State of Wisconsin\Government Accountability Board

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MEMORANDUM

DATE: For the July 21-22, 2010 Board Meeting

TO: Members, Government Accountability Board

FROM: Nathaniel E. Robinson
Elections Division Administrator
Government Accountability Board

Prepared by: Diane Lowe, Lead Elections Specialist
Ross Hein, Elections Specialist

SUBJECT: Ballot Access for the 2010 General Election

Summary

The nomination paper filing deadline for the 2010 General Election for constitutional, congressional and legislative offices was 5:00 pm on Tuesday, July 13, 2010. Three hundred eighty (380) candidates filed with the Government Accountability Board Elections Division. Sixty two candidates registered for the election but did not submit any nomination papers. (Two of those were incumbents who had registered for the election, and later filed a Notification of Noncandidacy.).

The first day to circulate nomination papers was June 1, 2010. The first candidate filed nomination papers on Monday, June 7. Elections Division staff received seventy nine (79) sets of nomination papers by June 30. Between July 1 and July 9, staff received one hundred seventy three (173) sets of papers. The remaining one hundred twenty nine (129) sets of nomination papers were filed on the last two days. Every nomination paper received was reviewed and a determination was made regarding sufficiency within 24-48 hours.

By the deadline for filing nomination papers, one hundred eight (108) candidates had also filed additional nomination papers to supplement their original filing.

Twenty four (24) incumbents filed notifications of noncandidacy with the Elections Division by the deadline of July 6, 2010. These were incumbents who were not seeking re-election to their currently held office. No incumbent failed to timely file a notification of noncandidacy and there will be no 72-hour extension for any office. A chart showing the number of candidates by office and by party is attached.

A listing of candidates recommended for ballot status will be available at the board meeting and is also available on the Elections Division website at http://gab.wi.gov. Staff requests Board affirmation of the ballot status of those candidates listed.

Irregularities in Ballot Access Documents Not Affecting Ballot Status

During review of nomination papers and other ballot access documents, Elections Division staff identified the following irregularities, none of which affected ballot status:

- Staff allowed for irregularities in listing office title, such as "Assembly," "Representative," "State Assembly." Staff determined that the papers were sufficient as long as the electors could determine the office and district the candidate was pursuing by information provided in the nomination paper heading. In all cases the district sought was identified.

- Staff identified candidates who used the primary date of September 14, 2010 and candidates who used November 2 but did not indicate the year "2010." One candidate failed to provide the day of the election but provided November and 2010. One candidate provided an incorrect date, November 4, 2010 instead of November 2, 2010 on a portion of his papers and one candidate failed to indicate "general" for the type of election on the petition heading. Staff determined that the electors understood the nomination papers were for the fall 2010 election event and the papers were found to be sufficient.

- One candidate failed to provide the following language in the signer affirmation: "...representing the party or principle..." However, the statement of principal (Independent) appeared in the "Party or Statement of Principle" box above the required language. Staff determined that the statement of principle was obvious without the express language, and the papers substantially complied with § 8.15(5). The papers were found to be sufficient.

- Five Assembly candidates circulated nomination papers with a sentence ("I know their respective residences given.") missing from the certification of circulator. The language is required by § 8.15(4)(a). Staff did not notice the omission and approved the nomination paper templates prior to circulation. Staff noticed the omission when the first candidate submitted completed papers. The papers were corrected by amending affidavit of circulator and found to be sufficient.

- Two independent candidates for the office of Governor filed nomination papers with no Lieutenant Governor Candidate listed. The process of nomination and election of independent candidates for Governor and/or Lieutenant Governor continues to raise issues regarding the appearance of a conflict between the application of the Wisconsin Constitution and §8.20(2)(c), Wis. Stats. Nearly each election for Governor and Lieutenant Governor involves an independent candidate for one of the offices, without a running mate. The statutes do not provide a mechanism for creation of a "slate" for the November General Election for independent candidates for Governor and Lieutenant Governor, when a candidate chooses to run for only one office without a running mate. For uniformity and clarity, staff recommends that the Board adopt a policy interpretation of these provisions that will apply prospectively for future nominations and elections of independent candidates for Governor and Lieutenant Governor.

  Pursuant to §8.20(2)(c), Wis. Stats., independent candidates for the offices of Governor and Lieutenant Governor may prepare nomination papers that "shall contain both candidates' names or the name of a candidate for either office." This statutory language permits independent candidates to circulate nomination papers solely for one office.

