

# NOTICE OF OPEN AND CLOSED MEETING

## Wisconsin Elections Commission

Special Meeting

Thursday, April 11, 2024

6:30 P.M.

*This meeting is being held via video teleconference only. Members of the public and media may attend online or by telephone. Please visit <https://elections.wi.gov/event/special-meeting-4112024> to view materials for the meeting. All public participants' phones/microphones will be muted during the meeting. Members of the public wishing to communicate to the Commissioners should email [electioncomments@wi.gov](mailto:electioncomments@wi.gov) with "Message to Commissioners" in the subject line.*

### **Zoom information for the meeting:**

When: Apr 11, 2024, 6:30 PM Central Time (US and Canada)

Topic: Meeting of the Wisconsin Elections Commission

Please click the link below to join the webinar:

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# NOTICE OF OPEN AND CLOSED MEETING

## OPEN AND CLOSED SESSION AGENDA

- A. Call to Order**
- B. Administrator’s Report of Appropriate Meeting Notice**
- C. Approval of Previous Meeting Minutes 1**
  - 1. March 20, 2024**
- D. Discussion and Potential Action Related to the Recall Petition Pertaining to Assembly Representative Robin Vos, Including Review and Potential Decision-making on the Petition Challenges Filed by Assembly Representative Robin Vos. 8**
- E. Discussion and Potential Action Pertaining to Candidate Use of Non-residential Address on Nomination Papers. 15**
- F. Closed Session\***
  - 1. Litigation Update and Consideration of Potential Litigation**

*§ 19.85(1)(g) – The Commission may confer in closed session with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved*

## **G. Adjourn**

*\*The Elections Commission will convene in open session but may move to closed session under Wis. Stat. § 19.85(1)(g) and Wis. Stat. § 19.851 and then reconvene into open session prior to adjournment of this meeting. This notice is intended to inform the public that this meeting will convene in open session, may move to closed session, and then may reconvene in open session. Wis. Stat. § 19.85 (2).*



# Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8005 | elections@wi.gov | elections.wi.gov

**Wisconsin Elections Commission**  
Special Teleconference Meeting  
201 W. Washington Avenue, Second Floor  
Madison, Wisconsin  
9:00 a.m. March 20, 2024

Open Session Minutes

**Present:** Commissioner Marge Bostelmann, Commissioner Ann Jacobs, Commissioner Don M. Millis, Commissioner Carrie Riepl, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, all by teleconference.

**Staff present:** Joel DeSpain, Sharrie Hauge, Brandon Hunzicker, Robert Kehoe, Anna Langdon, Riley Vetterkind, Riley Willman, Jim Witecha, and Meagan Wolfe, all by teleconference.

**A. Call to Order**

Commission Chair Millis called the meeting to order at 9:01 a.m. and called the roll. All Commissioners were present.

**B. Administrator's Report of Appropriate Meeting Notice**

Administrator Meagan Wolfe informed the Commission that the meeting was noticed in accordance with Wisconsin's open meetings laws.

**C. Approval of Previous Meeting Minutes**

**a. February 8, 2024**

**b. March 12, 2024**

**MOTION:** Approve the minutes from February 8, 2024, and March 12, 2024.

Moved by Commissioner Bostelmann. Seconded by Commissioner Riepl.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

**D. Discussion and Possible Action Pertaining to Uniform Instructions for Absentee Voters (Particularly UOCAVA Voters who Receive a Ballot by Mail).**

*Wisconsin Elections Commissioners*

Don M. Millis, chair | Marge Bostelmann | Ann S. Jacobs | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator  
Meagan Wolfe

Election Supervisor Riley Willman reviewed the item before the Commission.

**MOTION:** The Wisconsin Elections Commission approves and prescribes the Uniform Instructions for Military and Overseas Absentee Voters (Mail) (EL-128UP), as shown in Appendix A for UOCAVA voters who request to receive their ballot by mail for all future elections. Staff are directed to update all Commission resources with this guidance and to notify clerks of this change.

Moved by Commissioner Jacobs. Seconded by Commissioner Thomsen.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

**E. Review and Possible Action on Proposed Agency Administrative Rule: Uniform Instructions Rule (Wis. Admin. Code Chapter EL 6).**

Chief Legal Counsel Jim Witecha reviewed the item before the Commission.

Discussion.

**MOTION:** The Wisconsin Elections Commission approves the proposed rulemaking drafts for SS 093-23 and SS 094-23 for emergency and permanent rulemaking relating to the mandatory use of uniform instructions for absentee voting. The Commission directs staff to submit the final draft emergency rule, SS 094-23, to the Governor, who must provide written notice of approval. Wis. Stat. § 227.24(1)(e)1g. Following gubernatorial approval, the Commission further directs staff to prepare a plain language analysis of the rule to be printed with the rule when published in the official state newspaper and with the Legislative Reference Bureau. Wis. Stat. § 227.24(1)(c), (d), (e) 1m., and (2). Finally, the Commission directs staff to proceed with the necessary permanent rulemaking steps for SS 093-23.

Moved by Commissioner Jacobs. Seconded by Commissioner Riepl.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

**F. Review and Possible Action on Proposed Agency Administrative Rule and Public Notices: Election Observer Rule and Associated Economic Impact Analysis (Wis. Admin. Code Chapter EL 4)**

Staff Attorney Brandon Hunzicker reviewed the item before the Commission. He noted that, after soliciting comment on the Economic Impact Analysis (EIA) for the election observer rule, he received one comment from City of Racine Clerk, Tara McMenamin. He introduced Clerk McMenamin to present her comments to the Commission.

Discussion.

Attorney Hunzicker and Chair Millis clarified that Clerk McMenamain was invited to present to satisfy Wis. Stat. § 227.137(3), which states that, “The agency or person shall prepare the economic impact analysis in coordination with local governmental units that may be affected by the proposed rule.”

