

RECALL OF CONGRESSIONAL, COUNTY AND STATE OFFICIALS

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Wisconsin Elections Commission
212 East Washington Avenue, Third
Floor
P.O. Box 7984
Madison, WI 53707-7984

Phone: (608) 266-8005
FAX: (608) 267-0500
<https://elections.wi.gov>

Introduction

Recall gives voters the right to reconsider their choice of an elected official; however, it does not automatically result in removal of an official from office. It provides an opportunity for voters to require an elected official to run for office again before the expiration of his or her term. The requirements for initiating recall efforts are very specific and must be carefully followed.

The statutory provisions for recalling state, county, congressional, legislative, and judicial elected officials are provided in Wis. Stat. § 9.10 and Wis. Admin. Code EL Ch. 2. These include registering with the appropriate filing officer, and preparing, circulating, and filing a recall petition.

A *Glossary of Terms* used in the discussion of recall procedures is found on pages 11-12.

Recall of Congressional, County and State Officials: Wis. Stat. § 9.10(1) and (3)

The qualified electors of any state, county, congressional, legislative, judicial, or of any prosecutorial unit may petition for the recall of any incumbent elected official by filing a petition with the same official or agency with whom nomination papers or declarations of candidacy for the office are filed, demanding the recall of the officeholder. The right to recall congressional, judicial, legislative, or county officials has been provided by the Wisconsin Constitution since November, 1926. See *Wisconsin Constitution, Article XIII, Section 12*.

Recall of Local Elected Officials

The qualified electors of any city, village, town, town sanitary district, or school district may also petition for the recall of any incumbent elected official. Please see the Wisconsin Elections Commission Manual “Recall of Local Elected Officials” with information on this process.

Who Can be Recalled?

Any elected officeholder who has served a minimum of one year of the term for which he or she was most recently elected, as of the date the recall petition is offered for filing, can be recalled. Wis. Stat. § 9.10(2)(s).

After one recall petition and recall election, no further recall petition may be filed against the same official during the term for which he or she was elected. Wis. Stat. § 9.10(6).

A recall election should not be held if the regular term of an elected officeholder’s position is scheduled for re-election at a Spring Election or General Election to be held within six weeks of the date the recall petition is certified as sufficient by the local filing officer.

Who Can Petition for a Recall?

Any qualified elector of the election district from which the officeholder was elected may initiate a recall. A qualified elector is a United States citizen, 18 years of age or older, who has resided in the district or jurisdiction for at least 28 days. Disqualification of electors is addressed in Wis. Stat. § 6.03. A disqualified elector under Wis. Stat. § 6.03, may not petition for a recall. The person who files the recall petition is referred to as the petitioner.

Registration of a Recall Committee: Wis. Stat. §9.10(2)(d)

Before circulating a petition for recall the petitioner must register with the appropriate filing officer (See “*Glossary of Terms*” for definition of filing officer). Pursuant to Wis. Stat. § 9.10(2)(d), registration is accomplished by filing a Campaign Registration Statement under Wis. Stat. § 11.0902.

Pursuant to Wis. Stat. § 9.10(2)(d), a Statement of Intent to Circulate Recall Petition (EL-170i) must be attached to the registration form indicating:

- Petitioner’s intent to circulate a recall petition.
- Name of the officeholder for whom recall is sought.

A sample Statement of Intent to Circulate Recall Petition is included with this manual.

After the petitioner has filed the required registration documents with the filing officer, circulation of the petition may begin.

Circulating the Recall Petition: Wis. Stat. § 9.10(2)(d)

Circulation of the recall petition must be completed within 60 days after the petitioner files a campaign registration statement and intent to circulate a recall petition with the filing officer. The completed petition must be offered for filing (submitted to the filing officer), no later than 5:00 p.m. on the 60th day after the date of registration. Any signature on a recall petition that is dated either before the date of registration or more than 60 days after the registration date is invalid.¹

If the deadline for submitting the petition falls on a weekend or holiday, the petition must be filed by the next business day, but valid signatures may not be dated outside of the 60-day circulation window.

¹ Measuring 60 days from the date of registration results in 61 actual days during which petition signatures are valid.

Number of Signatures Required: Wis. Stat. § 9.10(1)(b)

The petition must contain the signatures of qualified electors equal to at least 25% of the vote cast for the office of Governor at the last General Election held within the same district or jurisdiction as that of the officeholder. The filing officer is required to determine, and inform any interested person upon request, the number of signatures required to recall an officeholder of that district or jurisdiction. To calculate the required number of signatures, refer to the election results page of the agency website: <http://elections.wi.gov/elections-voting/results>.