  However, Article V, §3, of the Wisconsin Constitution provides that the Governor and Lieutenant Governor "shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices beginning with the general election in 1970." The appearance of a

conflict arises due to the fact that a "slate" of independent candidates for Governor and Lieutenant Governor are not elected at the September Primary Election, whereas the slate of major party candidates for the November General Election do complete their nomination by election at the September Primary Election. Independent candidates for Governor and Lieutenant Governor are nominated solely by completing the requisite nomination paper and other ballot access filings. While these independent candidates do appear on the September Primary Election ballot, they all pass through to the November General Election without creation of a "slate" containing both a Governor and Lieutenant Governor. Similarly, there is also a risk that a minor party independent candidate for one office could win at the September Primary Election and appear on the November General Election without a running mate.

Staff had advised independent candidates for Governor and Lieutenant Governor that it would be a best practice to circulate nomination papers containing a candidate for both offices, so that a proper "slate" containing both offices was present for the November General Election ballot. However, staff has continued to apply a policy of the former State Elections Board whereby the failure of an independent candidate to file nomination papers containing a candidate for both offices was not fatal to that independent candidate's ballot access.

The net effect of staff's policy can result in ballots for the November General Election containing an independent candidate for Governor, without a running mate, or vice versa. If elected at the General Election, the independent candidate for Governor would take office without a Lieutenant Governor. Article V, §3 of the Wisconsin Constitution only addresses the mechanism of the actual November General Election for these offices, not the nomination procedure, which is only addressed in §8.20(2)(c), Wis. Stats. What results then would be an election of just a Governor, leaving a vacancy in the office of Lieutenant Governor. There is no mechanism in Chapter 17, Wis. Stats., regarding filling vacancies that applies to the Lieutenant Governor office and it is specifically excluded from §8.50, Wis. Stats., (special elections) so that office would remain vacant until the next election. More troublesome is that if an independent candidate for Lieutenant Governor is elected without a gubernatorial running mate, then a vacancy exists in the Governor's office, which would be immediately filled by the newly elected Lieutenant Governor. In light of the history of elections in Wisconsin, the likelihood of this occurring is slim; however, it remains a possibility. The reality is that staff prefers clear direction regarding the nomination process and whether the absence of a "slate" for these offices is fatal to ballot access for independent candidates.

Staff recommends that the Board adopt the following policy that comports with the statutory language of §8.20(2)(c), Wis. Stats.: That the Government Accountability Board determines that independent candidates for the offices of Governor and Lieutenant Governor are permitted to file nomination papers containing "both candidates' names or the name of a candidate for either office."

<u>Independent Candidates – Statements of Principle</u>

- Three independent candidates had Statement of Principle inconsistencies between their nomination papers and Declarations of Candidacy.
  - Two candidates agreed to amend their Declarations of Candidacy to reflect the Statement of Principle indicated on the nomination papers.
  - One candidate had two variations of his Statement of Principle on his nomination papers; some pages read "Common Sense." Others read "Common Sense Candidate." His declaration of Candidacy indicates "Common Sense" as the Statement of Principle. Staff

counsel determined that the variation in nomination papers was minor. The Statement of Principle that will appear on the ballot is "Common Sense," as indicated on the Declaration of Candidacy.

- On July 7, 2010, staff received a §5.06, Wis. Stats., compliance review complaint from Ms. Ieshuh Griffin, an independent candidate for Office of Assembly, 10th District. Candidate Griffin filed a Declaration of Candidacy and Nomination Papers including a requested statement of principle as follows: NOT the "whiteman's bitch." Staff determined that Candidate Griffin's filings were sufficient to gain ballot access as an "independent" candidate, but declined to approve the aforementioned phrase for printing on the ballot. Staff determined that this phrase was pejorative in nature and did not satisfy the requirements of §8.20(2)(c), Wis. Stats.

  Staff recommends that the Board affirm staff's determination, allowing Candidate Griffin ballot access as an "independent" candidate without the pejorative phrase: NOT the "whiteman's bitch." Since Candidate Griffin did file a compliance review complaint, the Board should move to affirm the staff determination separate from other ballot access matters.

  Attached to this Memorandum are copies of the following documents which relate to Candidate Griffin's compliance review complaint:

  - Declaration of Candidacy
  - Page 1 of the Nomination Papers
  - G.A.B. Receipt of Nomination Papers
  - Candidate Griffin's handwritten note filed with Nomination Papers
  - Election Division Administrator Robinson's Determination Letter dated 6/28/10
  - G.A.B. 1 (Campaign Registration Statement)
  - Compliance Review Complaint received 7/7/10

  The G.A.B. has inherent, general, and specific authority to grant ballot access to Candidate Griffin as an independent, but without the pejorative phrase. Pursuant to §5.05(1), the G.A.B. has the general authority and responsibility for the administration of ch. 8, Wis. Stats., which specifically addresses candidate nomination and ballot access approval. Pursuant to §8.15(8), Wis. Stats., Candidate Griffin is specifically required to file her nomination papers with the G.A.B., for review and approval. In addition, Candidate Griffin is required by §8.21(1), Wis. Stats., to file her Declaration of Candidacy with the G.A.B., for review and approval. Finally, the G.A.B. is required to review all Candidate Griffin's ballot access filings and provide a determination.

