



Wisconsin Elections Commission

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DATE: For the March 12, 2024, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Brandon Hunzicker, Staff Attorney

SUBJECT: Recall Petition Filed against Representative Vos

Introduction:

On March 11, Petitioner Matt Snorek filed a recall petition against Representative Vos. The Commission has not administered a recall process since its formation in 2016, and staff seek both to provide an overview of the relevant statutes and to receive the Commission's guidance concerning how staff should proceed. Additionally, there are questions related to the active injunction in the *Clarke* litigation for the Commission to consider. Overall, the filing of the recall petition immediately set off a series of required Commission actions under Wis. Stat. § 9.10, and staff must begin carrying them out. A list of municipalities and the old and new map sections at issue, a receipt given to the Petitioner, and an acknowledgement signed by the Petitioner follow this memo.

Discussion:

First, this memo will provide an overview of the applicable recall statutes and deadlines. Then it will provide information about the recall petition sheets that staff received. Finally, it will raise issues that staff believe the Commission needs to address before the remaining processes can be carried out.

1. Relevant Statutory Processes

- a. **Registration and filing** — Qualified electors have the right to petition for the recall of an incumbent elective official. Wis. Stat. § 9.10(1). Because nomination papers and declarations of candidacy for state legislative offices are filed with the Commission, the Commission is also the filing officer for any recall petition against a state legislative official. *Id.* A registration statement is required to be filed before recall signatures can be collected and, once filed, a petitioner has 60 days during which signatures can be collected. Wis. Stat. § 9.10(2)(d). The petition must be filed at least one year after the officeholder's term has commenced. Wis. Stat. § 9.10(2)(s).

In this case, the registration occurred on January 10, and the 60th day following registration was Sunday, March 10. Due to the deadline falling on a Sunday, when the Commission office is closed, the Petitioner had the right under Wis. Stat. § 990.001(4)(b) to do the act of filing the petition on Monday, March 11. Commission staff accepted the petition as timely filed on March 11.

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- b. **Petition sufficiency** — A valid recall petition must be signed by qualified electors equal to “at least 25 percent of the vote cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled.” Wis. Stat. § 9.10(1)(b). Regarding the old district 63, the petition would need to contain at least 6,850 valid signatures to be sufficient. Regarding the new districts 33 and 66, staff have not yet calculated the number of signatures that would be required for a recall election in these districts. The calculation would require implementing the new lines in our WisVote system to redistrict all voters, and then analyzing the corresponding voter data. Staff have not had enough time to carry out these tasks since receiving official map data from LTSB last week. A recall petition must say “RECALL PETITION” on its face, but otherwise the petition conforms to the requirements of Wis. Stat. § 8.40, which generally requires the same procedures for signers and circulators as apply to nomination papers. Wis. Stat. § 9.10(2)(a).
- c. **Challenge procedure** — The officeholder that the petition seeks to recall can file a challenge against the petition within 10 days after its filing. Wis. Stat. § 9.10(3)(b). The challenge procedure is substantially the same as the nomination paper challenge procedure, except that most requirements are found within Wis. Stat. § 9.10(2)(e)–(r). A rebuttal may be filed within 5 days of the challenge’s filing, followed by a reply within 2 days of the rebuttal. Wis. Stat. § 9.10(3)(b). Within 31 days after the petition is filed, the Commission must “determine by careful examination whether the petition on its face is sufficient and so state in a certificate attached to the petition.” *Id.* However, this timeline may be shortened if parties file their challenge materials ahead of the deadlines because the Commission must file “the certificate or an amended certificate” within 14 days after the expiration of time allowed for filing a rebuttal. *Id.*

If the petition is insufficient, the Commission’s certificate must “state the particulars creating the insufficiency” and then the petition “may be amended to correct any insufficiency within 5 days following the affixing of the original certificate.” *Id.* Within 5 days of filing an amended petition, the Commission must “again carefully examine the face of the petition to determine sufficiency and shall attach a certificate stating the findings.” *Id.* If the petition is sufficient, the Commission must “file the petition and call a recall election to be held on the Tuesday of the 6th week commencing after the date of filing of the petition.” *Id.* Notably, “[u]pon showing of good cause, the circuit court for the county in which the petition is offered for filing may grant an extension of any of the time periods provided in this paragraph.” *Id.*

