

CERTIFICATE

State of Wisconsin)
) ss.
Elections Board)

I, Kevin J. Kennedy, Executive Director of the State Elections Board and custodian of the official records, do hereby certify that the annexed rule, ElBd 2.05, relating to sufficiency and treatment of nomination papers, was duly created by this board on July 27, 1993.

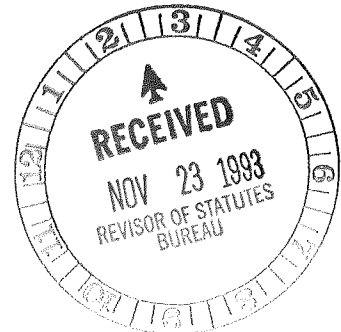
I further certify that this copy has been compared by me with the original on file in this board and that the same is a true copy thereof and of the whole of such original.

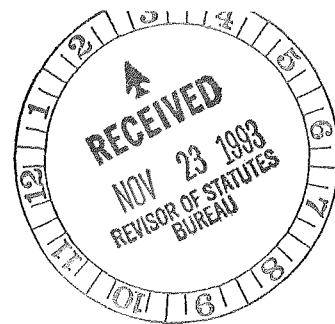


IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the State Elections Board at 132 East Wilson Street, in the City of Madison, on November 23, 1993.

Kevin J. Kennedy

Kevin J. Kennedy
Executive Director





ORDER
OF
STATE ELECTIONS BOARD

To repeal ElBd 2.05 and re-create ElBd 2.05 relating to the treatment and sufficiency of nomination papers

ANALYSIS:

Statutory authority: ss.5.05(1)(f) and 227.11(2)(a)

Statutes interpreted: ss.8.02, 8.04, 8.05(3) and (4), 8.07, 8.10, 8.11, 8.15, 8.20, 8.30(1), 8.50(3)(a) and 9.10(3)(c) and (4)(e)

The rule prescribes the standards for filing officers to determine whether nomination papers comply with the requirements of ch.8 of the Wisconsin Statutes and provides guidance to candidates and other circulators to enable them to so comply. The old rule was no longer consistent with board policy and practice and needed to be restructured for internal symmetry. The new rule has been re-organized under six categories: (1) Filing and filing officer responsibilities; (2) General standards for nomination papers; (3) Signator responsibilities; (4) Signature standards; (5) Disqualification of nomination papers; and (6) Disqualification of individual signatures. The term "statutory requirements" has been replaced with "statutory and other legal requirements". The new rule makes clear that a disclaimer is not required on any nomination paper even if the paper contains a campaign message. The rule spells out that the affidavit of the circulator is to be completed after the paper is circulated, not before, and that no one may sign a nomination paper for another unless that person is unable to sign, is present when the signing occurs and specifically authorizes the signing. The new rule also specifies six circumstances under which individual signatures on a nomination paper are disqualified.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss.5.05(1)(f) and 227.11(2)(a), Stats., the Elections Board hereby repeals ElBd 2.05 and re-creates ElBd 2.05 interpreting ss.8.02, 8.04, 8.05(3) and (4), 8.07, 8.10, 8.11, 8.15, 8.20, 8.30(1), 8.50(3)(a) and 9.10(3)(c) and (4)(e) Stats., as follows:

SECTION 1. ElBd 2.05 is repealed and re-created to read:

ElBd 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.

(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.

(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.11.30(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) of this rule 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 may be counted unless the elector who circulated the nomination paper completes and signs the affidavit of circulator under oath 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) No signature on a nomination paper may be counted unless the official administering the oath to the circulator signs the affidavit. The title of the person administering the oath, along with the expiration date, if any, of the commission, shall be listed on the affidavit. The official seal of the person administering the oath is not required on the nomination paper.

(16) 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 notarization contained in the affidavit 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.

(17) 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.

(18) 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.

INITIAL REGULATORY FLEXIBILITY ANALYSIS


The creation of this rule does not affect business.

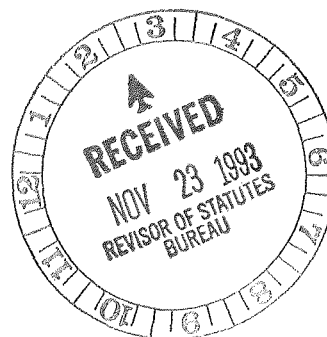
FISCAL ESTIMATE

The creation of this rule has no fiscal effect.

The creation of this rule takes effect on the first day of the month following its publication in the Wisconsin Administrative Register pursuant to s.227.22(2), Stats.

