
Wisconsin Elections Commission

Meeting of the Commission
Wednesday, October 16, 2019
4:30 P.M.

Open Session Agenda

Wisconsin Elections Commission
212 East Washington Ave., Third Floor
Madison, Wisconsin

Commission to Appear by Teleconference

- A. Call to Order**
- B. Administrator's Report of Appropriate Meeting Notice**
- C. 7th Congressional District Special Election Nomination
Paper Issues and Statutory Deadlines**
- D. Adjourn**



Wisconsin Elections Commission

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MEMORANDUM

DATE: For the October 16, 2019 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator
Wisconsin Elections Commission

Prepared and Presented by:
Michael Haas, Staff Counsel

SUBJECT: Nomination Papers for 7th Congressional District Special Election

As the Commission is aware, Governor Evers has indicated that he intends to amend his executive order for a special election in the 7th Congressional District to establish new election dates. The Governor's original executive order set the special election for January 27, 2020 and the special primary, if necessary, for December 30, 2019.

While those dates comply with the provisions of Wis. Stat. § 8.50, they do not comply with the requirement of the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to make absentee ballots available to military and overseas voters at least 45 days before the special primary and the special election. The original election dates also would not comply with other provisions of state law, including a similar 47-day deadline in Wis. Stat. § 7.15(1)(cm). This is the first election to fill a Congressional vacancy since these deadlines related to elections for federal office were established as a result of federal legislation in 2009 and therefore these issues have not previously arisen.

While the Governor has not yet issued an amended executive order, he has publicly indicated that he expects to establish new election dates that satisfy the federal absentee ballot deadline. As a result, Commission staff is seeking the Commission's input and guidance regarding several issues related to the review of signatures on candidate nomination papers. Commission staff believes it would be helpful for the Commission to make determinations regarding these questions in advance to provide certainty to candidates circulating nomination papers and to staff reviewing those papers, rather than waiting until the Commission rules on the certification of qualified candidates. At that time it would be too late to address any inaccuracies or insufficiencies on the nomination papers caused by the potential change in election dates that

Wisconsin Elections Commissioners

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Administrator
Meagan Wolfe

could have been prevented through the issuance or clear guidance by the Commission ahead of the filing deadline.

First, the original executive order authorized nomination papers to be circulated beginning on September 23, 2019. While an amended executive order might indicate that the same circulation period applies, it would be helpful for the Commission to determine how it would resolve any challenges that might be filed related to signatures being collected prior to the date of a second executive order. Wis. Stat. § 8.50(3) states that “Nomination papers may be circulated no sooner than the day the order for the special election is filed. . . .” Also, EL 2.07(3)(c), Wis. Adm. Code provides that “If a challenger establishes that the date of a signature, or the address of a signer, is not valid, the signature may not be counted.” It is possible that challenges to nomination papers may be filed based on an argument that the date of a signature collected prior to the amended executive order should not be considered valid and therefore the signature should be struck.

If an amended executive order establishes a new start date for the circulation of nomination papers, staff would recommend signatures collected prior to the amended start date be struck. If an amended order retains the original start date of September 23, 2019, Commission staff would similarly intend to review signatures according to the order and count signatures as valid if they are dated on or after that date. In addition to complying with the plain language of such an order, that approach would avoid legal challenges from candidates who have circulated nomination papers in good faith based upon the original executive order and upon staff’s initial review of the form of their papers.

The second issue that arises relates to the form of the nomination papers. Wis. Stat. § 8.15(4)(a) requires that nomination papers include the date of the special election. Nomination papers circulated pursuant to the original executive order would not include the correct special election date if an amended order is issued.

It is the recommendation of staff, however, that signatures on nomination papers containing the original special election date should be considered valid. Again, those papers were circulated in good faith by the candidates and their supporters. There is unlikely to be confusion regarding the election that pertains to the nomination papers, given the rarity of a special election to fill a Congressional vacancy and that no nomination papers for other elections are being circulated at the same time. In addition, there is the practical challenge of distributing new nomination papers with a corrected election date to circulators more than two weeks into the circulation period, especially given the geographical size of the 7th Congressional District. Some candidates may have already collected a sufficient number of signatures on nomination papers using the original election date.

In recommending the approach described above, staff is mindful of the statutory and administrative rule presumptions which weigh in favor of accepting signatures on nomination papers absent evidence of misrepresentation, fraud or confusion on the part of signers. In referring to the information which must be included on nomination papers, Wis. Stat. § 8.15(5)(a) provides that nomination papers “shall have *substantially* the following words printed at the top. . . .” (*Emphasis added*).