Discussion.

Clerk McMenamain appeared and presented her disagreement with the Commission’s fiscal estimate for the observer rule as it pertained to EL 4.03(8): The designated election official shall permit an observer access to any available chair within the observable location and with the same access to restrooms available to election officials at the observable location.

Discussion.

**MOTION:** Staff shall update the draft rule order and finalize the EIA as directed by the Commission during this meeting. Staff shall finalize the draft notice for the hearing and comment period and the draft notice of submission to the rules clearinghouse as directed by the Commission during this meeting, and take all necessary steps to publish those notices in the administrative register and as needed to provide the public with notice of the hearing as directed during this meeting. Staff shall send the notice of hearing to the secretary of administration. Staff shall submit the EIA to the Department of Administration, the governor, and to the chief clerks of each house of the legislature. Staff shall submit the Draft Rule Order and EIA and Fiscal Estimate to the Legislative Council’s Rules Clearinghouse.

Moved by Commissioner Spindell. Seconded by Commissioner Thomsen.

The Commissioner clarified that the motion was moved with the understanding that Attorney Hunzicker would update section 13 of the EIA to note that the Commission considered the comments Clerk McMenamain submitted disagreeing with the fiscal estimate of the Commission, but the Commission’s opinion did not change.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

Discussion.

**G. Discussion, Review, and Possible Action Pertaining to the Recount Procedures Manual for County/Municipal Clerks.**

Chief Legal Counsel Jim Witecha reviewed the item before the Commission.

Discussion.

The Commission took a break at 10:41 a.m. and returned at 10:50 a.m.

Discussion.

**MOTION:** On page 82 of the recount manual, replace the stricken paragraphs at the top of the page with, “Review of absentee ballot applications is not the purview of the Board of Canvassers conducting a recount pursuant to Chapter 9. Any absentee ballot application forms are subject to open records requests.”

Moved by Commissioner Jacobs. Seconded by Commissioner Riepl.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	No
	Millis:	Aye	Thomsen:	Aye

Motion carried 5-1.

Discussion.

**MOTION:** Adopt the changes to the recount manual on which there was consensus, subject to a review by the Chair and Commissioner Jacobs. Direct staff to make the required changes to the EL- 186 and EL-186R forms: Sample Recount Petition and Sample Recount Petition for Referendum: list the correct physical address and zip codes for the physical address and PO Box; update the revision date. The Commission prescribes the EL-186 and EL-186R forms as revised.

Changes to the recount manual:<sup>1</sup>

- Create a definition section and put it before the “Procedures for Requesting a Recount” section.
  - Aggrieved candidate (Page 69)
  - Leading candidate (Page 69)
  - Territory (Page 69)
  - Filing officer (Page 73)
  - Determine (Page 73)
  - Original election materials (Page 78)
  - Probable absentee ballots (Page 84)
- Page 69: Under “How is a Recount Requested?” replace “A recount is requested by filing a valid, sworn petition with the filing officer or, in the case of a referendum, with the clerk of the jurisdiction in which the referendum is called,” with, “A recount of an election is requested by filing a valid sworn petition with the filing officer. A recount of a referendum is requested by the filing of a valid sworn petition with the clerk of the jurisdiction.”
- Page 69: Under “What is a Recount Petition?” re-word the section to clarify that a recount may be requested for a recount or a referendum.
- Page 69: Define “aggrieved candidate” and “leading candidate.” Specify requirements for various races.
- Page 69: Define “territory.”
- Page 70: Include the footnote in the regular text as its own section.

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<sup>1</sup> Page numbers correspond to the Commission’s materials for this meeting.

- Page 71: Break “When is a Filing Fee Required?” into sub-parts: For recount of an election; For recount of a referendum. Update the table of contents to reflect the sub-parts.
- Page 73: Define “filing officer.”
- Page 73: Under “When Must the Petition be Filed?” break out the deadlines, clarify the language (“The filing deadline is...”).
- Page 73: Move “Campaign Finance Note” under, “When Must the Petition be Filed?”
- Page 74: Reword the highlighted language: “While not required, if the following morning is a Saturday, Sunday, or holiday, the Wisconsin Elections Commission recommends that the board of canvassers may begin the recount on the Saturday, Sunday, or holiday.”
- Page 74: Under “What Happens When the Petition is Properly Filed?” clarify whether a petition can be sent and delivered electronically. Make the same clarification in “When Does the Recount Begin?” If so, include language requiring confirmation of receipt.
- Page 76: Clarify that the designated primary representative to the board of canvassers can change or defer to others, as long as one person at a time is speaking for the campaign.
- Page 76: In the first sentence of the third paragraph, change “canvass board members” to “members of the board of canvassers.” In the second to last sentence of the third paragraph, change “board” to “board of canvassers.”
- Page 77: Include the footnote in the regular text.
- Page 78: Include direction to notice the recount process in the manual before the requirement to include whether proper notice was given in the minutes.
- Page 78: Define “original election materials.”
- Page 79: Include the footnote in the regular text.
- Page 80: Strike “also” in the first full sentence.
- Page 80: Break the language specifying what needs to be in the minutes into its own section: “The Keeping of Minutes.” Consolidate the first full sentence and the last sentence of the first paragraph of “How Does the Board Conduct the Recount?” into this section.
- Page 80: Reword the second full sentence: “A court reporter may be helpful and assist in recording the actions of the recount.”
- Page 80: Under “How Does the Board Conduct the Recount?” label the listed items as numbered steps. Indent the check boxes to indicate sub-steps.
- Page 80: Remove sub-step in Step 2 (already contemplated in Step 1).