Petition Format Requirements: Wis. Stat. § 9.10(2)

The format of a recall petition must meet certain statutory requirements found in Wis. Stat. § 9.10(2). In addition, other requirements as to preparation and form of the petition are governed by Wis. Stat. § 8.40 and Wis. Admin. Code EL Ch. 2. A sample Recall Petition (EL-170) is included with this manual.

Recall petition requirements:

- Every recall petition must have on its face, at the top of each petition page, in bold print, the words “**RECALL PETITION.**”
- The recall petition must identify the name of the officeholder. Only one officeholder can be named on a recall petition. If more than one officeholder is to be recalled, a separate petition must be circulated and filed for each.

Each petition must provide a space for electors to:

- Sign their name.
- Print their name.
- List their municipality of residence, along with the post office address, including street and number, if any, or rural route (the address must be complete and clearly show that the signer resides in the district or jurisdiction represented by the officeholder).
- List the date of signing.
- Each separate sheet of a recall petition must contain a completed Certification of Circulator.

Individual Signature Requirements

The specific requirements that apply to each signature on a recall petition are listed here and can also be found in Wis. Stat. §§ 8.40, 9.10(2) and Wis. Admin. Code EL § 2.09, which incorporates by reference the requirements of Wis. Admin. Code EL § 2.05.

- The signature listed must be that of a qualified elector of the jurisdiction or district represented by the officeholder.
- The legible, printed name of the signer.
- The full address, including municipality of residence, of each signer must be listed on the petition and must be within the election district or jurisdiction of the officeholder.
- Each signature must be dated when it is affixed to the petition.
- The date of the signature must be within 60 days from the date the recall petitioner registered with the filing officer. The date of the signature may not be before the date the recall petitioner registered with the filing officer.
- The date of the signature must not be later than the date of the circulator's signature in the Certification of Circulator.

Certification of Circulator: Wis. Stat. §§ 9.10(2)(a) and 8.40(2)

Each page of a recall petition must contain the Certification of Circulator. The language of the certification must comply with the requirements of Wis. Stat. § 8.40(2). The certification must be completed by the circulator, ***after*** the signatures are obtained.

Specific requirements of the circulator are:

- The circulator must list his or her full address, including municipality of residence, and street and number, if any, or rural route. Other information, such as state of residence and zip code, is not required.
- The circulator must sign and date the certification ***after*** he or she has obtained the signatures.
- The person signing as circulator must have personally circulated the petition and personally obtained each of the signatures on the paper.
- The certification must state that the circulator is aware that falsifying the certification is punishable under Wis. Stat. § 12.13(3)(a).

Review of Petition by Filing Officer: Wis. Stat. § 9.10(3)(b)

The filing officer should notify the official subject to the recall that a petition has been offered for filing against him or her. This is not required by law, but is a recommended practice.

Within 31 days after the petition is offered for filing, the filing officer is required to determine the sufficiency of the petition. Wis. Stat. § 9.10(3)(b). (See also Wis. Admin. Code EL §§ 2.05

and 2.09, regarding the treatment and sufficiency of petitions.) A careful review of the petition must be done by the filing officer to verify that:

- The format of the petition follows the requirements of Wis. Stat. § 8.40.
- The petition contains all the information required under Wis. Stat. § 9.10, and clearly informs the electorate of the intentions of the petitioner.
- Each signer is a qualified elector of the district represented by the officeholder.
- The address listed by each signer is within the district represented by the officeholder.
- The date of signing for each elector is within the 60-day circulation period, and not later than the date the certification was signed by the circulator.
- The circulator has properly completed the Certification of Circulator (See previous section for requirements of circulator.)

The information on the petition is presumed to be valid. The filing officer is not required to consult extrinsic resources in reviewing the petitions, but may do so if time permits.

Certificate of Sufficiency/Insufficiency: Wis. Stat. §9.10(3)(b)

The filing officer's findings must be stated in a certificate attached to the petition within 31 days after the petition is offered for filing. The certificate must state the number of petition sheets filed with the filing officer and the number of valid signatures. If the petition is found to be sufficient, the filing officer shall file the petition and transmit the certificate and petition to the appropriate governing body, subject to the special note in the next paragraph. The WEC or county clerk shall then promptly call a recall election. If the petition is found to be insufficient, the certificate shall state the specific items creating the insufficiency.

