p.m. central … time [the agency] would have been obliged to accept them; but if the candidate or his representative fails, as here, ***to***

reach the office until later than the time specified the tender comes too late." (emphasis added). Commission staff agrees that this is a proper reading of the *Stearns* case, and that is why the nomination papers were filed late. While the response definitively asserts that the nomination paperwork was "in the office of the Commission" before 5 p.m., Ms. Ruhland's affidavit, which is cited to support this assertion is not quite as certain: "[w]hen I left the car with the paperwork, it was 4:59. I believe I was in the Commission's offices before 5 p.m." Clear and convincing evidence to the contrary of that statement establish that Ms. Ruhland entered the building that houses the Commission after 5:00, therefore it was not possible to reach the Commission's office before 5 p.m. as her affidavit suggests.

Respondents attempt to provide reasons why they were unable to file the nomination papers times, by vaguely asserting that two members of the media and another individual that works for the Democratic Party "followed us into the building and, some combination of those individuals, physically separated me and the person carrying the remainder of the petitions." Ruhland Aff. ¶ 12. Clear and convincing evidence establishes that Ms. Ruhland and the other individual carrying the nomination papers were already late. It is unclear what sort of procedures or rules the Respondents believe should have been implemented by the Commission to ensure that timely filing of the petitions could have occurred for the Candidates. Commission staff have no control over what happens on public sidewalks outside of the building, but in any case, Commission staff monitoring the door near the deadline did not report any access to the building being impeded. Commission staff was in contact with Campaign representatives throughout the afternoon of August 4 and explained the process for accessing the Commission's office to file nomination papers. Commission staff were waiting at the front entrance door of the building to allow candidates to enter the building after they arrived. Commission staff escorted Ms. Ruhland and the other individual to the elevator, which staff had ensured was at the ground floor for the quickest access possible. Commission staff enforced the social distancing rule related to elevators in the Commission's building and did not allow other individuals onto the elevator other than Ms. Ruhland, the other individual and the Commission staff member.

Commission staff believes accepting the argument that the Commission should somehow be responsible for providing security protection for filers or the building security policy regarding door access should be suspended when access is substantially the same as an unlocked door is not a policy that should be set. "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." Wis. Admin. Code EL § 2.05(1). If such arguments are accepted, what would stop future candidates from claiming they were late because of a high number of red traffic signals slowed delivery, an unexpected detour because of road construction caused the trip to take a couple minutes longer, a slow or maximum capacity elevator, or the plan to park in the front of the building had to be modified because all available spots were filled and they had to park a block away. Candidates need to plan ahead and arrive in time to get into the building and file the papers in the office of the Commission prior to the deadline, there are no exceptions under the statute or the relevant case law.[2] Commission staff did receive a call from Ms. Ruhland at 4:57 indicating she was on her way to the office to file. Commission staff received that call on an office cell phone while on the first floor of the building waiting to let potential filers in the building if they arrived.

[2] Respondents cite to *Manning v. Young*, 210 Wis. 588, 247 N.W. 61 (1933) which Commission staff believe is not relevant to the facts in this case. The statutory deadline did not fall on a legal holiday and enforcement of the statute at issue here is mandatory.

4) The nomination papers were not in possession of the filing officer by 5:01 p.m. on the filing deadline either.

Even if the Commission accepts the argument that a candidate has until 5:01 to file nomination papers, the papers were not in the possession of the Commission by 5:01. Filing of nomination papers is not accomplished by stepping through the front door of the office building that houses the Commission. The Commission's office is located on the third floor of the building. To reach the Commission's office, an individual needs to walk down the first floor hallway, access the elevator, ride the elevator to the third floor, get out of the elevator, approach the Commission staff at the front desk and present the nomination papers for filing and when the Commission takes physical possession of the papers, they are considered filed. These steps to access the Commission's office and transfer possession of the papers all occurred after the "5:00:14" time cited throughout the response and corroborated by the Remiker video and the time contained on the Commission staff member's Apple iPhone. It is virtually impossible to accomplish these steps in the approximate 46 seconds that would have been needed to present the papers for filing by 5:01, as argued in the response.

Finally, Ms. Ruhland and the other individual that accompanied her with additional nomination papers were unable to transfer control of the nomination papers to the Commission staff for several minutes after they stepped off of the elevator, because the papers were not numbered as required by Wis. Admin. Code EL § 2.05(2). "Each of the nomination papers **shall be numbered, before they are filed,** and the numbers shall be assigned sequentially, beginning with the number "1". Notwithstanding any other provision of this chapter, the absence of a page number will not invalidate the signatures on that page." (emphasis added). Ms. Ruhland and the other individual that accompanied her were organizing and number nomination papers in the Commission's office which did not allow for a transfer of the papers after they reached the Commission's office.

5) Commission staff's acceptance of the nomination papers after the filing deadline does not "ratify the filing as timing."

Only filing nomination papers prior to the deadline can result in the papers being ratified as timely. There is no dispute that the Commission staff allowed Ms. Ruhland to transfer the nomination papers into the possession of the Commission, but Commission staff believe this has no bearing on whether the papers were timely filed or not. If the nomination papers were not "in the physical possession" of the Commission by the statutory deadline of "not later than 5 p.m." – the papers were not timely filed. See Wis. Admin Code EL §§ 2.05(2), 6.04(2). Due to the frantic filing of the respondents so close to the filing deadline, out of an abundance of caution, and to promote access to the ballot, and not denial of access if the papers were later determined to be timely, Commission staff were advised to accept transfer of the papers and conduct a facial review of the signatures notwithstanding the timeliness issue. Commission staff was aware that the full Commission (not the Commission staff) would be ultimately tasked with deciding whether the papers were in fact timely. Commission staff took possession of the papers and conducted a facial review of the content of those papers under Wis. Admin. Code § EL 2.05(3).

While Respondents argue that the three leading court cases on the timeliness of nomination paper filing could potentially be interpreted to require rejection of the papers for their holdings to apply, Commission staff believe that is a fundamental misreading of those cases. Those cases

clearly espouse the holding that if a candidate's nomination papers were not filed or "tendered" on time with the filing officer in the office of the filing officer, the candidate's name shall not appear on the ballot. The Commission, not the Commission staff, is tasked with making this determination. See Wis. Stat. § 8.30(1)(a). The fact that the papers were transferred to the Commission after the filing deadline, is the fact that informs the Commission's ballot access decision.