- Page 82: Change “Review Rejected Absentee Ballots” to “Remove Rejected Absentee Certificate Envelopes” and change “Examine Absentee Ballot Envelopes” to “Examine Absentee Ballot Certificate Envelopes.”
- Page 82: Remove references to the colors of carrier envelopes, provided those envelopes are not required to be the colors specified.
- Page 84: Define “probable absentee ballot.”
- Page 84: Clarify the headings to differentiate separating probable absentee ballots from reconciling the number of absentee ballots with the number of certificate envelopes and the number of written applications.
- Page 86: Delete “Review Provisional Ballots.”
- Page 86: Under “Count the Votes,” list instructions for hand count and optical scan count separately.
- Change references to “optical scan” to “electronic voting systems.”
- Page 86: Put the first paragraph of “Count the Votes” at the bottom of the section.
- Page 87: Change “Hand Count” to “Tabulating Votes by Hand Count” and indent the sub-steps. Change “Optical Scan” to “Tabulation by Electronic Voting System.”
- Page 89: Revise the highlighted language to conform to statute more closely.
- Page 89: Add to the “Count the Votes” section: when recounting votes by hand or by electronic voting system is permitted. List “Tabulation by Electronic Voting System” instructions before “Tabulating Votes by Hand Count.”
- Page 92: In the paragraph above “How Does a Candidate or Petitioner Challenge the Recount Results?” clarify “final.”
- Page 95: Update the physical address for the Wisconsin Elections Commission and list the correct zip code for both the physical address and the PO box.
- Pages 104-105: Make both Recount Checklists consistent with the steps laid out in the manual and the table of contents.

Moved by Commissioner Thomsen. Seconded by Commissioner Riepl.

**FRIENDLY AMENDMENT:** Direct staff to create a separate email address to receive electronic copies of recount documents.

Proposed by Commissioner Jacobs. Agreed to by Commissioner Thomsen and Commissioner Riepl.

The Commission voted on the motion as amended:

Roll call vote: Bostelmann: Aye Riepl: Aye

Jacobs: Aye Spindell: Aye  
Millis: Aye Thomsen: Aye

Motion carried 6-0.

## H. Closed Session

**MOTION:** Adjourn into closed session.

Moved by Commissioner Bostelmann, Seconded by Commissioner Jacobs.

Roll call vote: Bostelmann: Aye Riepl: Aye  
Jacobs: Aye Spindell: Aye  
Millis: Aye Thomsen: Aye

Motion carried 6-0.

The Commission left open session at 12:04 p.m.

## I. Adjourn

The Commission adjourned in closed session at 1:46 p.m.

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March 20, 2024, Wisconsin Election Commission meeting minutes prepared by:

\_\_\_\_\_  
Anna Langdon, Help Desk Staff

April 11, 2024

March 20, 2024, Wisconsin Election Commission meeting minutes certified by:

\_\_\_\_\_  
Carrie Riepl, Commission Secretary

April 11, 2024



# Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8005 | elections@wi.gov | elections.wi.gov

**DATE:** For the April 11, 2024, Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Brandon Hunzicker – Staff Attorney

**SUBJECT:** Representative Vos Recall Petition Sufficiency

## Introduction

Today is the Commission’s deadline for issuing a certificate regarding sufficiency of the first recall petition against Representative Vos. Wis. Stat. 9.10(3)(b) (the certificate stating sufficiency or insufficiency must be attached to the petition “[w]ithin 31 days after the petition is offered for filing”). Staff have reviewed the challenge brought by Representative Vos against the petition and have made recommendations on each individual challenge. Accordingly, staff revised the recommended number of valid signatures contained on the recall petition. For the purpose of this memo, “old AD 63” means the 63<sup>rd</sup> Assembly District under the former legislative maps, where state representatives currently are elected and serve. “New AD 33” and “new AD 66” refer to the new assembly districts recently adopted and that will go into effect for the November 2024 General Election. Staff recommend that the recall petition contains:

- 4,989 valid signatures from old district Assembly District (AD) 63,
- 3,053 valid signatures from new AD 33, and
- 5,472 valid signatures from new AD 66.

It would take 6,850 signatures in old AD 63, 7,195 signatures in new AD 33, and 5,270 signatures in new AD 66 for a recall election to be called.<sup>1</sup> The petition itself lists “Robin Vos 63rd Assembly” as the officeholder and officer subject to the recall petition, and that the electors signing are of the “63rd Assembly District.”

Staff recommend that the Commission find the petition insufficient regarding all three districts. Not enough valid signatures were submitted from either old AD 63 or new AD 33 for the petition to be valid, and because Representative Vos was neither elected to new AD 66 nor lives within the territory of that district, staff do not believe that this petition could cause a recall election against representative Vos to be held regarding that territory.

This memo will provide an overview of the challenges as well as the calculations made by staff leading to the recommended motions in this memo. The spreadsheets used to make these determinations and recommendations are available as appendix B.

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<sup>1</sup> Appendix 1 shows how staff calculated the number of signatures needed for a recall in new AD 33 and new AD 66. These numbers had not yet been calculated during the March 12 Commission meeting when the petition was first discussed. The total for AD 66 is significantly lower than expected.

## Discussion

The challenge submitted by Representative Vos was far more complicated than most to review. Representative Vos challenged signatures that had already been struck by staff during first and second review, as well as challenging each individual signature alleged not to be within old AD 63 and challenging each individual signature alleged not to be within new AD 33. The district boundary challenges also duplicate thousands of determinations made during the staff review. The result of these overlapping challenges is that to review the challenge, staff needed to first make a recommendation on each individual challenge regardless of whether staff had previously struck the signature. Next, staff determined if any signatures needed to be removed from the total because of the challenge, which entailed separating challenges that duplicated staff findings following the second review from those that staff had not struck during the second review. Finally, staff needed to calculate which of the three districts was affected and recommend removing the proper number of signatures from the total for that district. Table 1 below summarizes the final numbers recommended following staff's review of the challenge.