Accordingly, EL 2.05(4), Wis. Adm. Code states that “Any information which appears on a nomination paper is entitled to a presumption of validity.” And EL 2.05(5), Wis. Adm. Code states that “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.” In addition, when processing challenges to nomination papers, Commission staff is guided by EL 2.05(3)(a), Wis. Adm. Code which states that “The burden is on the challenger to establish any insufficiency.” Attached is a copy of Chapter 2 of the Commission’s administrative rules which govern its review of nomination paper signatures.

Taken together, these provisions encapsulate the traditional and consistent approach that the state elections agency has taken with regard to the review of nomination papers and processing of challenges to signatures. While there is certainly information that is required to be included in the header of the nomination papers and with the signatures, and there are thresholds for the minimum number of signatures required, nomination papers are deemed sufficient if there is substantial compliance with the law, so that technical noncompliance does not prevent a candidate’s access to the ballot and the will of electors is honored. In the case of an amended executive order that alters the date of a special election after the start of the circulation period, it is the consensus of staff that candidates, circulators and signers should not be adversely affected by the change which they had no control over and which results in technical noncompliance with the statutes.

Commission staff considered an alternative recommendation which would require that nomination papers dated on or after the date of an amended executive order contain the new election date. On balance, staff concluded that the intent of the statutes would not be served by making a distinction based on the date of a new order, again given that campaigns and circulators have no control over the change and that such an interpretation would effectively shorten the circulation period if the amended order retains the original beginning date for circulation.

If the Commission declines to rule on these issues prospectively, staff would be required to advise candidates and challengers that its determination regarding a substantial number of signatures is subject to challenges which have not been previously considered. In addition to possibly prompting candidates to re-circulate nomination papers which may not be legally required, such an approach is likely to encourage challenges which the Commission would be required to resolve prior to certifying candidates for ballot access. To provide certainty for the benefit of candidates and circulators, as well as for Commission staff reviewing nomination papers, staff is recommending the motion outlined below.

Recommended Motion

WEC staff recommends the Commission approve the following motion:

MOTION: The Commission directs staff to apply the following rules when evaluating signatures on nomination papers of candidates for the 7th Congressional District:

1. If an amended executive order of the Governor establishes a new starting date for the nomination paper circulation period, signatures must be dated on or after that date and on or before the filing deadline to be accepted as valid signatures.
2. Notwithstanding Wis. Stat. § 8.50(3) and EL 2.07(3)(c), Wis. Adm. Code, if an amended executive order retains the original starting date for the circulation of nomination papers, the Commission determines that September 23, 2019 is the beginning date of the nomination paper

circulation period and signatures on nomination papers are valid when the date of the signature is dated on or after that date and on or before the filing deadline.

3. Notwithstanding Wis. Stat. 8.15(5), the Commission determines that signatures are valid if the nomination paper indicates that the date of the election is either January 27, 2019 or the date of the special election established by any amended executive order issued by the Governor.

Chapter EL 2

ELECTION RELATED PETITIONS

EL 2.05 Treatment and sufficiency of nomination papers.
EL 2.07 Challenges to nomination papers.

EL 2.09 Treatment and sufficiency of election petitions.
EL 2.11 Challenges to election petitions.

Note: Chapter ELBd 2 was renumbered chapter GAB 2 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 2. and 7., Stats., [Register April 2008 No. 628](#). Chapter GAB 2 was renumbered Chapter EL 2 under s. 13.92 (4) (b) 1., Stats., [Register June 2016 No. 726](#).

EL 2.05 Treatment and sufficiency of nomination papers. (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.

(2) In order to be timely filed, all nomination papers shall be in the physical possession of the filing officer by the statutory deadline. 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.

(3) The filing officer shall review all nomination papers filed with it, up to the maximum number permitted, to determine the facial sufficiency of the papers filed. Where circumstances and the time for review permit, the filing officer may consult maps, directories and other extrinsic evidence to ascertain the correctness and sufficiency of information on a nomination paper.

(4) Any information which appears on a nomination paper is entitled to a presumption of validity. Notwithstanding any other provision of this chapter, errors in information contained in a nomination paper, committed by either a signer or a circulator, may be corrected by an affidavit of the circulator, an affidavit of the candidate, or an affidavit of a person who signed the nomination paper. The person giving the correcting affidavit shall have personal knowledge of the correct information and the correcting affidavit shall be filed with the filing officer not later than three calendar days after the applicable statutory due date for the nomination papers.