Respondents argue that because the nomination papers were transferred to the Commission, a presumption of validity under the Commission's administrative code should apply. The presumption of validity cited by the Respondent applies to "any information which appears on a nomination paper." The response "summarizes" that code provision to attach a presumption of timeliness to papers which is found nowhere in the Commission's administrative code. To the contrary, Candidate West fails to cite to the administrative code section that is directly on point related to when nomination papers are considered timely. Wis. Admin. Code § 2.05(2) states: **"In order to be timely filed, all nomination papers shall be in the physical possession of the filing officer by the statutory deadline."** (emphasis added).

6) The Commission has not violated Mr. West or his Campaign's rights to free association under the First Amendment and to equal protection under the Fourteenth Amendment.

As a preliminary matter, the two major party candidates have not already filed nomination paperwork to obtain ballot status for the November election. Political organizations that have obtained ballot status certify the names of candidate nominated at the nominating convention to the Commission by September 1, 2020. Those candidates must also file a Declaration of Candidacy by that same date. The process for candidates to obtain ballot access for President and Vice-President is statutory and the Commission grants access to candidates that have complied with those requirements and denies access to candidate that do not.

Without citing to any evidence or caselaw, Respondents assert that the Commission's timekeeping and security procedures could equate to serious violations of Mr. West's Constitutional rights if ballot access is not granted.

The Commission staff has already described the timekeeping used to ensure that candidates who file valid nomination papers timely and meet all other requirements are granted access, and those that do not meet those standards are denied. All individuals that file nomination papers in the Commission's office are required to follow the same security protocols for obtaining access to the building and the Commission's office. The doors to the building that houses the Commission's office, along with another stage agency and a private company are accessed by keycard of the employees. Respondents expressed they felt burdened by the security procedure for the building that houses the Commission's offices, that requires a visitor to contact the agency for which they had business with to authorize entry and escort them to the office from the front door. The building that houses the Commission's offices also has several other tenants and is not a state-owned facility. The Commission's landlord has established security procedures for the benefit of all tenants in the building and staff mitigated these access issues by stationing staff at the entrance of the building as the 5 pm deadline approached.

The Commission does not have "favored" or "disfavored" candidates, it treats all candidates the same, and determine on a case by case basis whether a candidate has met the statutory requirements to appear on the ballot or not.

Commission staff recommends that the Commission reject the challenge to the timeliness of the declaration candidacy documents filed by Mr. West and Ms. Tidball as they were filed timely in accordance with Wis. Stat. § 8.21(1).

The declaration of candidacy shall be filed with the officer or agency with which nomination papers are filed no later than the latest time provided for the filing of nomination papers. Wis. Stat. § 8.21(1), which was August 4, 2020 by not later than 5 p.m. The Commission received in the mail on the morning of August 4, 2020, executed declaration of candidacy forms for both Candidate West and Candidate Tidball.

Since those documents were timely filed, Commission staff recommend rejecting the challenge to those documents.

Challenge to signatures on nomination papers: Circulators misrepresented the nature, meaning, and purpose of the nomination papers when presented to signers

The complaint alleges that multiple circulators of Respondent's nomination papers misrepresented to signatories the nature, meaning, and purpose of the nomination papers.

The complaint includes sworn affidavits from individuals that signed the nomination papers who state that they signed the nomination paper under a variety of false pretenses, and but for being misled, they would not have signed the Respondent's nomination papers. The complaint includes an example of Trais Haire who signed a nomination paper for the Respondent circulated by Kim Shanklin. Haire's affidavit states that he was approached to sign the petition that was about increasing minority representation and did not receive any additional information about the petition. Haire states he would not have signed the petition had he been aware that the petition was to get Kanye West on the ballot.

The complainant argues the affidavit filed by Haire demonstrates that Kim Shanklin affirmatively misrepresented the contents of the nomination papers in collecting nomination signatures which violates Wis. Stat. § 8.15(4)(a) and Wis. Admin. Code § 2.05(4) which requires a signed certification of circulator to appear on each page. The complainant alleges that Kim Shanklin's violation of law by providing an improper certification should render all pages she circulated (22) and the signatures contained on those pages (205) invalid.

The complaint alleges that similar signers experienced the same sort of misrepresentation from other circulators and therefore those pages and the signatures contained on those pages all be struck as invalid. See Affidavits of Derek A. Jeter, Ora Brown, Virginia McCorty, Jerry Lewis, Hazel Lindsey and Tobisha Lyones and nomination papers circulated by Mario Coleman, Chawana H, Micah Marshbanks, Darius Fletcher, Ernest Buggest, Jermain Crouch, Ernest Johnson, S.H. Brinkman, Keith Young, Jake Thomas and Benjamin Rush, Jr. The complaint alleges that 103 pages, containing 880 signatures circulated by these individuals should all be struck. Cumulatively, the complaint alleges that the false certifications of circulators invalidate

1517 signatures, the removal of which, would leave the Respondent short of the 2000 signatures required.

Candidate Response:

Respondent states that the allegations of misrepresentation fall short of the required "clear and convincing evidence" burden of proof to successfully challenge and strike nomination signatures. Respondent states that while the complainant provides some evidence to support the allegation, the evidence falls short of the evidentiary standard. Additionally, the Respondent cites Wis. Admin. Code EL § 2.05(5) which states that "where a 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."

Respondent states that without referencing any specific pages or line numbers, the Complainant alleges that entire pages of signatures should be disregarded because "a single elector (out of many) on a few pages, after being contacted and harassed by Democratic Party operatives, appears to suffer from buyer remorse and claims to have not understood what they signed." The Respondent states that the Complainant cite no cases or legal authorities to support this unique proposition – because there is none. The Respondent argues that one cannot meet the clear and convincing evidentiary burden to strike ten signatures per page by providing an affidavit of an elector, unrelated to the others, and allege, after signing days earlier, that they did not fully understand what they were signing. At best, that single signatures might be stricken, assuming clear and convincing evidence, but not the entire page.

Respondent attached affidavits of the petition circulators identified in the complaint which describe the process of circulating the petitions, the information they provided to signers while obtaining signatures on the papers, their knowledge that none of their colleagues were covering the header portion of the page, and that they did not mislead any of the signers on the pages they circulated.