This section will begin by providing an overview of the challenge and what staff did to recommend if the burden had been met for each type of challenge. Then, it will describe how staff used that data to make revised calculations for the Commission concerning each district.

### 1. Staff Challenge Process and Recommendations

For background, following the submission of the recall petition, staff conducted a first and second review and made initial recommendations concerning how many valid signatures were contained on the petition. After reviewing each challenge, staff have revised the recommendations. In each of the potential districts, the recommended number decreased following the review of the challenge. The Recall Committee did not submit any correcting affidavits, nor did they submit a rebuttal or reply to any of the challenges. In addition, the Recall Committee had asked the Dane County Circuit Court to grant an extension of time to file a rebuttal. The Dane County Circuit Court did not approve an extension and the parties stipulated to dismiss the case.

Related to the challenge process, Representative Vos challenged thousands of individual signatures. The challenge included one exhibit challenging each signature alleged not to be within old AD 63 and another challenging every signature alleged not to be within district 33. To review these signatures, staff compared each line of the challenge with each corresponding line of the recall petition. If the challenge claimed that a signature was not in one of the districts, and that claim agreed with second staff review, staff marked that the burden was met but marked that the signature did not need to be removed from the total, since the second staff review did not count that signature as being within the district. If the challenge claimed that a signature that the staff second review had counted for a district was actually not within the district, staff looked up the signature using the district maps available on the legislature's website. Occasionally, staff used our own MyVote website to look up the address. If we determined that the second review recommendation was correct, we marked burden not met. If we determined that the second review district determination was incorrect we marked burden met and marked that the signature need to be removed from the total for that district.

Representative Vos challenged signatures on a variety of grounds, as outlined below:

- In the first circulator challenge, four out of state felons were alleged to have submitted 94 petition pages. It appears that each of the four individuals had at some point been convicted of a felony. However, no evidence was submitted showing that any of these individuals was still serving part of a sentence, and thus that they would not qualify as electors in Wisconsin. Instead, the challenge instructs that "WEC should verify whether each of these individuals would be eligible to vote in Wisconsin." It is possible that these pages should be struck due to these felony convictions, but the burden of proof is on the challenger, and without an allegation supported by evidence that these four individuals do not qualify as

circulators due to active felony convictions, that burden has not been met because even if the allegations are true that they were once convicted, they may have completed their sentences and would not be disqualified from voting under Wis. Stat. § 6.03 if they had been Wisconsin residents. Wis. Stats. §§ 8.40(2), 9.10(2)(em)2. *No signatures are recommended to be removed on this basis.*

- Other circulator certifications were challenged for listing non-residential or non-existent addresses, and for lacking a full address. Staff reviewed these challenges by going to each circulator certification page and reviewing if the information was present. Other circulator challenges were against individual signatures including that the date of the circulator signature was before the date of certain signatures, and that some signatures lacked dates entirely. *Staff found that the burden was met on some of these challenges, which are captured in the spreadsheets in Appendix B.*
- Representative Vos also challenges to signatures for duplicate signatures, incomplete addresses, incorrect municipality and for illegible names or addresses. Staff reviewed each line challenged. Most of the challenges for incorrect municipality were not accepted because staff were able to determine the residency of the signer of the petition from the information presented on the page. Under Wis. Stat. § 9.10(2)(e)4., the relevant standard for striking a signature is that the “residency of the signer of the petition sheet cannot be determined by the address given.” *Mailing addresses may use unincorporated municipalities or a neighboring municipality, but if staff were able to determine where the voter resided from the information given and that it was within one of the three possible districts, staff did not recommend striking the signatures.*
- The challenge included several unusual challenges, including that someone signed an individual’s name without that individual’s permission. Wis. Stat. 9.10(2)(j) states that, “If a challenger demonstrates that someone other than the elector signed for the elector, the signature may not be counted, unless the elector is unable to sign due to physical disability and authorized another individual to sign in his or her behalf.” *Staff reviewed the allegations and recommended sustaining most of these challenges. One failed to identify a page number and thus could not be reviewed, but the rest swore that the individual named resides at the address listed but did not sign the petition.*
- Three other affidavits came from parents swearing that the names of their minor children appeared on the petition, and that their children did not sign the petition. Wis. Stat. § 9.10(2)(e)7. States that a signature may not be counted if “[t]he signer is not a qualified elector by reason of age.” Staff recommend sustaining the three challenges on both grounds. One affidavit swears that the singer was told that the petition was for women’s rights, and that the circulators obstructed her access to her vehicle. *Staff recommend striking the signature under Wis. Stat. § 9.10(2)(m), which states that, “[n]o signature may be stricken on the basis that the elector was not aware of the purpose of the petition, unless the purpose was misrepresented by the circulator.”*
- Staff did not recommend striking a signature on the basis of an affidavit from the person’s daughter and power of attorney swearing that her mother is unable to sign and did not sign. It is possible that this individual did not give her permission for her name to be added, but the affidavit fails to clearly state that the individual did not herself authorize someone to sign her name on her behalf. It says that she “is unable to sign” and that “no one else authorized” her signature to be added. *Staff do not recommend striking this signature due to the gap in the affidavit, which does not clearly allege that this individual would be unable to authorize her signature being added, though this may have been the intent of the affidavit.*
- Another affidavit was provided by an individual saying he is not a qualified elector and did not understand what he was asked to sign, and that he was told he did not need to be eligible to vote. *Because he swears he is not an eligible elector, staff recommend striking the signature under Wis. Stat.*

9.10(2)(L), which states that, “if a challenger establishes that an individual is ineligible to sign the petition, the signature may not be counted.”