Special Note: The filing officer should allow at least 10 days after the petition has been offered for filing to issue a certificate of sufficiency to allow time for a challenge to the petition.

Correcting an Insufficient Petition: Wis. Stat. § 9.10(3)(b)

If a recall petition is found to be insufficient the certificate shall state the particulars creating the insufficiency and a petitioner may amend the petition by filing affidavits or other proof correcting certain insufficiencies within 5 days following the attachment of the original certificate by the filing officer. Wis. Stat. § 9.10(3)(b).

Correctable insufficiencies as prescribed by Wis. Stat. § 9.10(2)(e) and (r), include, but are not limited to:

- The failure of the circulator to sign the certification or to include all required information.
- The person signing the petition omitted the date or wrote the incorrect date.
- The failure of the circulator to write his or her complete address on the certification.

Within 5 days after the amended petition is offered for filing, the filing officer shall again carefully examine the face of the petition to determine its sufficiency and attach an amended certificate stating the findings. Wis. Stat. § 9.10(3)(b).

If the filing officer makes a finding that the petition is sufficient, he or she shall immediately attach a certificate of sufficiency, file the petition, and call a recall election. For County-level offices, the county clerk is required to call the election, while the WEC would call any potential recall elections for state and federal offices.

Challenges to a Recall Petition: Wis. Stat. § 9.10(3)(b)

Within 10 days after a recall petition is offered for filing with the appropriate filing officer, the officeholder can challenge the sufficiency of the recall petition. The challenge must be made in the form of a written, sworn complaint and filed with the filing officer who received the recall petition. Wis. Stat. § 9.10(3)(b). and Wis Admin. Code EL Ch. 2.

The challenge must specify any alleged insufficiency in the petition. Wis. Stat. § 9.10(3)(b), and Wis. Admin. Code EL Ch. 2. Any challenge to the validity of signatures on a recall petition must demonstrate by affidavits or other supporting evidence a failure to comply with statutory requirements. The burden of proof is on the challenger. The information on a recall petition is presumed to be valid unless proven otherwise. Wis. Admin. Code EL § 2.05(4).

Some of the grounds for challenge and the resulting effect are:

- Grounds: An elector has signed the recall petition more than once.
Resulting Effect: The second and subsequent signatures are not counted.
- Grounds: A person signed the name of another elector.
Resulting Effect: The signature may not be counted, unless the elector was unable to sign due to physical disability and authorized the individual to sign on his or her behalf. In this case, a notation clarifying the situation should be made on the petition by the signer.
- Grounds: An individual is ineligible to sign the petition because he or she is not a qualified elector of the district or jurisdiction.
Resulting Effect: The signature may not be counted.
- Grounds: A challenger establishes that the purpose of the petition was misrepresented by

the circulator and the signer was not aware of the purpose of the petition.
Resulting Effect: The signature may not be counted.

- Grounds: A signature is obtained before the first day for circulation, after the last day for circulation, or after the date of certification contained in the certificate of circulator.
Resulting Effect: The signature may not be counted.

When a challenge is made, the filing officer must review the challenge, all rebuttals, and replies, and make a determination of sufficiency within 14 days after the expiration of time allowed for such challenges, rebuttals, and replies as set forth below. Wis. Stat. § 9.10(3)(b).

Rebuttals and Replies: Wis. Stat. § 9.10(3)(b)

The filing officer is required to determine the sufficiency of the petition within 31 days after the petition is offered for filing. Wis. Stat. § 9.10(3)(b). If a challenge is filed within 10 days after the petition is offered for filing, the following schedule for a rebuttal, reply, and final sufficiency determination totals the maximum 31 days for determining sufficiency of the petition.

Within 5 days after a challenge is filed, the petitioner may file, with the filing officer, a written rebuttal to the challenge.

Within 2 days after the filing of a rebuttal, the officeholder may file a reply to any new matter raised in the rebuttal.

Within 14 days after the expiration of time allowed for the officeholder to file a reply to the rebuttal, the filing officer shall file the certificate of sufficiency/insufficiency.