Dated November 23, 1993


Kevin J. Kennedy
Executive Director
State Elections Board





State of Wisconsin \ ELECTIONS BOARD

BRENT SMITH
CHAIRMAN

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(608) 266-8005
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Kevin J. Kennedy
Executive Director

November 23, 1993

Gary L. Poulson, Assistant Revisor
Revisor of Statutes Bureau
119 Martin Luther King Jr. Blvd., 2nd Floor
Madison, WI 53703

Dear Mr. Poulson:

This letter is to inform you of the status of the repeal and re-creation of Elections Board rules ElBd 2.05 and 2.07 and the promulgation of Elections Board rules ElBd 2.09 and 2.11, all contained within Clearinghouse Rule 93-163. Each of the rules was promulgated pursuant to the 30 day notice procedure.

No petition under ch.227, Stats., was filed with the Board within 30 days to request a public hearing on the proposed action regarding any of these rules. The legislative Council reviewed and commented about each rule. After submitting these rules to both houses of the legislature on October 7, 1993, both houses took no action on these rules within the appropriate 30 day period. The Board through its Executive Director, Kevin J. Kennedy, has ordered the appropriate action on these rules. The original and a copy of the Board's orders for each rule are enclosed.

Please publish these at your earliest convenience to become effective according to their terms.

If you have any questions about the rules or the orders, please contact me.

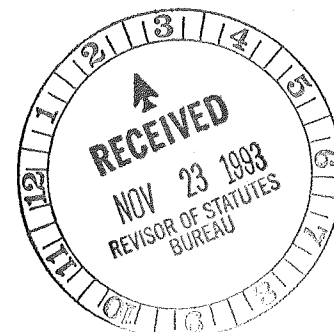
Thank you for your assistance.

Sincerely,

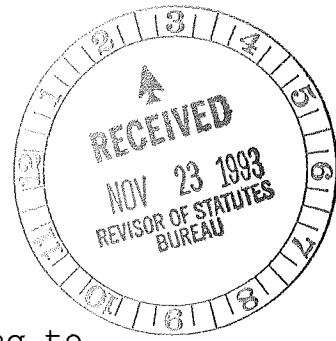
STATE ELECTIONS BOARD

George A. Dunst
Legal Counsel

GAD/jp
glp.rvsr



ORDER
OF
STATE ELECTIONS BOARD



To repeal ElBd 2.07 and re-create ElBd 2.07 relating to challenges to nomination papers

ANALYSIS:

Statutory authority: ss.5.05(1)(f) and 227.11(2)(a)

Statutes interpreted: ss.8.02, 8.04, 8.05(3) and (4), 8.07, 8.10, 8.11, 8.15, 8.20, 8.30(1), 8.50(3)(a) and 9.10(3)(c) and (4)(e)

The rule prescribes the procedures requisite to the filing and deciding of challenges to nomination papers. The old rule has been re-written to reflect changes in board practice and policy. The new rule specifically incorporates by reference the standards set forth in ElBd 2.05. The new rule requires that challenges must be by verified complaint in the form provided in ElBd ch.10, but that the procedure and time schedule to resolve challenge complaints shall not be as provided in ElBd ch.10, but as provided in this rule. The new rule codifies the rule established in Stahovic v. Rajchel 122 Wis.2d 370(App.1984) that the invalidity or disqualification of one or more signatures on a paper does not impeach or affect the validity of other signatures on that paper. The new rule establishes, in several of its provisions, that the burden of proving the invalidity of a signature or of an entire paper is on the challenger.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss.5.05(1)(f) and 227.11(2)(a), Stats., the Elections Board hereby repeals ElBd 2.07 and re-creates ElBd 2.07 interpreting ss.8.02, 8.04, 8.05(3) and (4), 8.07, 8.10, 8.11, 8.15, 8.20, 8.30(1), 8.50(3)(a) and 9.10(3)(c) and (4)(e), Stats., as follows:

SECTION 1. ElBd 2.07 is repealed and re-created to read:.

El Bd 2.07 CHALLENGES TO NOMINATION PAPERS

(1) The board shall review any verified complaint concerning the sufficiency of nomination papers of a candidate for state office that is filed with the board under ss.5.05(3) 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 filing officer under s.8.07, Stats. The filing officer shall apply the standards in s.ElBd 2.05 to determine the sufficiency of nomination papers, including consulting extrinsic sources of evidence under s.ElBd 2.05(3).