- Another affidavit was provided by an individual stating that a person was asking individuals to sign a petition he believed to be the recall petition while misrepresenting its purpose. The individual did not allege that he saw the petition, and no affidavits were provided from any of the signers, nor is there any description of which lines of the petition may be at issue. *Without more evidence, staff were unable to review this allegation.*
- Another allegation involves an individual accused of multiple serious felony offences and alleges that the individual is in jail facing charges. *However, because the individual has not yet been convicted, and because it would be possible for someone held in jail but not yet convicted to sign a petition, staff do not recommend striking this signature.*

More broadly speaking, the challenge also brought two questions to the Commission’s attention:

- Speaker Vos asks that the Commission make appropriate criminal referrals for election fraud and alleges that the circulators signed the names discussed above or misrepresented the petition. For the Commission to make any referrals regarding election fraud, it would need to receive a Wis. Stat. § 5.05 complaint making a specific allegation against a specific individual. The Commission cannot make a referral regarding any allegation contained in the challenge unless it receives such a complaint. If it receives any such complaint, its considerations would occur in closed session.
- The Challenge also argues that because the petition contained the words “Robin Vos 63rd Assembly District” that no recall election could occur on the basis of the petition because “Speaker Vos no longer resides in the 63rd Assembly District” but rather he “resides in the 33rd Assembly District.” Staff have not addressed this question, and recommend for other reasons that the Commission find the petition insufficient regarding each district the Commission asked staff to review.

## 2. Staff Calculations

After reviewing each challenge described above and marking either burden met or burden not met in the spreadsheet, staff also determined whether a signature would need to be removed from one of the totals due to the challenge. In many cases, the challenge simply duplicated a prior staff determination in the second review, meaning that no additional number should be subtracted, because the signature was never counted by staff toward one of the totals. In the case of a challenge not already recommended by staff for which the burden was met, a signature would need to be removed from the total. Due to reviewing old AD 63, new AD 33, and new AD 66 at once, staff needed to calculate which signature needed to be removed from which total. A brief description of this process appears below, followed by the final calculations. The entirety of the data can be found in the spreadsheets attached as exhibit B, and the letters below refer to different columns within the spreadsheet.

To determine the final number of valid recall petition signatures in assembly districts 63 and 33, staff subtracted from the total number of previously unstruck signatures in each district the challenged lines that were indeed outside that given district and all signatures within that district for which the burden was met for at least one of the challenge reasons in columns F to S.

- Specifically, for **old AD 63**, staff subtracted from the AD 63’s 6,000 previously unstruck signatures 768 for the challenged lines that were indeed outside AD 63 and subtracted an additional 243 for lines within AD 63 that met the burden for any of the challenge reasons in columns F to S, reaching 4,989 as the final number of valid signatures for AD 63.

- For **new AD 33**, staff subtracted from the AD 33's 3,356 signatures 135 for being outside of AD 33 and an additional 168 for being within AD 33 but having met the burden for at least one of the challenge reasons in columns F to S, reaching 3,053 as the final number of valid signatures for AD 33.
- For **new AD 66**, which was not subject to a specific challenge, staff subtracted from AD 66's 5,677 previously unstruck signatures 205 for lines within AD 66 that met the burden for any of the challenge reasons in columns F to S, reaching 5,472 as the final number of valid signatures for AD 66.

The final numbers showing these calculations can be seen in this table:

## TABLE 1

### District 63

Total Number of Burdens Met	3,566
Total Number of Signatures to Remove (had not yet been struck)	<b>768</b>

### District 33

Total Number of Burdens Met	5,859
Total Number of Signatures to Remove (had not yet been struck)	<b>135</b>

### Burden Met F - S

Total number of BM in any columns F - S	431
Those BM in F - S that have already been struck	58
Total not yet struck BM in any columns F - S	373
<b>F - S BM for Old AD 63 &amp; New AD 66 (YELLOW)</b>	<b>76</b>
<b>F - S BM for New AD 33 ONLY (GREEN)</b>	<b>1</b>
<b>F - S BM for Overlap Old AD 63 &amp; New AD 33 (BLUE)</b>	<b>167</b>
<b>F - S BM for New AD 66 (PINK)</b>	<b>129</b>
	373

### *Valid Signatures after 2nd Staff Review*

<i>AD 63 (AD63&amp;AD33 combo + AD 63 only)</i>	6,000
<i>AD 33 (AD63&amp;AD33 combo + AD 33 only)</i>	3,356

<b>2nd Staff Review 6,000 - 768 outside of AD 63</b>	5,232
<b>Less any burden met F - S for AD 63 (Yellow &amp; Blue)</b>	243
<b>Final # Signatures in AD 63</b>	<b>4,989</b>

<b>2nd Staff Review 3,356 - 135 outside of AD 33</b>	3,221
<b>Less any burden met F - S for AD 33 (Green &amp; Blue)</b>	168
<b>Final # Signatures in AD 33</b>	<b>3,053</b>

<b>Final # Signatures for AD 66 after 2nd Staff Review</b>	5,677
<b>Less any burden met F - S for AD 66 (Yellow &amp; Pink)</b>	205
<b>Final # Signatures in AD 66</b>	<b>5,472</b>

**Recommended Motion:**

After careful examination of all signatures submitted on the petition to recall Representative Vos, and after reviewing the challenge as described in this memo and within the attachments, the Commission finds that the petition contained 4,989 valid signatures from old AD 63, 3,053 valid signatures from new AD 33, and 5,472 valid signatures from new AD 66. The Commission finds that the petition is insufficient to call a recall election regarding old AD 63 because fewer than 25 percent of the number of electors who cast a vote for governor at the last election within that territory signed the petition. The Commission finds that the petition is insufficient to call a recall election regarding new AD 33 because fewer than 25 percent of the number of electors who cast a vote for governor at the last election within that territory signed the petition. The Commission finds that the petition is insufficient to call a recall election regarding new AD 66 because Representative was neither elected to that office, and is not the officeholder, nor resides within the district. Staff shall use this motion to create a certificate and shall attach the certificate to the petition materials and transmit those materials and the materials discussed during this meeting and transmit them to both parties, to allow the petitioner 5 days to amend the petition to correct any of its insufficiencies.