Appeal of Determination of Sufficiency: Wis. Stat. § 9.10(3)(bm)

Within 7 days after an official makes a final determination of sufficiency or insufficiency of a recall petition, the petitioner or the officer against whom the recall petition is filed may file a petition for a writ of mandamus or prohibition with the circuit court for the county where the recall petition is offered for filing. Upon filing of such a petition, the only matter before the court shall be whether the recall petition is sufficient. The court may stay the effect of the filing officer's order while the petition is under advisement and may order the filing officer to revise the election schedule contained in the order, if a revised schedule is necessitated by judicial review. Whenever the recall petitioner files a petition, the officer against whom the recall petition is filed shall be a party to the proceeding. The court shall give the matter precedence over other matters not accorded similar precedence by law.

Date of Recall Election: Wis. Stat. § 9.10(3)(b)

The filing officer shall call a recall election promptly after a certificate of sufficiency is filed.

The recall election shall be held on the Tuesday of the 6th week commencing after the date on which the certificate of sufficiency is filed. If the 6th Tuesday is a legal holiday, the recall election shall be held on the first day after Tuesday which is not a legal holiday.

Recall Primary: Wis. Stat. § 9.10(3)(d-f)

If more than two persons compete for the office, a recall primary will be held on the date originally set for the recall election. The recall election will then be held on the Tuesday of the fourth week after the recall primary. If that day is a legal holiday, the recall election will be held on the first day after Tuesday which is not a legal holiday. Wis. Stat. § 9.10(3)(f).

The two candidates receiving the highest number of votes in the recall primary will be certified to appear on the ballot in the recall election.

Non-Partisan Office

If in a recall primary for a non-partisan office, the incumbent officeholder or any other candidate at the recall primary receives the *majority* of the total number of votes cast in the recall primary, that person shall be elected to serve for the remainder of the unexpired term of the incumbent and the recall election will not be held. Wis. Stat. § 9.10(3)(d).

Partisan Office

For any partisan office, a recall primary shall be held for each political party which is entitled to a separate ballot under Wis. Stat. § 5.62 (1) (b) or (2), and from which more than one candidate competes for the party's nomination in the recall election. The primary ballot shall be prepared in accordance with Wis. Stat. § 5.62, insofar as applicable. The person receiving the highest number of votes in the recall primary for each political party shall be that party's candidate in the recall election. Independent candidates shall be shown on the ballot for the recall election only. Wis. Stat. § 9.10(3)(e).

Candidates at the Recall Election: Wis. Stat. § 9.10(3)(c)

The officeholder against whom the recall petition is filed shall automatically appear on the ballot as a candidate at the recall election, or at the primary if a primary is required, unless the officeholder resigns within 10 days after the date the certificate of sufficiency is issued.

All other candidates must file a registration statement, circulate and file nomination papers (EL-168 or 169), and file a declaration of candidacy (EL-162) with the appropriate filing officer. A Statement of Economic Interest (SEI) may be required for certain offices. For more information regarding whether an SEI form must be filed, please contact the Wisconsin Ethics Commission at (608) 266-8123 or ethics@wi.gov.

1) Campaign Registration Statement

Candidates at the recall election must register with the appropriate filing officer by filing a Campaign Registration Statement, as soon as they form the intent to be a candidate and before

receiving contributions or making disbursements. The deadline for registration is 5:00 p.m. on the 4th Tuesday before the date of the recall election or recall primary.

2) Declaration of Candidacy (EL-162)

A Declaration of Candidacy (EL-162) must also be filed by candidates at the recall election no later than the deadline for filing nomination papers, which is 5:00 p.m. on the 4th Tuesday before the date of the recall election or recall primary. The candidates must designate on this form the same office title as appears on the nomination papers.

3) Nomination Papers for Nonpartisan Office or Partisan Office

A. Nomination Papers for Nonpartisan Office (EL-169)

Candidates at the recall election for a nonpartisan office must circulate and file nomination papers. Wis. Stat. § 9.10(3)(c). The proper form is Nomination Paper for Nonpartisan Office (EL-169). The nomination papers must contain at least the required minimum number of valid signatures of qualified electors and must be filed no later than 5:00 p.m. on the 4th Tuesday before the date of the recall election or recall primary.

Candidates for the recall election must designate, on their nomination papers, which position they are seeking. Candidates in the recall election may begin circulating nomination papers after the filing officer has scheduled the election. For the number of signatures required, check with the filing officer, or refer to Wis. Stat. § 8.10(3).