(2) (a) Any challenge to the sufficiency of a nomination paper shall be made by verified complaint. The form of the complaint, its filing and its service shall comply with the requirements of ch. ElBd 10; the timetable and procedure for resolving the complaint shall be governed by this section and not by ch. ElBd 10. Any challenge to the sufficiency of a nomination paper shall be filed within 3 business 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 business 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 board 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) Challenges are not limited to the categories set forth in pars. (a) and (b) above.

(4) The filing officer shall examine any evidence offered by the parties when reviewing a complaint challenging the sufficiency of 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.

INITIAL REGULATORY FLEXIBILITY ANALYSIS


The creation of this rule does not affect business.

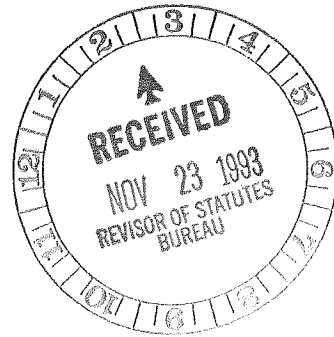
FISCAL ESTIMATE

The creation of this rule has no fiscal effect.

The creation of this rule takes effect on the first day of the month following its publication in the Wisconsin Administrative Register pursuant to s.227.22(2), Stats.

Dated November 23rd, 1993


Kevin J. Kennedy
Executive Director
State Elections Board



CR 93-163

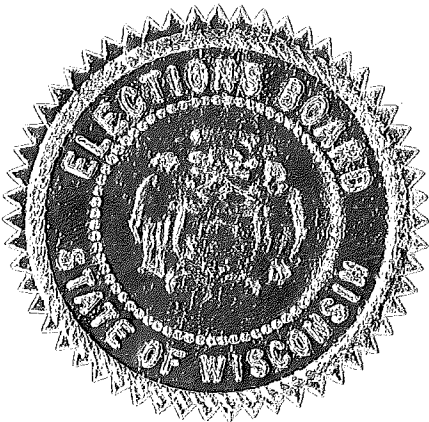
CERTIFICATE

State of Wisconsin)
Elections Board) ss.

I, Kevin J. Kennedy, Executive Director of the State Elections Board and custodian of the official records, do hereby certify that the annexed rule, ElBd 2.09, relating to sufficiency and treatment of election petitions, was duly created by this board on July 27, 1993.

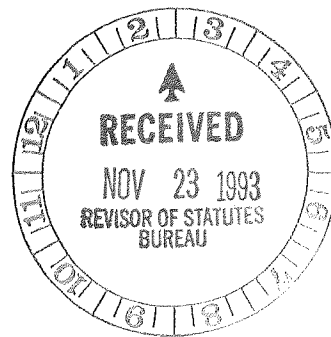
I further certify that this copy has been compared by me with the original on file in this board and that the same is a true copy thereof and of the whole of such original.

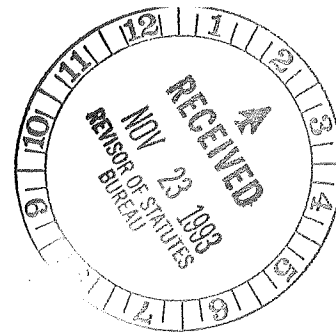
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the State Elections Board at 132 East Wilson Street, in the City of Madison, on November 23, 1993.



Kevin J. Kennedy

Kevin J. Kennedy
Executive Director





ORDER
OF
STATE ELECTIONS BOARD

To create ElBd 2.09 relating to treatment and sufficiency of election petitions

ANALYSIS:

Statutory authority: ss.5.05(1)(f) and 227.11(2)(a)

Statutes interpreted: ss. 8.40, 9.10, and 9.20

This rule applies to all petitions whose filing could require a governing body to call an election. The rule prescribes the standards for filing officers to determine whether petitions comply with the requirements of s.8.40 of the Wisconsin Statutes and provides guidance to petitioners and other circulators to enable them to so comply. The rule specifically incorporates by reference the provisions of ElBd 2.05, except as expressly provided otherwise in this rule. The rule spells out that the affidavit of the circulator is to be completed after the paper is circulated, not before, and that no one may sign a nomination paper for another unless that person is unable to sign, is present when the signing occurs and specifically authorizes the signing. The new rule also specifies six circumstances under which individual signatures on a nomination paper are disqualified.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss.5.05(1)(f) and 227.11(2)(a), Stats., the Elections Board hereby creates ElBd 2.09 interpreting ss.8.40, 9.10, and 9.20, Stats., as follows:

SECTION 1. El Bd 2.09 is created to read:

EL BD 2.09 TREATMENT AND SUFFICIENCY OF ELECTION PETITIONS

(1) Except as expressly provided herein, the standards established in s.El Bd 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.