Respondent states that given the nature in which the affidavits (from signers in the complaint) were obtained, and that any information on a nomination paper is entitled to a presumption of validity, the allegations of misrepresentation on the part of several circulators falls short of the required clear and convincing burden, and no signatures should be stricken.

Commission Staff Analysis and Recommendations

"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." Wis. Admin. Code EL § 2.07(3)(a). The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence." Wis. Admin. Code EL § 2.07(4).

When a signer applies their signature to a nomination paper, and the circulator of that page completes the certification, the circulator stating that the individuals have "signed the paper with full knowledge of its content." See Wis. Stat. § 8.15(4). "Any information which appears on a nomination paper is entitled to a presumption of validity." Wis. Admin. Code EL § 2.05(4).

Commission staff agree with the Respondent's argument that the Complainant has not met its burden of proof to establish that all signatures collected by 12 circulators should be stricken because the signer did not have full knowledge of what they were signing and that the circulators misrepresented the purpose of the petition in order to get individuals to sign. Additionally, the complainants do not specifically identify which pages and signatories they believe were deceived by the various circulators. Without such identification, and the counter affidavits filed by the circulators, the presumption of validity to information contained on those pages is not overcome by the challenge.

Commission staff recommends rejecting the challenges to 1,517 signatures that the complainant alleges were obtained on pages in which the circulator misrepresented the purpose of the petition to the signer.

Challenge to signatures on nomination papers: Circulators did not provide correct residential address in their certification

The complaint alleges that three of the Respondent's circulators provided an improper address when they executed the certification of circulator. The complaint includes a sworn affidavit from Charles Myers and several exhibits to the affidavit to support the claim that the addresses provided by circulators Kenneth Linares, Benjamin Rush, Jr., and Joseph Durrell were improper.

The complaint cites Wis. Stat. § 8.15(4) (as incorporated here by Wis. Stat. § 8.20(3) as the requirement for a circulator to provide "his or her residence with street and number at the bottom of each nomination paper" as part of the required circulator certification.

Linares: The Myers Affidavit states that Mr. Linares certified he lives at 15 Morgan Street, in Crystal Lake, IL, that address is not a residential address, the property is zoned commercial for industrial use, cannot lawfully be used as a residence and a visit to the property demonstrates that no one currently resides there or has resided there in the recent past. Mr. Myers used Google Streetview and saw what appeared to be a business called "Bebe's Doggie Daycare and Grooming Spa"; used the City of Crystal Lake, IL website to obtain a city zoning map, City of Crystal Lake's GIS data for the property and the McHenry County, IL property tax inquiry – all of which were attached as Exhibits A-C of the affidavit – and he concluded that the property was zoned for industrial use (M-L) and was owned by "Cerniglia, Dominic"; he spoke with an Assistant City Planner of Crystal Lake, IL and inquired whether properly zone M-L could be used for residential purposes and he obtained verbal and written confirmation that residential uses were not listed as an allowable use for properties in that class; video footage (Exhibit E) of the property was taken, and in his opinion as an "experienced real estate investor" the presence of a For Lease sign and a realtor's lockbox that these were indications of a vacancy in commercial property; video footage of a conversation of a man identified as Bob Kelley who lived in the neighborhood who stated that the property had hosted numerous businesses in the past but that no one lived there or to his knowledge no one had ever lived there; search of McHenry County tax records indicated that a Robert Kelley lives at 345 E. Crystal Lake Avenue which is directly across E. Crystal Avenue from the parcel at 15 Morgan Street.

Rush: The Myers Affidavit states that Mr. Rush certified he lives at 17922 Gothard Street in Huntington Beach, CA, but that address is not a residence. Mr. Myers used Google Streetview and observed that it appeared to host a number of automotive repair garages (Exhibit H); used

Yelp! and other online business listings that listed numerous automotive repair garages including but not limited to Ken's Automotive, Corona Autowerks, and Pacific Coast Automotive (Exhibit I); called Ken's Automotive and "Ken" informed him that there were no residences or residents of his building as it is an automotive garage in Huntington Beach, CA, he had never heard the name Benjamin Rush before and had never employed any individual by that name, and that Ken would consider texting him something to that effect; notes of the conversation with Ken were taken immediately after the conversation the description was derived from those notes.

Durrell: The Myers Affidavit states that Mr. Durrell certified he lives at 13142 Chrissy Way in Lakeside, CA, a review of publicly available materials demonstrates that Mr. Durrell does not reside in California and has not resided there recently. Mr. Myers investigated Mr. Durrell online and reviewed a Facebook profile and posts for "Joey Durrell" (Exhibit J) which indicated that he is a paid petition circulator; Facebook posts suggested he does not currently reside in CA and lives in various locations all around the country; a July 5, 2020 Facebook post stated that "we have decided to save money by living in Florida."; Facebook post expresses support for Kanye West; a response to a Facebook friend inquiry regarding moving to Jacksonville, and not having plans to move back to CA; Mid-July Facebook comments that said he was in Michigan for the next 6 months for work and then heading to Florida for 6 months; no longer in California; great money working in Michigan; stating he was in Michigan and his girlfriend and dog were on the way to join him. Based on the Facebook review, Mr. Myers concludes that Mr. Durrell is no longer a resident of the State of California, and therefore the circulator certification address is incorrect.

The complaint alleges that due to the improper addresses in the circulator certifications of Mr. Linares, Mr. Rush, and Mr. Durrell, the Commission should invalidate the 637 elector signatures contained on the pages that were submitted with those circulators.

Candidate Response:

Respondent states that the allegations against the three circulators of providing an improper address are false and states that "Mr. Myers was grossly incorrect." To counter the claims, the response includes an affidavit from each of the three circulators as well as supporting evidence such as copies of utility bills, pictures of driver licenses, and even a picture with the individual in front of the residence. Respondent asserts that the attempt to challenge the residences of the three circulators in this instance using the affidavit of Mr. Myers (which they assert is misleading and false) should "cast a cloud over the credibility of the other supporting affidavits provided by Complainants."

Linares: Mr. Linares filed a sworn affidavit that states he resides at 15 North Morgan Street, Crystal Lake, Illinois, 60014; he includes with his affidavit a picture of mail he received in May 2020 from ComEd, his electric company that is address to him at 15 North Morgan Street; he states that it is true that Bebe's Doggie Daycare and Grooming Spa used to be a store at 15 North Morgan Street but he understands that business to now be closed; he indicates that the business referenced and his residence are located in a residential neighborhood; there are several individual units that comprise 15 North Morgan street behind where the dog grooming business was located.