(5) 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.

(6) Nomination papers shall contain at least the minimum required number of signatures from the circuit, county, district or jurisdiction which the candidate seeks to represent.

(7) The filing officer shall accept nomination papers which contain biographical data or campaign advertising. The disclaimer specified in s. 11.1303 (2), Stats., is not required on any nomination paper.

(8) An elector shall sign his or her own name unless unable to do so because of physical disability. An elector unable to sign because of physical disability shall be present when another person signs on behalf of the disabled elector and shall specifically authorize the signing.

(9) A person may not sign for his or her spouse, or for any other person, even when they have been given a power of attorney by that person, unless sub. (8) applies.

(10) The signature of a married woman shall be counted when she uses her husband's first name instead of her own.

(11) Only one signature per person for the same office is valid. Where an elector is entitled to vote for more than one candidate for the same office, a person may sign the nomination papers of

as many candidates for the same office as the person is entitled to vote for at the election.

(12) A complete address, including municipality of residence for voting purposes, and the street and number, if any, of the residence, (or a postal address if it is located in the jurisdiction that the candidate seeks to represent), shall be listed for each signature on a nomination paper.

(13) A signature shall be counted when identical residential information or dates for different electors are indicated by ditto marks.

(14) No signature on a nomination paper shall be counted unless the elector who circulated the nomination paper completes and signs the certificate of circulator and does so after, not before, the paper is circulated. No signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper.

(15) An individual signature on a nomination paper may not be counted when any of the following occur:

(a) The date of the signature is missing, unless the date can be determined by reference to the dates of other signatures on the paper.

(b) The signature is dated after the date of certification contained in the certificate of circulator.

(c) The address of the signer is missing or incomplete, unless residency can be determined by the information provided on the nomination paper.

(d) The signature is that of an individual who is not 18 years of age at the time the paper is signed. An individual who will not be 18 years of age until the subject election is not eligible to sign a nomination paper for that election.

(e) The signature is that of an individual who has been adjudicated not to be a qualified elector on the grounds of incompetency or limited competency as provided in s. 6.03 (3), Stats., or is that of an individual who was not, for any other reason, a qualified elector at the time of signing the nomination paper.

(16) After a nomination paper has been filed, no signature may be added or removed. After a nomination paper has been signed, but before it has been filed, a signature may be removed by the circulator. The death of a signer after a nomination paper has been signed does not invalidate the signature.

(17) This section is promulgated pursuant to the direction of s. 8.07, Stats., and is to be used by election officials in determining the validity of all nomination papers and the signatures on those papers.

History: Emerg. cr. 8-9-74; cr. [Register, November, 1974, No. 227](#), eff. 12-1-74; emerg. r. and recr. eff. 12-16-81; emerg. r. and recr. eff. 6-1-84; cr. [Register, November, 1984, No. 347](#), eff. 12-1-84; r. and recr. [Register, January, 1994, No. 457](#), eff. 2-1-94; [CR 00-153](#): am. (2), (4), and (14), r. (15), renum. (16), (17), and (18) to be (15), (16) and (17), and am. (15) (b) as renum., [Register September 2001 No. 549](#), eff. 10-1-01; **correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.**

EL 2.07 Challenges to nomination papers. (1) The elections commission shall review any verified complaint concerning the sufficiency of nomination papers of a candidate for state office that is filed with the elections commission under ss. 5.05 and 5.06, Stats.; and the local filing officer shall review any verified complaint concerning the sufficiency of nomination papers of a candidate for local office that is filed with the local fil-

ing officer under s. 8.07, Stats. The filing officer shall apply the standards in s. EL 2.05 to determine the sufficiency of nomination papers, including consulting extrinsic sources of evidence under s. EL 2.05 (3).

(2) (a) Any challenge to the sufficiency of a nomination paper shall be made by verified complaint, filed with the appropriate filing officer. The complainant shall file both an original and a copy of the challenge at the time of filing the complaint. Notwithstanding any other provision of this chapter, the failure of the complainant to provide the filing officer with a copy of the challenge complaint will not invalidate the challenge complaint. The filing officer shall make arrangements to have a copy of the challenge delivered to the challenged candidate within 24 hours of the filing of the challenge complaint. The filing officer may impose a fee for the cost of photocopying the challenge and for the cost of delivery of the challenge to the respondent. The form of the complaint and its filing shall comply with the requirements of ch. EL 20. Any challenge to the sufficiency of a nomination paper shall be filed within 3 calendar days after the filing deadline for the challenged nomination papers. The challenge shall be established by affidavit, or other supporting evidence, demonstrating a failure to comply with statutory or other legal requirements.