- d. **Writ of Mandamus or Prohibition** — Within 7 days of the Commission’s sufficiency determination, the petitioner or the official subject to the recall “may file a petition for a writ of mandamus or prohibition” with, in this case, the Dane County Circuit Court. Wis. Stat. § 9.10(3)(bm). The court shall “give the matter precedence over other matters not accorded similar precedence by law” and may then determine the sufficiency of the petition, stay the Commission’s order, or require revising the recall election schedule. *Id.*
- e. **Recall Election and Schedule** — The elective official is a candidate in the recall election without needing to submit nomination papers, unless the official resigns 10 days after the original filing of the petition, which corresponds to the same timeline in which the official can challenge the petition. Wis. Stat. § 9.10(3)(c). Other candidates “may be nominated under the usual procedure of nomination for a special election by filing nomination papers not later than 5 p.m. on the 4th Tuesday preceding the election.” *Id.* Each political party entitled to a separate ballot for which more than one candidate is nominated shall have a recall primary. Wis. Stat. § 9.10(3)(e). Independent candidates shall appear only for the recall election, and not the recall primary. *Id.* If a primary is required, the recall election date becomes the recall primary date, and

the recall election must be held “on the Tuesday of the 4th week commencing after the recall primary.” Wis. Stat. § 9.10(3)(f).

- f. **Associated deadlines** — Clearly, there are variables that can affect the deadlines of a recall process. Staff have provided ranges below during which the event would occur, but the Commission will need to be somewhat flexible given the uncertainty surrounding actual filing dates and potential court actions.

i. <i>Initial filing:</i>	March 11
ii. <i>Range to file a challenge:</i>	March 12 – 21
iii. <i>Range to file a rebuttal:</i>	March 13 – 26
iv. <i>Range to file a reply:</i>	March 14 – 28
v. <i>Range for WEC determination:</i>	March 15 – April 11
vi. <i>Potential amendment:</i>	March 16 – April 16
vii. <i>Potential reexamination:</i>	March 17 – April 21
viii. <i>Potential Circuit Court Filing:</i>	March 16 – April 28

Parties tend to file documents closer to the deadline, so the later dates are more likely, and the earlier dates are theoretical and correspond to all parties completing the allowed or required action on the earliest possible day. The most important dates for Commissioners to be aware of are the March 15 – April 11 range and the March 17 – April 21 range because these would require Commission meetings, which would closely resemble a ballot access challenge meeting. If the petition is sufficient, the Commission would also need to meet to consider nomination papers filed by candidates on the 4th Tuesday preceding the election, which would very likely end up being the primary. This means that the challenge period and the printing and distributing of ballots would all need to take place within this 4-week span.

Were the Commission to find the petition sufficient on April 11, nomination papers would be due on April 23, the likely primary on May 21, and the recall election on June 18. These dates are only intended to give a general sense of the possibilities going forward.

2. **The Recall Petition** — Staff have scanned the petition and made it available to all individuals online. We have also proceeded through a first review (out of two) and determined the number of complete signatures, meaning signature lines with a signature; printed name; street address; municipality within any of the old district 63, or the new districts 33 and 66; and date, also taking into account headers and circulator certificates. After this review, staff believe there are 9,053 potentially valid signatures to consider.

Staff also made determinations of where a signer likely resides considering the previous district 63 lines, and the new district 33 and 66 lines. Staff did not undertake a fine-grain review of addresses and used only municipality to make this determination. Regarding these districts on the first review, staff believe that:

3,332 signatures would fall within both the previous 63 and the new 33;
2,573 would fall within both the previous 63 and the new 66;
32 signatures would fall only within the new 33;
3,116 would fall only within the new 66; and
5,905 signatures would fall within the previous district 63.

Staff are not asking the Commission to review any signatures today but seek guidance on completing the second review. These numbers might fluctuate slightly following a second review.

3. Questions — The Wisconsin Supreme Court enjoined the Commission “from using the current maps in all future elections.” *Clarke v. WEC* par. 77. But for this injunction, there would be no question that any recall election would use the lines from which the officeholder subject to recall was elected.¹ The Commission is not enjoined from reviewing recall petitions or challenges, but it is enjoined from conducting future elections under the maps found unconstitutional in *Clarke*. Were the Commission to order a recall election in mid-April, it will need to order an election in a specific territory based on the number of signatures submitted for that territory, and candidates would need to know where they may gather nomination signatures.

Representative Vos was elected from the old Assembly District 63. His residence would now place him in the new Assembly District 33, but some of his previous voters now reside within the new Assembly District 66. Staff seeks guidance from the Commission concerning how staff should conduct the second review of signatures.