Rush: Mr. Rush filed a sworn affidavit that states he resides at 17922 Gothard Street, Suite B8, Huntington Beach, California, 92647; he includes with his affidavit a picture of his driver's license bearing the same address above (license number redacted); he states that he lives in an RV on the lot of the autoshop; he receives his mail at the shop; he often travels for work but "unquestionably consider 17922 Gothard Street, Suite B8, Huntington Beach, California, 92647 to be my residence" and that is where he resides when he is home.

Durrell: Mr. Durrell filed a sworn affidavit that states he resides at 13142 Chrissy Way, Lakeside, California, 92040; he includes with his affidavit a picture of his most recent utilities bill from San Diego Gas and Electric which contains his residential address; he includes his current California driver's license that lists his residential address as 13142 Chrissy Way, Lakeside, California, 92042; he states that he has not abandoned his California residence; he is currently subleasing his Lakeside, California residence to friend who are watching the residence and his pets, but that he intends to return to his Lakeside, California residence once the 2020 election campaign is complete; he states that due to his work as a petition circulator, he travels to various states to help candidates get on the ballot; he is currently visiting family in another state before he begins circulating petitions there; he not purchased or rented another home to replace his Lakeside, California residence; he explains his Facebook post that states he "Just moved into Ann Arbor" Michigan, he did not mean that he signed a lease on a property or purchased a home in Ann Arbor, Michigan to replace his residence in Lakeside, California, but that he was in Michigan to circulate petitions for another campaign.

Commission Staff Analysis and Recommendations

"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." Wis. Admin. Code EL § 2.07(3)(a). The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence." Wis. Admin. Code EL § 2.07(4).

Nomination papers must include an executed certificate of circulator and the circulator is required to provide "his or her residence with street and number at the bottom of each nomination paper." Wis. Stat. §§ 8.20(3); 8.15(4)(a). "Any information which appears on a nomination paper is entitled to a presumption of validity." Wis. Admin. Code EL § 2.05(4).

The Myers Affidavit certainly provides explicit details of the process used by Mr. Myers to try and establish that the addresses provided by the three circulators were somehow incorrect or otherwise invalid. Mr. Myers uses publicly available data as well as personal observation, with video footage, to provide an opinion as to whether the address listed is in fact where the circulator resides. In Commission staff's opinion however, the sworn affidavits provided by Mr. Linares, Mr. Rush and Mr. Durrell contain sufficient explanations and actual evidence (utility bills, driver license) that the individuals listed their "residence with street and number at the bottom of each nomination paper" as required by the statute. Individuals that travel extensively for work or have lodging arrangements that may not be traditional do not restrict an individual's ability to circulate a petition, as long as the requirement is met. Information that appears on a nomination papers is entitled to a presumption of validity under the Commission's administrative code, and Commission staff believes the evidence provided does not overcome that presumption.

Commission staff recommends rejecting the challenge to the 637 signatures collected on Respondent's nomination papers by Mr. Linares, Mr. Rush and Mr. Durrell.

Challenge to signatures on nomination papers: Signers provided an address different than the address at which they are registered to vote

The complaint alleges that multiple signers of the Respondent's nomination papers provided an address other than the address at which they are registered to vote. The complaint alleges that "[i]n order for a signature to be valid, an elector must provide his or her municipality of residence for voting purposes and the street and number, if any, on which the signer resides." Wis. Stat. § 8.20(5). The complaint alleges that the information provided by the signer "must match" the signer's residence for voting purposes. The complaint alleges that where there is a disparity between the address listed on the nomination papers and the address at which an elector is registered to vote, the signature should be stricken. The complaint alleges that cumulatively, the number of elector signatures submitted by Respondents with an address disparity that should be stricken is 188. To support this claim, Complainants attach an affidavit from Devin Remiker and Exhibit B in the appendix.

The Remiker Affidavit provides the details of the address matching that was conducted, which states he purchased an update to the Commission's voter file on July 24, 2020 and the file was uploaded into the Democratic Party's "Votebuilder" software. He describes the voter file information being operational in Votebuilder on Tuesday, August 4, 2020. He stated that the voter file information was used to "verify the validity of the residences of signatories on the nomination papers submitted to the WEC on behalf of The Birthday Party" and that the verification effort indicated that 188 of the signatories are registered to vote at an address other than the one shown next to their signatures on the nomination papers at issue here. ¶¶ 19-21.

Candidate Response:

The response cites to Wis. Stat. § 8.20(5) which requires that each elector signing nomination papers must include "their municipality of residence for voting purposes" and the "street and number, if any, on which the signer resides." Respondent asserts that the Complainant incorrectly suggest that if the address where the signer resides differs from the address where they are registered to vote, that the signature must be stricken. Respondent argues that this simply cannot be the case because a signer is only required to include their municipality for voting purposes, not their entire registered voting address. Respondent cites the presumption of validity that is attached to information submitted on nomination papers. Wis. Admin. Code EL § 2.05(4). Respondent asserts that the vast majority of the signatures challenged include the municipality for voting purposes and the street and number at which they resident – but notes that the street and number are not required, due to the "if any" language. Respondent claims that the Complainant has set up a strawman argument (that the full registered voting address must be included) and then proceeded the attack based on that flawed strawman argument. Respondent argues that "[a]ll that is required for inclusion is the "municipality for voting purposes" – nothing more, nothing less." Respondent also argues that the matching process used is ripe for error and that a careful review of the challenged addresses show that several address which were allegedly incorrect appear to be substantially similar, suggesting that the database used by the Complainant has the incorrect address, or the software misread the entered address from the papers. Respondent cites several Pages and Line Numbers that were challenged that he argues are

substantially similar, and acknowledges this is not an exhaustive list, but argues that it shows the analysis done by the Complainant is "flawed, suspect, and simply does not meet the high clear and convincing standard."

Commission Staff Analysis and Recommendations

"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." Wis. Admin. Code EL § 2.07(3)(a). The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence." Wis. Admin. Code EL § 2.07(4). "Any information which appears on a nomination paper is entitled to a presumption of validity." Wis. Admin. Code EL § 2.05(4).