(b) The response to a challenge to nomination papers shall be filed, by the candidate challenged, within 3 calendar days of the filing of the challenge and shall be verified. After the deadline for filing a response to a challenge, but not later than the date for certifying candidates to the ballot, the elections commission or the local filing officer shall decide the challenge with or without a hearing.

(3) (a) The burden is on the challenger to establish any insufficiency. If the challenger establishes that the information on the nomination paper is insufficient, the burden is on the challenged candidate to establish its sufficiency. The invalidity or disqualification of one or more signatures on a nomination paper shall not affect the validity of any other signatures on that paper.

(b) If a challenger establishes that an elector signed the nomination papers of a candidate more than once or signed the nomination papers of more than one candidate for the same office, the 2nd and subsequent signatures may not be counted. The burden of proving that the second and subsequent signatures are that of the same person and are invalid is on the challenger.

(c) If a challenger establishes that the date of a signature, or the address of the signer, is not valid, the signature may not be counted.

(d) Challengers are not limited to the categories set forth in pars. (a) and (b).

(4) The filing officer shall examine any evidence offered by the parties when reviewing a complaint challenging the sufficiency of the nomination papers of a candidate for state or local office. The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence.

(5) Where it is alleged that the signer or circulator of a nomination paper does not reside in the district in which the candidate being nominated seeks office, the challenger may attempt to establish the geographical location of an address indicated on a

nomination paper, by providing district maps, or by providing a statement from a postmaster or other public official.

History: Emerg. cr. 8-9-74; cr. Register, November, 1974, No. 227, eff. 12-1-74; emerg. r. and recr. eff. 12-16-81; emerg. r. and recr. eff. 6-1-84; cr. Register, November, 1984, No. 347, eff. 12-1-84; emerg. am. (1), (4) to (6), eff. 6-1-86; am. (1), (4) to (6), Register, November, 1986, No. 371, eff. 12-1-86; r. and recr. Register, January, 1994, No. 457, eff. 2-1-94; CR 00-153; am. (2) (a) and (b), Register September 2001 No. 549, eff. 10-1-01; reprinted to restore dropped copy in (2) (b), Register December 2001 No. 552; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628; correction in (1), (2) (b) made under s. 13.92 (4) (b) 6., Stats., and correction in (1), (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

EL 2.09 Treatment and sufficiency of election petitions. (1) Except as expressly provided herein, the standards established in s. EL 2.05 for determining the treatment and sufficiency of nomination papers are incorporated by reference into, and are made a part of, this section.

(2) In order to be timely filed, all petitions required to comply with s. 8.40, Stats., and required by statute or other law to be filed by a time certain, shall be in the physical possession of the filing officer not later than the time set by that statute or other law.

(3) All petitions shall contain at least the number of signatures, from the election district in which the petition was circulated, equal to the minimum required by the statute or other law establishing the right to petition.

(4) Only one signature per person for the same petition, is valid.

(5) This section applies to all petitions which are required to comply with s. 8.40, Stats., including recall petitions, and to any other petition whose filing would require a governing body to call a referendum election.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

EL 2.11 Challenges to election petitions. (1) Except as expressly provided herein, the standards established in s. EL 2.07 for determining challenges to the sufficiency of nomination papers apply equally to determining challenges to the sufficiency of petitions required to comply with s. 8.40, Stats., including recall petitions, and to any other petition whose filing requires a governing body to call a referendum election.

(2) (a) Any challenge to the sufficiency of a petition required to comply with s. 8.40, Stats., shall be made by verified complaint filed with the appropriate filing officer. The form of the complaint, the filing of the complaint and the legal sufficiency of the complaint shall comply with the requirements of ch. EL 20; the procedure for resolving the complaint, including filing deadlines, shall be governed by this section and not by ch. EL 20.

(b) The complaint challenging a petition shall be in the physical possession of the filing officer within the time set by the statute or other law governing the petition being challenged or, if no time limit is specifically provided by statute or other law, within 10 days after the day that the petition is filed.

(3) The response to a challenge to a petition shall be filed within the time set by the statute or other law governing that petition or, if no time limit is specifically provided by statute or other law, within 5 days of the filing of the challenge to that petition. After the deadline for filing a response to a challenge, the filing officer shall decide the challenge with or without a hearing.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction in (1), (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.