Appendix A

**New AD 33 ONLY**

<b>MunicipalityName</b>	<b>MunicipalityType</b>	<b>Total Votes Cast</b>
BURLINGTON	TOWN	3176
BURLINGTON (wards 1-8)	CITY	4721
DOVER	TOWN	1790
EAST TROY	TOWN	2394
EAST TROY	VILLAGE	2249
GENEVA (wards 8, 9)*	TOWN	550
LAKE GENEVA (except ward 9)*	CITY	3000
LINN (wards 3, 6)*	TOWN	500
LYONS	TOWN	1729
ROCHESTER	VILLAGE	2112
SPRING PRAIRIE	TOWN	1282
TROY	TOWN	1411
UNION GROVE	VILLAGE	2115
YORKVILLE	VILLAGE	1748
<b>TOTAL</b>	<b>ALL</b>	<b>28777</b>
<b>25%</b>		<b>7194.25</b>

**New AD 66 ONLY**

<b>MunicipalityName</b>	<b>MunicipalityType</b>	<b>Total Votes Cast</b>
ELMWOOD PARK	VILLAGE	283
MOUNT PLEASANT	VILLAGE	11911
RACINE (whole wards 5, 29-33,35-44,49)(partial wards 3,4,6-8)	CITY	6718
STURTEVANT	VILLAGE	2166
<b>TOTAL</b>	<b>ALL</b>	<b>21078</b>
<b>25%</b>		<b>5269.5</b>



# Wisconsin Elections Commission

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**DATE:** For the **April 11, 2024**, Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Presented by:  
Angela O'Brien Sharpe, Staff Attorney

**SUBJECT:** Candidate Exceptions to Wis. Stats. §§ 8.10(2)(b) and 8.15(5)(a) pertaining to the Residential Address Requirement in Nomination Paper Headers

## Introduction

The purpose of the header of a nomination paper is, in part, to demonstrate that the signatories understand which candidate is running for which office in which election. Accordingly, candidates for public office must provide specified information on the header of their nomination papers. Wis. Stats. §§ 8.10(2)(b), 8.15(5)(a). The law requires that each nomination paper have “substantially” the information indicated by statute in the header. One of this required fields is the candidate’s residence, which is defined by statute as the “candidate’s street address.” Wis. Stats. §§ 8.10(2)(b), 8.15(5)(a). The Commission has regularly sustained challenges to nomination papers when a candidate has not provided a residence (street) address.<sup>1</sup>

However, the Commission has also granted occasional exceptions to candidates who do not wish to provide their residence (street) address on nomination papers. Most recently, in 2018, the Commission considered a request from then-Representative JoCasta Zamarripa to use a post office box or a street address without an apartment number for her nomination papers due to threats she had received over the years. The Commission approved this request unanimously. At that time, Commissioner Knudson expressed an interest in the Commission establishing criteria for evaluating future requests, but the Commission did not ultimately consider that topic again. The materials and motion from that meeting are included for reference in **Attachment A**.

Commission staff recommend that the Commission revisit its previous discussion and decisions on this topic ahead of the current nomination paper cycle.

## Discussion

The Commission’s decision in the Zamarripa matter was based upon State Elections Board and Government Accountability Board (GAB) past precedent to permit candidates on a case-by-case basis to omit their residential address on ballot access documents when security concerns have been documented.

<sup>1</sup> See page 3 of the Common Nomination Paper Challenges Manual, available here:  
<https://elections.wi.gov/resources/manuals/common-nomination-paper-challenges-manual>.

In 2010, the GAB heard a nomination paper challenge to U.S. Sen. Tammy Baldwin's nomination papers when she was a candidate for the U.S. House of Representatives. Sen. Baldwin had used a campaign office address rather than her residential address. The GAB approved the use of the campaign office address, absent evidence that she was no longer residing within the Second Congressional District. The GAB concluded that the use of the campaign office address was substantially compliant with Wis. Stat. § 8.15(5)(a) based on the following factors: 1) the documented security concerns raised by the candidate; 2) the candidate's sworn statement on the Declaration of Candidacy attesting to the residency requirement; 3) the lack of evidence to the contrary in the complaint; and 4) staff verification of the candidate's residential address.

As discussed above, the statutes detailing nomination paper requirements state that the header must contain "substantially" the information provided. Wis. Stats. §§ 8.10(2)(b), 8.15(5)(a). In the Zamarripa and Baldwin matters, the Commission appeared to read "substantially" broadly to conclude that evidence of security concerns coupled with verification of the candidate's residence still substantially complied with these statutes, even if the residence address was not provided in the header.

However, it is the opinion of Commission staff that a nomination paper without a candidate's residence (street) address cannot be substantially compliant with Wis. Stats. §§ 8.10(2)(b) and 8.15(5)(a), even if the candidate has security concerns and attempts to verify their residence through other means. The purpose of requiring a candidate to provide their residence (street) address on nomination papers is so that potential signatories and other interested individuals can confirm whether the candidate meets the requisite residence requirements for the office sought. This is confirmed by the statutory language — candidates are required to provide the information specified in §§ 8.10(2)(b) and 8.15(5)(a) "*so that* voters will have the opportunity to vote for (him or her)" for the intended office. (Emphasis added). Whether a candidate resides in the district or jurisdiction they are seeking to represent is of interest and importance to voters who also reside in that district or jurisdiction.