In Commission staff's opinion, Exhibit B provided by the Complainant makes it nearly impossible to validate the information they are claiming, because the document does not contain the voter's name or what information that was compared or searched to generate the Exhibit that purports to show the comparison results. Additionally, without further explanation, Commission staff is unable to assess the reliability of the "Votebuilder" data cross referenced against information contained on the nomination papers.

Additionally, the Complainant asserts that the information provided by the signer "must match" the signer's residence for voting purposes or the signature must be struck. Such a strict standard has never been applied to nomination paper signatures because there could be any number of legitimate reasons why the information on the nomination paper and information contained in the database maintained by the Democratic Party does not match. For example, a person's address could have changed, and they did not update their voter registration yet which could certainly cause a mismatch between two data sets.

Commission staff do not believe the Complainants have provided enough evidence here to meet their burden of clear and convincing evidence to show that the signers identified have provided an incorrect address. Additionally, the strict matching standard set forth by the Complainants, is not the proper test. Information contained on nomination papers is entitled to a presumption of validity. Without clear and convincing evidence to demonstrate an insufficiency in the information, that presumption is not overcome, and the signatures are accepted as valid. Finally, Exhibit B falls short of providing enough information for the Commission staff to even attempt to determine if there is some discrepancy between the nomination paper information and the "Votebuilder" database.

Commission staff recommend rejecting the challenge to the 188 signatures alleged by the Complainant to not include the signer's municipality of residence for voting purposes and the street and number.

Challenge to signatures on nomination papers: Incomplete signatures

The complaint alleges that various signatures contained on the Respondent's nomination papers are incomplete, and therefore should be struck.

Printed Name Legibility

The complaint cites Wis. Stat. § 8.20(5) which states that for a signature to be valid, an elector must legibly print his or her name in a space provided next to his or her signature. The complaint cites to the review standards used by the Commission to determine whether a printed name meets the legibility standard and that if a filing officer can discern no part of a printed name, it should be deemed illegible and the signature should not be counted. The complaint attaches an affidavit from Linton Mohammed, Ph.D. to support the claim that some signatures did not contain a legibly printed name. Dr. Mohammed identifies himself as a "U.S.-certified and internationally recognized Forensic Document Examiner, and the focus of my research and professional experience is on handwriting and signature identification and the scientific approach to analyzing questioned signatures." Dr. Mohammed was engaged by the Complainant to review and analyze elector and circulator signatures and other handwritten information included on the nomination papers in question. Dr. Mohammed asserts that in his opinion, 187 entries are illegible. Dr. Mohammed attaches a table identifying the entries. (Exhibit A to affidavit).

No municipality listed
The complaint cites Wis. Stat. § 8.20(5) which states that in order for a signature to be valid, an elector must provide his or her municipality of residence for voting purposes. The complaint alleges that 65 signatures are not accompanied by the signer's municipality (Exhibit B).

Incomplete signature date
The complaint cites Wis. Stat. § 8.20(5) which states in order for a signature to be valid, and elector must include the date of signing. The complaint alleges there are 47 signatures for which there is not a proper date (and for whom the date is not bracketed) (Exhibit B).

The complaint generally asserts that only Wisconsin electors, not all individuals present in Wisconsin, are eligible to sign a nomination paper, and, in some circumstances, electors are barred from signing a nomination paper for a candidate based on the elector's residence. Wis. Stat. §§ 8.10(4), 8.15(3). Therefore, submission of accurate identifying information is necessary in order to validate elector signatures, and consequently, signatures without complete and accurate identifying information must be stricken.

Candidate Response:

Respondent states that a quick review of the affidavit of the Complainant's handwriting expert shows that many of the "supposed illegible" names, are indeed legible, and they assert that "Nos. 6, 10, 16, 18, 41, 51 and many, many others are clearly legible, even to the untrained eye." Respondent asserts that in situations where only part of the name can be discerned, but does not have the exact spelling, that signature should be counted. Respondent cites to the Commission's Nomination Paper Challenges manual that sets forth the test for legibility used by filing officers to determine whether a signature meets the statutory standard or not. Additionally, Respondent asserts that there is no requirement that the signed name be legible, or that the signed name not be printed.

Respondent cites to the Commission's Common Nomination Paper Challenges manual which references Wis. Admin. Code EL § 2.05(15)(a) that allows for a signature to survive an incomplete date challenge 'if the date can be determined by referenced to other dates of other signatures on the paper.' As such, Respondent argues that if the date can be determined by other dates on the form, following the advice of the Wisconsin Department of Justice, all dates should

be counted. Respondent alleges that here, the majority of the alleged defective dates can be determined by other dates on the page, as such, they should not be stricken.

Respondent describes the burden of proof and burden shifting process outlined in Wis. Admin. Code EL § 2.07(3)(a). Respondent asserts that a complainant cannot simply raise an issue, with little or no evidence, and shift the burden to the candidate to prove validity-which is what Complainant attempts to do here with the signature challenges. The burden to rebut challenges does not shift to the challenged candidate to prove sufficiency *until and if* the challenger first meets their clear and convincing burden. As such, Respondent states that challenges with little or no supporting evidence should be dismissed.

Commission Staff Analysis and Recommendations

For signatures to be valid, an elector must legibly print his or her name in a space provided next to his or her signature, include his or her municipality of residence for voting purposes and provide the date of signing. Wis. Stat. § 8.20(5), Wis. Admin. Code EL § 2.05(12), (15).

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).

Printed Name Legibility

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. 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).*

Commission staff reviewed the challenged signatures provided by the Complainant and provide the following recommendations:

Accept the challenge, and strike the following 16 signatures from the total: Page 149, Line 2; Page 185, Line 4, Page 196, Line 1; Page 238, Line 3; Page 251, Line 6; Page 252, Lines 3 and 4; Page 259, Line 4; Page 267, Line 6, Page 293, Line 4; Page 308, Line 10; Page 312, Line 8; Page 349, Line 1; Page 350, Line 6; Page 354, Line 1, Page 370, Line 10 – for failure to provide a legibly printed name.

Reject the remaining challenge because the signatures were legible, the signatures challenged were unable to be determined based on the Page and Line number described, or they were previously struck for legibility issues or other issues on the page.