¹ Recall elections are allowed only upon the filing of signatures “equal to at least 25 percent of the vote cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled.” Wis. Stat. § 9.10(1)(b). The statute looks to the last election, and to the territory—necessarily based on a map for legislative seats—that elected the current office holder. Further, Wis. Stat. § 9.10(2)(e)6. explains that a signature may not be counted if “[t]he signature is that of an individual who is not a resident of the jurisdiction or district from which the elective official being recalled is elected.” The word “is” is harder to understand than if the statute had used “was,” but the meaning appears to still be backward looking to the district lines that were used to elect the official. Wis. Stat. § 9.10(3)(c) explains that the incumbent is automatically a candidate for the recall election unless the incumbent resigns, and it would be difficult to apply this section of statute to a new district given the possibility that the incumbent might not be a resident of the new district. Finally, Wis. Stat. § 9.10(5)(b) states that “[t]he person receiving a plurality of votes at the recall election . . . shall be declared elected for the remainder of the term. If the incumbent receives the required number of votes he or she shall continue in office.” This section clearly shows that the map in place at the time the officeholder was elected is the territory that the incumbent or plurality vote winner would represent for the remainder of the term.

ATTACHMENT A

MEMORANDA: “RECALL PETITION FILED AGAINST REPRESENTATIVE VOS”

The municipal composition of prior Wisconsin Assembly District 63 is as follows:

- City of Burlington
- Village of Rochester
- Village of Sturtevant
- Village of Union Grove
- Town of Dover
- Town of Yorkville
- Town of Burlington (Partial)
- Village of Caledonia (Partial)
- Village of Mount Pleasant (Partial)

The municipal composition of new Wisconsin Assembly District 33 is as follows:

- Town of Burlington
- Town of Dover
- Village of Rochester
- Village of Union Grove
- Village of Yorkville
- Town of Troy
- Town of East Troy
- Town of Lyons
- Town of Spring Prairie
- Village of East Troy
- City of Burlington (the part in Racine County)
- Town of Geneva Ward 8
- Town of Geneva Ward 9 (partial - this is a new ward split).
- Town of Linn Ward 3
- Town of Linn Ward 6
- All of City of Lake Geneva EXCEPT Ward 9

The municipal composition of new Wisconsin Assembly District 66 is as follows:

- Village of Sturtevant
- Village of Elmwood Park
- All of Village of Mount Pleasant except Wards 4, 5, 6 and 25
- City of Racine - Whole Wards 5, 29, 30, 31, 32, 33, 35, 37, 38, 39, 40, 41, 42, 43, 44, 49
- City of Racine - Partial Wards (% in district 66):
 - Ward 3 - 5%
 - Ward 4 - 95%
 - Ward 6 - 70%
 - Ward 7 - 33%
 - Ward 8 - 5%

- Ward 34 - 90%
- Ward 45 - 40%

The following is a visual representation of the composition of prior Wisconsin Assembly District 63 and new Wisconsin Assembly District 33:





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ACKNOWLEDGEMENT AND AGREEMENT RECALL PETITION: ASSEMBLYMAN ROBIN VOS

I, the undersigned party, hereby acknowledge and agree that the Wisconsin Elections Commission and its staff, in accepting the recall petition for Wisconsin Assemblyman Robin Vos, are making no representations or guarantees as to the sufficiency of the petition by accepting its delivery. I submit this petition today having been made fully aware that its delivery represents only a filing of the petition, not a determination relating to its content or whether it has met the legal requirements for such a petition.

All requirements for the Wisconsin Elections Commission to determine sufficiency of a recall petition, facial or otherwise, will be performed at a later date. Staff accepting this recall petition are not performing any sufficiency assessments or filing reviews. Staff and Commissioners will make reasonable efforts to do so in an expeditious manner, but compliance requirements may cause some delays.

Specifically, *Rebecca Clarke et al. v. Wisconsin Elections Commission et al.*, Case No. 2023AP1399-OA, remains open before the Wisconsin Supreme Court. This matter has raised certain issues that will likely be presented to the Wisconsin Elections Commission for assessment before any sufficiency review can be completed. Wisconsin Elections Commission staff will remain in contact as this matter progresses.

Petitioner Signature

Printed Name

Wisconsin Elections Commission

Printed Name

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

**Wisconsin Elections Commission
Recall Petition Receipt**

WISCONSIN ELECTIONS COMMISSION
201 WEST WASHINGTON AVE
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MADISON, WI 53703-7984

Recall Committee Name : Recall Vos
Address 1 : 4350 67th Drive
Address 2:
City, State, Zip : Union Grove, WI 53182
Phone : 262-404-6747

Officeholder Being Recalled : Representative Robin Vos

Date Filed Recall Petition Papers : 03/11/2024
Approximate Number of Pages: 1349
Approximate Number of Signatures: 10,702

Receptionist : _____

Agency Staff : By 2i