B. Nomination Papers for Partisan Office (EL-168)

Candidates at the recall election for a partisan office must circulate and file nomination papers. Wis. Stat. § 9.10(3)(c). The proper form is Nomination Paper for Partisan Office (EL-168). The nomination papers must contain at least the required minimum number of valid signatures of qualified electors and must be filed no later than 5:00 p.m. on the 4th Tuesday before the date of the recall election or recall primary (For the number of signatures required, check with the filing officer, or refer to Wis. Stat. § 8.10(3)).

Candidates for the recall election must designate, on their nomination papers, which position they are seeking. Candidates in the recall election may begin circulating nomination papers after the filing officer has scheduled the election. For the number of signatures required, check with the filing officer, or refer to Wis. Stat. § 8.10(3).

4) Statement of Economic Interests (SEI)

A Statement of Economic Interest (SEI) may be required for certain offices. For more information, please contact the Wisconsin Ethics Commission at (608) 266-8123 or ethics@wi.gov.

Interim Position of Incumbent

If the officeholder resigns after the completion of the petitioner's registration, but before the filing of the petition, or before the primary or election, the recall proceeds unaffected. However, the time of resignation may affect whether the resigned officeholder appears on the ballot. If the officeholder resigns more than 10 days after the date of certification of the recall petition, the resigned officeholder remains on the ballot for the recall primary or recall election. Wis. Stat. § 9.10(3)(c).

If the officeholder does not resign, he or she continues to perform the duties of the office. If the incumbent is defeated at the recall election, he or she continues to perform the duties until a certificate of election is issued to the successor. Wis. Stat. § 9.10(5)(b).

Campaign Finance Disclosure Requirements

Petitioners seeking to recall elected officials and recall candidates must comply with the campaign finance disclosure requirements of Wisconsin law, Wis. Stat. Ch. 11. For questions about campaign finance requirements, please contact the County Clerk for county office recalls or the Wisconsin Ethics Commission at (608) 266-8123 or ethics@wi.gov.

Glossary of Terms

Certification of Circulator – a statement at the bottom of each sheet of a petition, which is signed and dated by the circulator.

Campaign Registration Statement – Wisconsin Ethics Commission form, filed by petitioner to register intent to file a recall petition; each candidate at the recall election, except for the officeholder; and any others actively supporting or opposing the recall effort.

Circulation period – a 60-day period beginning the day after registration when petition signatures can be collected

Circulator – a qualified elector who circulates a petition. A circulator is not required to be a resident of the jurisdiction or district subject to recall, but must be otherwise a qualified elector if he or she were a resident of Wisconsin. Wis. Stat. § 6.03.

Declaration of Candidacy – Wisconsin Elections Commission form (EL-162), a statement of qualification to hold office if elected, to be filed by all candidates at the recall election, except for the officeholder. (Sample is included with this manual.)

Filed – the recall papers have been reviewed and a certificate of sufficiency or insufficiency is attached by the filing officer.

Filing Officer – for recalls of county officials, the county clerk is the filing officer; for recalls of district attorneys, State Senators, State Representatives, Congressional Members or U.S. Senators, the Wisconsin Elections Commission is the filing officer.

Nomination Papers – Wisconsin Elections Commission form (EL-169), for nonpartisan offices, or Wisconsin Elections Commission form (EL-168), for partisan offices, to be filed by candidates at the recall election, except for the officeholder.

Offered for filing – submitting the petition to the filing officer for review for certificate of sufficiency or insufficiency (note: the filing officer should not accept partial petitions and make partial determinations of sufficiency until such time as the petitioner is submitting the petition for a complete review for sufficiency and the filing officer is prepared to make the sufficiency determination.)

Officeholder – the elected official for whom recall is sought.

Petition – Wisconsin Elections Commission form (EL-170), a sworn document which conforms to Wis. Stat. §§ 8.40 and 9.10(2). (Sample is included with this manual.)

Petitioner – the individual or group initiating and filing the recall petition.

Registration – the act of filing a Campaign Registration Statement with the appropriate filing officer along with a Statement of Intent to Recall, which includes the name of the officeholder.

Sworn Complaint – a written challenge, sworn to before a person authorized to administer oaths.

Questions concerning recall of local elected officials should be directed to the local filing officer or to the Wisconsin Elections Commission, or may be addressed by consulting the Commission's separate Recall of Local Officials Manual. All forms and a copy of this manual can be found at the Wisconsin Elections Commission website listed below. Forms should be printed from the agency website for the current version.

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