No municipality listed and incomplete signature date

Commission staff reviewed the Exhibit provided by the Complainant and is unable to determine what signatures are being alleged to have no municipality listed. The first section of the exhibit contains 4 columns – referencing pages and lines and notes, some of which are cut off that indicate the potential signer's name – it is unclear what this first section is identifying or challenging. The next section lists information about addresses, municipality, and dates of signing from signatures, but there is no Page or Line number to associate with that information, so it is unclear what is being challenged. The remaining sections of the Exhibit contain column headings that are mostly cutoff, so it is difficult to understand what the data actually represents, and again, what is actually being challenged. It appears to document completeness of information and who the circulator was for certain pages, but again, there is no Page or Line number to associate with any of the information presented.

The Complaint does provide four examples that contain a Page and Line number (citing the Bates Number provided by Complainant) – 2 of which were already struck by staff during its initial review for failure to include a municipality (Page 404, Line 2; Page 388, Line 8), 1 was struck already because it did not contain a proper date (Page 166, Line 10, and 1 was bracketed and counted (Page 219, Line 8).

Commission staff recommends rejecting the challenge to these signatures because the Complainant has not met the burden of proof of clear and convincing evidence that signatures were incomplete. The main reason, however, is that staff was unable to identify and research the signatures due to the deficiencies contained in the Exhibit. The burden is on the Complainant and not on the Commission to try and decipher the contents of the evidence provided to determine whether a signature should be struck during a challenge.

Challenge to signatures on nomination papers: Duplicate and fake names

The complaint alleges that two individuals signed the nomination papers purporting to be Kanye West, who is not a Wisconsin elector (Page 11, Line 8 and Page 281, Line 6) and one person signed the nomination paper purporting to be Bernie Sanders, who is also not a Wisconsin elector (Page 314, Line 3).

Candidate Response:

Respondent did not provide a specific response to the challenge of these signatures.

Commission Staff Analysis and Recommendations

"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." Wis. Admin. Code EL § 2.07(3)(a). The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence." Wis. Admin. Code EL § 2.07(4). "Any information which appears on a nomination paper is entitled to a presumption of validity." Wis. Admin. Code EL § 2.05(4). Only individuals eligible to vote in the State of Wisconsin may sign a nomination paper of a candidate running for President and Vice President. See Wis. Stat. § 8.20(2)(a).

The signatures on Page 11, Line 8 and Page 281, Line 6 (Kanye West) were accepted by during the initial review. Complainants assert that Kanye West is not a Wisconsin elector and is therefore not qualified to sign the nomination papers. Commission staff reviewed the information provided by the individuals purporting to be Kanye West on the pages described. Commission staff determined that no elector with the name of Kanye West is currently or previously registered to vote in Wisconsin. Commission staff researched the two addresses provided by the electors: 7841 W. Center Street, Milwaukee, WI and 2460 N. 22nd Street, Milwaukee, WI and found no evidence that an individual with that name resides as either of those addresses. The 7841 W. Center Street address is a four-unit apartment building. Commission staff reviewed the registration history of all four units, as well as the address without a specific unit number, and found no registration records of any electors with the name Kanye West, active or otherwise. Additionally, per additional research using publicly available

records contained in the Milwaukee County GIS system, the address listed on Page 281, Line 6, 3460 N. 22nd St., does not exist.

Commission staff recommends sustaining the challenge to these two signatures.

The signature on Page 314, Line 3 (Bernie Sanders), has already been struck for failure to include a municipality of residence.

The complaint alleges that the nomination papers contain a signature for Mickey Mouse, who the Complainant states is an obviously fake name, and therefore should be struck. The signature on Page 285, Line 8 (Mickey Mouse), has already been struck for failure to include an address and municipality.

Recommended Motions:

1) **The Commission sustains the challenge to all nomination papers submitted by Mr. West and Ms. Tidball because they were not filed timely in accordance with Wis. Stat. § 8.20(8)(am), therefore their names shall not appear on the 2020 November General Election ballot as Independent candidates for President and Vice-President respectively, in Wisconsin.**

2) **The Commission rejects the challenges to 1517 signatures that the Complainant alleges were obtained on pages in which the circulator misrepresented the purpose of the petition to the signer.**

3) **The Commission rejects the challenge to the 637 signatures collected on Respondent's nomination papers by Mr. Linares, Mr. Rush and Mr. Durrell, as the Complainant has not met the burden of proof showing that the named circulators provided an incorrect address when completing the certification of circulator.**

4) **The Commission staff rejects the challenge to the 188 signatures alleged by the Complainant to not include the signer's correct municipality of residence for voting purposes and the street and number.**

5) **A. The Commission sustains the challenge, and strikes the following 16 signatures from the Candidate's total for failure to provide a legibly printed name as required by statute : Page 149, Line 2; Page 185, Line 4, Page 196, Line 1; Page 238, Line 3; Page 251, Line 6; Page 252, Lines 3 and 4; Page 259, Line 4; Page 267, Line 6, Page 293, Line 4; Page 308, Line 10; Page 312, Line 8; Page 349, Line 1; Page 350, Line 6; Page 354, Line 1, Page 370, Line 10.**

   B. The Commission rejects the remaining challenges because the signatures were legible, the signatures challenged were unable to be determined based on the Page and Line number described by the Complainants, or they were previously struck for legibility issues or other issues on the page.

6) **The Commission rejects the challenges to signatures alleged to be missing a municipality or contain an incomplete signing date because the Complainant has not met the burden of proof of clear and convincing evidence that signatures were incomplete.**

7) **The Commission sustains the challenge to the two signatures on Page 11, Line 8 and Page 281, Line 6, as the signer has provided an improper name information when signing the nomination paper. The remaining 2 signatures are already struck for other reasons and not included in the total.**

8) **The Commission directs staff to draft Findings and an Order consistent with these motions.**

3. **Allen Arntsen Complaint against The Wisconsin Green Party, Howie Hawkins, Angela Walker**
Case No. EL 20-32

Signatures required for office: 2000
Signatures challenged: 2046

This complaint alleges that 2,046 signatures should not be counted because the nomination papers contained an incorrect address for Vice President Candidate Walker; 1,834 signatures appear on nomination papers where the incorrect address for Vice President Candidate Walker was not corrected; 48 pages of nomination papers were printed with an incorrect address for Vice President Candidate Walker but the incorrect address was crossed out and the correct address was handwritten on the nomination paper without an initial or date; 57 pages were printed with an incorrect address for Vice President Candidate Walker but the incorrect address was crossed out, correct address was handwritten in after the date on which the electors signed the pages.

The Challenger's Complaint can be found at: https://elections.wi.gov/node/7024

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 August 7, 2020. Wis. Admin. Code EL § 2.05(4).