For the reasons above, staff recommend that the Commission review its past practice of permitting exceptions to this statutory requirement. No provision within §§ 8.10(2)(b) or 8.15(5)(a) provides a basis for the Commission to grant an exception to any of the information required. The justification for doing so is based on an interpretation of "substantially" that would not clearly define what is required information in the nomination paper header and what is not.

Finally, permitting exceptions of this type is inconsistent with the Commission's usual finding of noncompliance when candidates otherwise fail to include their residence (street) address on nomination papers. Permitting the exception could lead to an inconsistent result where Candidate A requests an exception not to provide a residence (street) address, and Candidate B doesn't request an exception but fails to provide a residence (street) address anyways. Candidate A would be substantially compliant and would receive ballot access but Candidate B would not, even though both sets of nomination papers would have the same defect.

**Recommended Motion:** The Wisconsin Elections Commission interprets Wis. Stats. §§ 8.10(2)(b) and 8.15(5)(a) to mean that nomination papers without a candidate's residence (street) address are not substantially compliant, even if the candidate has demonstrated security concerns and attempts to verify

their residence through other means. The Wisconsin Elections Commission will no longer grant exceptions to providing this required statutory element.

# WISCONSIN ELECTIONS COMMISSION

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INTERIM ADMINISTRATOR MEAGAN WOLFE

## MEMORANDUM

**DATE:** For the May 24, 2018 Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Meagan Wolfe  
Interim Administrator, Wisconsin Elections Commission

Prepared and Presented by:  
Michael Haas, Staff Counsel

**SUBJECT:** Representative Zamarripa Request Regarding Address on Ballot Access Documents

Due to harassing and threatening postcards she has received from an individual over the past three years, State Representative JoCasta Zamarripa has requested that the Elections Commission accept her nomination papers and Declaration of Candidacy form without her full apartment address. Instead, Representative Zamarripa requests that she be allowed to list a post office box as her address or her street address without the apartment number. Representative Zamarripa requests the Commission's guidance in advance of filing her ballot access documents to provide certainty and to avoid the issue arising as part of a challenge to her nomination papers. Based upon decisions of the State Elections Board and the Government Accountability Board in similar cases, Commission staff recommends permitting Representative Zamarripa to list a post office box or her street address without the apartment unit on her nomination papers and Declaration of Candidacy form.

### Applicable Law

Wis. Stat. § 8.15(5) governs the language required on candidate nomination papers for the Partisan Primary and states as follows:

(5)(a) 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) 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 (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.

(b) Each candidate shall include his or her mailing address on the candidate's nomination papers. (*Emphasis added*).

Nomination papers must be accompanied by a Declaration of Candidacy form which lists the candidates' name as it should appear on the ballot, and which includes a sworn statement that the candidate meets or will meet applicable age, citizenship, residency, and voting qualification requirements at the time of taking office. Wis. Stat. 8.21(4)(b) also requires that the Declaration of Candidacy form include a "statement that discloses the candidate's municipality of residence for voting purposes, and the street and number, if any, on which the candidate resides."

### **Circumstances of Request**

Representative Zamarripa has informed Commission staff that she has received numerous unsigned postcards since 2015 which appear to be sent by the same individual and which contain threatening and harassing messages. She provided reports from the Capitol Police from August and September of 2015 describing the content of postcards which she had received at her state office and home address. The police report notes that the postcards contained racist and derogatory comments about Mexicans and illegal immigrants, and at least two postcards contained a threatening message. The police report also indicates that the handwriting appears to have been written by the same person and the postcards do not include a return address but have a Milwaukee postmark.

Representative Zamarripa indicated that she has continued to receive similar postcards at her office and home, including within the last month. She does not know the identity of the sender. Representative Zamarripa lives in an apartment building and Commission staff has confirmed that the address is located within her State Assembly District. She requests that she be allowed to list a post office box address rather than her apartment street address on her nomination papers and Declaration of Candidacy form. If the Commission determines that a post office box is not acceptable, she requests that she be allowed to list the street address of her residence, but not the apartment number.

### **Agency Precedent**

During previous election cycles, the State Elections Board and Government Accountability Board (G.A.B.) have permitted candidates to omit their residential address on ballot access documents when security concerns have been documented on a case-by-case basis. In some cases, judges with security concerns have been permitted to list a post office box rather than a street address. This issue was addressed most thoroughly when the G.A.B. considered and resolved a challenge to nomination papers of Candidate Tammy Baldwin in 2010, when she was a candidate for U.S. House of Representatives. Staff has reviewed the G.A.B.'s analysis and decision in that matter.

Candidate Baldwin's nomination papers were challenged because they listed a campaign office address rather than her residential address, a practice which the Elections Board and G.A.B. had approved in previous election cycles. The G.A.B. approved the use of a campaign office address again in its 2010 decision and clarified that its decision was intended to apply to future election cycles absent evidence establishing that she no longer resides within the 2<sup>nd</sup> Congressional District.

The G.A.B.'s decision concluded that the use of the campaign office address achieved substantial compliance with the requirements of Wis. Stat. § 8.15(5)(a) based on the following specific factors: (1) the security concerns documented by the candidate; (2) Candidate Baldwin's sworn statement on her Declaration of Candidacy that she meets the residency requirements prescribed by the federal and state constitutions and laws; (3) the lack of evidence to the contrary in the challenge complaint; and (4) staff's verification that Candidate Baldwin's voting address was located within the 2<sup>nd</sup> Congressional District in which she wished to be a candidate.