  While §8.20(2)(c), Wis. Stats., may allow independent candidates to request inclusion of a statement of principles on the ballot, there is no mandate upon the G.A.B. that all requests must be automatically granted. In fact, in most nomination seasons, the G.A.B. exercises its inherent and general authority to address issues with candidates' statement of principles including, but not limited to the following: length of statement, established party name within statement, and reconciling statement on nomination papers and declarations of candidacy. The G.A.B. has authority to restrict ballot placement of language, when, as is the case here, a pejorative, profane, discriminatory, or obscene word or phrase is used. The Department of Transportation has similar practices that permit it to refuse to issue license plates which may carry connotations offensive to good taste or decency, or which would be misleading. See §341.145(7-8), Wis. Stats.

Candidate Griffin raised a First Amendment free speech claim in her handwritten note with her filings and in her compliance review complaint. Staff considered her First Amendment claims very carefully. Most importantly, staff did not deny Candidate Griffin ballot access, nor has staff recommended that the Board do so. Candidate Griffin has specifically been granted ballot access as an independent candidate for the Office of Assembly, 10th District. Candidate Griffin requested independent status on both her Declaration of Candidacy and Campaign Registration Statement. Staff did not prohibit Candidate Griffin circulating nomination papers containing the pejorative phrase, nor filing the Declaration of Candidacy with the same pejorative phrase. These are all public documents. Furthermore, staff has not prohibited Candidate Griffin from using the pejorative phrase in any of her campaigning, verbal, written or otherwise. Staff's determination only restricted what will appear on the ballot, therefore Candidate Griffin's First Amendment concerns are circumscribed.

Candidates (Who Submitted Nomination Papers) but Not Certified by Election Division Staff for Ballot Status

The following candidates were not certified for ballot status by Elections Board staff.

Note:

- Candidates for statewide office must file a minimum of 2,000 valid signatures of qualified electors from the State of Wisconsin to qualify for ballot access. § 8.15(6)(a), Wis. Stats.
- Candidates for congressional offices must file a minimum of 1,000 valid signatures of qualified electors from the district to qualify for ballot access. § 8.15(6)(b), Wis. Stats.
- Candidates for state senate must file a minimum of 400 valid signatures of qualified electors from the district to qualify for ballot access. § 8.15(6)(c), Wis. Stats.
- Candidates for assembly must file a minimum of 200 valid signatures of qualified electors from the district to qualify for ballot access. S.8.15(6)(d), Wis. Stats.

Staff recommends that the following candidates be denied ballot status.

1. John Schliess, candidate for Governor
   On July 13, 2010, Mr. Schliess filed nomination papers which staff determined were insufficient at 740 signatures.

2. Erick Scoglio, candidate for Governor
   On July 13, 2010, Mr. Scoglio filed nomination papers which staff determined were insufficient at 762 signatures.

3. Marcia Mercedes Perkins, candidate for Governor
   On July 14, 2010, the day after the deadline, Ms. Perkins filed approximately 300 signatures by mail.

4. Danny M. Gawrisch, candidate for Governor
   On July 13, 2010, Mr. Gawrisch submitted 4 signatures.

5. Craig Mohn, candidate for State Treasurer
   On July 13, 2010, Mr. Mohn filed nomination papers which staff determined were insufficient at 848 signatures.

6. 62 candidates for various offices
   Candidates who registered for an office, but did not submitted no nomination papers.

Challenges to Ballot Status

The deadline for challenges to ballot status was Friday, July 16, 2010.

Challenges will be discussed in a separate memorandum and presented by staff counsels.

		CANDIDATES FILING NOMINATION PAPERS					
	CANDIDATES REGISTERED	DEM	REP	WGR	LIB	IND	NON-FILERS
GOVERNOR	25	2	4	0	1	3	15
LT. GOVERNOR	13	4	5	0	1	0	3
ATTORNEY GENERAL	2	1	1	0	0	0	0
SECRETARY OF STATE	4	2	1	1	0	0	0
STATE TREASURER	7	2	3	0	1	0	1
U.S. SENATOR	9	1	3	0	0	1	4
REPRESENTATIVE IN CONGRESS	38	10	15	0	1	5	7
STATE SENATOR	48	16	24	0	0	1	7
REPRESENTATIVE TO THE ASSEMBLY	298	101	147	1	7	17	25
	444	139	203	2	11	27	62