The Candidate did not submit any correcting affidavits.

Supplemental Signatures:
The Candidate did not file any supplemental signatures by the August 4, 2020 deadline.

Challenge to signatures on nomination papers: Nomination papers contained incorrect address for Vice President Candidate Walker, or the pages were not corrected, or the incorrect address was crossed out with the correct address handwritten without an initial or date, or the incorrect address was crossed out and correct address was handwritten in after the date on which the electors signed the pages.

The complaint alleges that a total of 2,046 of the signatures submitted are on nomination papers that were printed with an incorrect address for Candidate Walker – address of 3204 TV Road, Room 231, Florence SC. The complaint alleges that "this is not a correct address for Ms. Walker; Ms. Walker's correct address is 315 Royal Street, Apt A, Florence, SC 29506. Complainant alleges that the nomination papers containing the "TV Road" address are legally insufficient, such that Mr. Hawkins and Ms. Walker should not be included on the ballot in Wisconsin for the November 3, 2020 election.

The complaint sets forth two separate arguments and analyses on why signatures should be stricken: 1) incorrect address printed, do not count signatures on those pages, 2) incorrect address printed, either no attempt to correct the address present or attempts to correct address are present on the page, but do not count the signatures on those pages.

Complaint argues that under either argument or analysis, Mr. Hawkins and Ms. Walker did not submit the minimum number of signatures required to appear on the ballot as independent candidates for President and Vice President.

Candidate Response:

No written response to the challenge was received from the Respondents.

Commission Staff Analysis and Recommendations

The statutory requirements for nomination papers filed by independent candidates are contained in Wis. Stat. § 8.20. Wis. Stat. 8.20(2)(a) states that each nomination paper shall have substantially the following words printed at the top:

> 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)) or (representing the principle(s) of (statement of principles))] 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 the (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.

"Each candidate shall include his or her mailing address on the candidate's nomination papers." Wis. Stat. § 8.20(2)(b). "In the case of candidates for the offices of president and vice president, the nomination papers shall contain both candidates' names; the office for which each is nominated; the residence and post-office address of each; and the party or principle they represent, if any, in 5 words or less." Wis. Stat. § 8.20(2)(c).

"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." Wis. Admin. Code EL § 2.07(3)(a). The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence." Wis. Admin. Code EL

§ 2.07(4). "[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). "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." Wis. Admin. Code EL § 2.05(1).

The Commission has the statutory authority to refuse to place a candidate's name on the ballot if the "nomination papers are not prepared, signed, and executed as required under this chapter." Wis. Stat. § 8.30(1)(a).

The complaint states that the address of 3204 TV Road, Room 231, Florence SC is incorrect, and the 315 Royal Street address is correct, however the complaint does not provide great detail as to why one address is correct, and the other is incorrect but does provide a detailed analysis of the papers that list each location. The Declaration of Candidacy form filed by Candidate Walker states that her address is 315 Royal Street., Apt. A, Florence, South Carolina, 29506. There are instances in which signatures were obtained on papers with both addresses signed on the same day – meaning one of those pages must be incorrect, as a candidate cannot claim to reside at two different locations on the same date.

During the review of nomination papers, Commission staff also examine the Declaration of Candidacy documents to ensure they have been filed timely, are complete and the information is substantially similar to the information provided by the candidate on their nomination papers. Amendments to a Candidate's Declaration of Candidacy are allowed to account for changes in a candidate's information, like address or how they want their name to appear on the ballot. No amendments to Ms. Walker's Declaration of Candidacy indicating a change in address are on file with the Commission.

While no written response to the challenge was received from the Candidate, Commission staff was contacted by the Hawkins campaign in late July who stated that one of the candidates moved during the circulation of papers. In response to questions, Commission staff provided the following information:

> *Your candidate would need to amend their declaration of candidacy with the updated address if it has been submitted. If it has not been submitted, the DOC should contain current information at the time it is submitted. Ideally, the candidate would have updated their address on nomination paper petitions to reflect the address change in real time beginning on the day that the candidate began residing at a new address. If the move and address change occurred after all of the petitions had been circulated, they will reflect correct information at the time of circulation.* (Via email, July 27, 2020)

> *Once the petition has been signed, no alterations may be made to the information in the header. When a candidate moved during the circulation period, we normally advise that they simply change the address on any nomination paper sheets to be used going forward. Candidates should not alter the information in the header, candidate section, once signatures have been collected on that page.* (Via email, July 28, 2020)

Commission staff provide this information to the Commission to give context as to why nomination papers were likely submitted with two addresses, which is unusual, but not unprecedented.

No written response: The key piece of information that should have been provided in a sworn response from the Candidate, was the date upon which the Candidate moved. This could have easily cleared up confusion on why multiple addresses appear on the nomination papers, why some addresses were corrected and why some papers were initialed and dated and others were not. Had this information been provided, nomination papers signed up until the move date would have properly contained one of the addresses, and then nomination papers signed after the move would have properly contained the other address. Without a sworn response, the Commission is left with the complaint that raises legitimate arguments as to what address was supposed to be on what papers, and when.

In Commission staff's opinion, the decision not to file a written response and explain the address discrepancy raised in the complaint proves fatal to the signatures contained on pages that are inconsistent with the address contained on the sworn Declaration of Candidacy of the Candidate. Once the burden shifts to the Candidate, they must provide clear and convincing evidence to rebut the insufficiency established by the evidence. The process for rebutting an insufficiency is providing a sworn response, which is before the Commission to then weigh and decide whether the papers are sufficient or not.

Commission staff recommend sustaining the challenge to the 1,891 signatures identified in Complainant's Exhibit B which it attached to the Complaint, which contain:

- 1834 signatures identified with a code of 3042 that represent nomination papers that were printed with the 3204 TV Road address.
- 57 signatures identified with a code of 315** which represent nomination papers that were corrected to include the 315 Royal Street, but the corrections were dated after the electors had signed the nomination papers, which would indicate that the 3204 TV Road address was present when they were signed.

Commission staff recommend dismissing the challenge to the 48 signatures identified in Complainant's Exhibit B which is attached to the Complaint that are identified with a code of 315*. Those signatures are contained on nomination papers that contain a handwritten 315 Royal Street address. There is no indication when the address was changed on the page. In this instance, the address matches the Candidate's Declaration of Candidacy and it is presumed that the address was on the nomination paper prior to it being circulated and signed.