### **Staff Analysis and Recommendation**

Based upon the security concerns documented by Representative Zamarripa, staff recommends that the Commission permit the use of a post office box rather than her residential address on her nomination papers and Declaration of Candidacy forms. Consistent with the G.A.B.'s 2010 decision related to Candidate Baldwin, Representative Zamarripa is required to include a sworn statement on her Declaration of Candidacy form indicating that she meets the required residency qualifications and Commission staff has verified that her voting address is located within the 8<sup>th</sup> Assembly District in which she is a candidate.

Absent any evidence to the contrary that might be filed as part of a challenge, staff believes Representative Zamarripa's use of a post office address constitutes substantial compliance related to nomination paper requirements under Wis. Stat. § 8.15. The Declaration of Candidacy form is governed by Wis. Stat. § 8.21, which requires the candidate's municipality of residence for voting purposes, and the street and number where the candidate resides. Requiring Representative Zamarripa to disclose the street address on the Declaration of Candidacy form would defeat the purpose of, and security provided by, omitting it from her nomination papers. If the Commission concludes that a street address is required on either the nomination papers or Declaration of Candidacy form filed by Representative Zamarripa, staff recommends that the documents be accepted without the apartment unit being included.

### **Recommended Motion:**

The Commission approves the use of a post office box address rather than a residential address on the nomination papers and Declaration of Candidacy form submitted by Candidate JoCasta Zamarripa. This decision also applies to future election cycles, absent a change in evidence establishing that Candidate Zamarripa no longer resides in the district in which she is a candidate.

Commissioners and staff discussed feedback staff received from the pilot program and plans for updates prior to the Partisan Primary. Ms. Linski said staff is looking at different hardware configurations. She stated that interest in implementing Badger Books for the remaining 2018 elections is limited, but that many more clerks have expressed interest in 2019 and beyond.

## **G. ERIC – Update from April and Plans for 2018**

WisVote Functional Lead Sarah Whitt made a presentation based on a written report starting on page 37 of the May 24 Commission meeting materials regarding the use of supplemental poll books at the Spring Election to ensure that any voter deactivated as a result of the ERIC movers postcard process who had not moved was not required to reregister to vote. She said 419 municipalities reporting having at least one voter on the supplemental poll list, with a total of less than 1,500. Staff recommends continuing the use of supplemental poll lists for the Partisan Primary in August, after which the Commission can evaluate the data and decide how to proceed for the General Election in November.

Ms. Whitt also discussed the next ERIC mailing, which will involve sending postcards to approximately 600,000 Wisconsin residents who appear to be eligible to vote but are unregistered.

## **H. Recount Manual**

Chair Thomsen asked Vice Chair Jacobs to take the gavel at 11:21 a.m. so he could step out of the meeting.

Staff Counsel Michael Haas and Senior Elections Specialist Nathan Judnic made a presentation based on a written report starting on page 26 of the May 24 Commission meeting materials regarding questions raised by Commissioner Knudson about recounts.

Mr. Judnic discussed the difficulty of including nuances of case law regarding recounts into the manual. Commissioner Knudson expressed his desire for there to be understandable common language in the manual about which actions are mandatory and which are not.

Mr. Haas noted that the manual is focused on procedures for boards of canvassers to follow during a recount and not the legal reasons behind them.

Chair Thomsen returned to the meeting at 11:37 a.m.

Commissioners and staff discussed the content of the recount manual and the idea of putting the staff report for this agenda item on the website along with the manual, as well as adding a note to the manual encouraging clerks to contact the Commission with questions.

## **I. Representative Zamarripa Nomination Paper Request**

Mr. Haas made a presentation based on a memorandum starting on page 77 of the Commission meeting materials about Representative JoCasta Zamarripa's request to use a post office box or a

street address without an apartment number for her nomination papers due to threats she has received over the years. He noted that the former State Elections Board and Government Accountability Board granted similar requests to other candidates in the past on a limited case-by-case basis.

**MOTION:** Approve the use of a post office box address rather than a residential address on the nomination papers and Declaration of Candidacy form submitted by Candidate JoCasta Zamarripa. This decision applies to future election cycles, absent a change in evidence establishing that Candidate Zamarripa no longer resides in the district in which she is a candidate.

Discussion. Commissioner Knudson expressed an interest in the Commission establishing criteria for evaluating future requests.

Motion carried unanimously.

Chair Thomsen said he would entertain a motion to convene in closed session to consider item N out of agenda order regarding US-DOJ UOCAVA Definition.

**MOTION:** Move to closed session pursuant to Wis. Stat. §§ 19.85(1)(g) to confer with counsel concerning potential litigation. Moved by Commissioner Jacobs, seconded by Commissioner Glancey.

Roll call vote:	Gill:	Aye	Glancey:	Aye
	Jensen:	Absent	Jacobs:	Aye
	Knudson:	Aye	Thomsen:	Aye

Motion carried unanimously.

The Commission recessed at 11:55 a.m. and convened in closed session at 12:03 p.m., returning to open session at 12:43 p.m.

**N. US-DOJ UOCAVA Definition**

Mr. Haas discussed potential litigation with the U.S. Department of Justice regarding the treatment of temporary overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act. The US-DOJ is asking the Commission to enter into a consent decree so voters who are temporarily overseas can be treated the same as permanent overseas voters and receive an absentee ballot electronically, as well as to vote by using the Federal Write-in Absentee Ballot (FWAB). Legislative changes to accomplish this were requested by the Commission and passed by the Assembly this session, but were not passed by the Senate.

Mr. Haas introduced Assistant Attorney General Thomas Bellavia, who is representing the Commission in the potential litigation. Mr. Bellavia noted that the US-DOJ has sent the Commission a letter saying they have authorization to file a lawsuit, but are offering a settlement in advance.