Recommended Motions:

1) **The Commission sustains the challenge to the 1834 signatures identified in the Complainant's Exhibit B identified with a code of 3042 which represent nomination papers that were printed and circulated with an address of 3204 TV Road, Room 231, Florence SC address.**

2) **The Commission sustains the challenge to the 57 signatures identified in the Complainant's Exhibit B identified with a code of 315** which represent nomination papers that were corrected to include the 315 Royal Street, but the corrections were dated after the electors had signed the nomination papers, which would indicate that the 3204 TV Road address was present when they were signed.**

3) **The Commission rejects the challenge to the 48 signatures identified in the Complainant's Exhibit B identified with a code of 315* which represent nomination papers that include the 315 Royal Street address, and there was no indication when the address was written on the page, but it is presumed to have been prior to circulation and signing on the page.**

4) **The Commission certifies 1846 valid signatures, which is below the minimum of 2,000 required for ballot access.**

5) **The Commission denies ballot access to Candidate Howie Hawkins and Candidate Angela Walker for the 2020 November General Election as independent candidates for President and Vice President and their names shall not appear on the ballot.**

6) **The Commission directs staff to draft Findings and an Order consistent with these motions.**

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

August 21, 2020

Attorney Michael Curran
115 N. Washington Street
P.O. Box 430
Spring Green, WI 53588
Sent via email to: mcurran@curranpfeillaw.com

Re: Wisconsin Elections Commission Actions – Ballot Access for 2020 General Election

Attorney Curran:

This correspondence is to inform you of the motions passed by the Wisconsin Elections Commission at its August 20, 2020 hearing regarding the nomination paper challenges filed against the papers of Mr. West (Case: EL 20-30, Santeler v. West and Mr. West and Ms. Tidball, Case: EL 20-31, Brent, et al., v. West and Tidball).

COPY

Case EL 20-30:

The Commission unanimously passed the following motion:

> **Motion:** The Commission rejects the challenge to Mr. West's nomination papers because the complainant has not established by clear and convincing evidence that 3202 Big Horn Ave., Cody, WY 82414 is not Candidate West's "residence and post-office address" as required by the statute.
>
> **Motion:** The Commission rejects the challenges to the signatures contained on Pages 1, 2, 5, 6, 7, 8, 19, 20, 23, 24, 25, 26, 27, 28, 33, 34, 161, 162, 220, 223, 225, 236, 292, and 334, because the Complainant did not indicate the reason why such papers and signatures were insufficient.
>
> **Motion:** The Commission directs staff to draft Findings and an Order consistent with these motions.

On a 5-1 vote, the Commission passed the following motion:

> **Motion:** Based upon the record of proceedings held before this Commission today, including the testimony of the Wisconsin Election Commission staff members, the Commission sustains the challenge to all nomination papers submitted by Mr. West because they were not filed timely in accordance with Wis. Stat. § 8.20(8)(am), therefore his name shall not appear on the 2020 November General Election ballot as an Independent candidate for President in Wisconsin.

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

Administrator
Meagan Wolfe

Case EL 20-31:

The Commission unanimously passed the following motions:

> **Motion:** The Commission rejects the challenges to 1517 signatures that the Complainant alleges were obtained on pages in which the circulator misrepresented the purpose of the petition to the signer.
>
> **Motion:** The Commission rejects the challenge to the 637 signatures collected on Respondent's nomination papers by Mr. Linares, Mr. Rush and Mr. Durrell, as the Complainant has not met the burden of proof showing that the named circulators provided an incorrect address when completing the certification of circulator.
>
> **Motion:** The Commission staff rejects the challenge to the 188 signatures alleged by the Complainant to not include the signer's correct municipality of residence for voting purposes and the street and number.
>
> **Motion:** The Commission sustains the challenge, and strikes the following 16 signatures from the Candidate's total for failure to provide a legibly printed name as required by statute: Page 149, Line 2; Page 185, Line 4, Page 196, Line 1; Page 238, Line 3; Page 251, Line 6; Page 252, Lines 3 and 4; Page 259, Line 4; Page 267, Line 6, Page 293, Line 4; Page 308, Line 10; Page 312, Line 8; Page 3[illegible], Line 1; Page [illegible], Line 6, Page 354, Line 1, Page 370, Line 10.
>
> **Motion:** The Commission rejects the remaining challenges because the signatures were legible, the signatures challenged were unable to be determined based on the Page and Line number described by the Complainant, or they were previously struck for legibility issues or other issues on the page.
>
> **Motion:** The Commission rejects the challenges to signatures alleged to be missing a municipality or contain an incomplete signing date because the Complainant has not met the burden of proof of clear and convincing evidence that signatures were incomplete.
>
> **Motion:** The Commission sustains the challenge to the two signatures on Page 11, Line 8 and Page 281, Line 6, as the signer has provided an improper name information when signing the nomination paper. The remaining 2 signatures are already struck for other reasons and not included in the total.

On a 5-1 vote, the Commission passed the following motions:

> **Motion:** The Commission sustains the challenge to all nomination papers submitted by Mr. West and Ms. Tidball because they were not filed timely in accordance with Wis. Stat. § 8.20(8)(am), therefore their names shall not appear on the 2020 November General Election ballot as Independent candidates for President and Vice-President respectively, in Wisconsin.
>
> **Motion:** The Commission directs staff to draft Findings and an Order consistent with these motions.

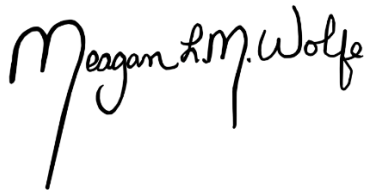
COPY

As a result of the motions passed by the Wisconsin Elections Commission in both of these matters, Mr. West, Candidate for President and Ms. Tidball, Candidate for Vice-President, will not have their names appear on the 2020 General Election Ballot in Wisconsin.

The Commission has directed staff to draft Findings and an Order consistent with the motions made in these matters. Those documents will be issued next week to the parties involved.

Sincerely,

WISCONSIN ELECTIONS COMMISSION



Meagan Wolfe
Administrator

Cc: Wisconsin Elections Commission
Joseph Santeler (via email to: joesanteler@gmail.com)
Attorney Jeffrey Mandell, Stafford Rosenbaum LLP via email to: jmandell@staffordlaw.com)

COPY