INITIAL REGULATORY FLEXIBILITY ANALYSIS


The creation of this rule does not affect business.

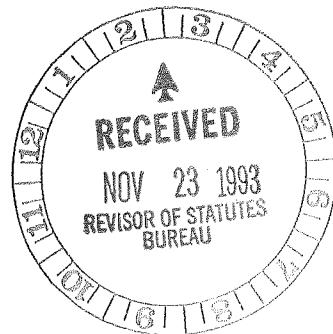
FISCAL ESTIMATE

The creation of this rule has no fiscal effect.

The creation of this rule takes effect on the first day of the month following its publication in the Wisconsin Administrative Register pursuant to s.227.22(2), Stats.

Dated November 23rd, 1993


Kevin J. Kennedy
Executive Director
State Elections Board



CR 93-163

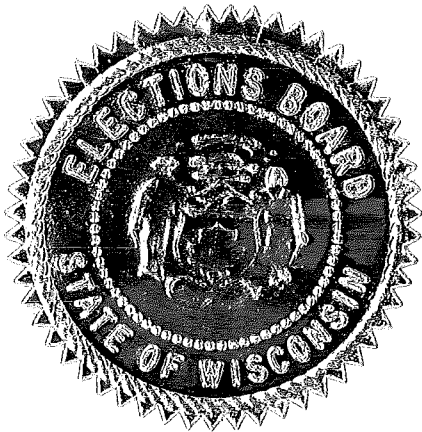
CERTIFICATE

State of Wisconsin)
) ss.
Elections Board)

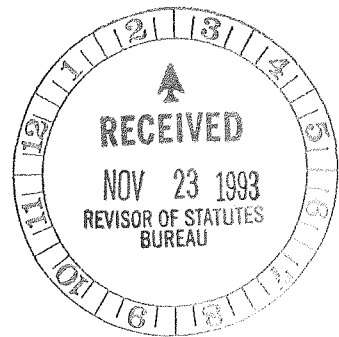
I, Kevin J. Kennedy, Executive Director of the State Elections Board and custodian of the official records, do hereby certify that the annexed rule, ElBd 2.11, relating to challenges to election petitions, was duly created by this board on July 27, 1993.

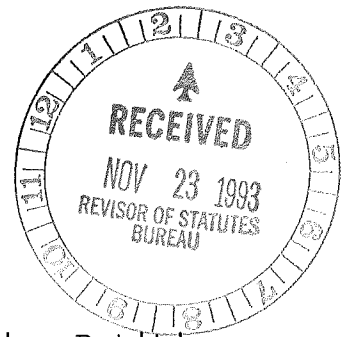
I further certify that this copy has been compared by me with the original on file in this board and that the same is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the State Elections Board at 132 East Wilson Street, in the City of Madison, on November 23, 1993.



Kevin J. Kennedy
Kevin J. Kennedy
Executive Director





ORDER
OF
STATE ELECTIONS BOARD

To create ElBd 2.11 relating to Challenges to Election Petitions

ANALYSIS:

Statutory authority: ss.5.05(1)(f) and 227.11(2)(a)

Statutes interpreted: ss.8.40, 9.10, and 9.20

The rule prescribes the procedures requisite to the filing and deciding of challenges to petitions. The rule specifically incorporates by reference the provisions of ElBd 2.07, except as expressly provided otherwise in this rule. By incorporation of ElBd 2.07, the rule requires that challenges must be by verified complaint in the form provided in ElBd ch.10, but that the procedure and time schedule to resolve challenge complaints shall not be as provided in ElBd ch.10, but as provided in this rule. The rule codifies the principle established in Stahovic v. Rajchel 122 Wis.2d 370 (App.1984), that the invalidity or disqualification of one or more signatures on a petition page does not impeach or affect the validity of other signatures on that page. The rule establishes, in several of its provisions, that the burden of proving the invalidity of an individual signature or of an entire page is on the challenger.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss.5.05(1)(f) and 227.11(2)(a), Stats., the Elections Board hereby creates ElBd 2.11 interpreting ss.8.40, 9.10, and 9.20, Stats., as follows:

SECTION 1. El Bd 2.11 is created to read:

El Bd 2.11 CHALLENGES TO ELECTION PETITIONS.

(1) Except as expressly provided herein, the standards established in s.ElBd 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. ElBd 10; the procedure for resolving the complaint, including filing deadlines, shall be governed by this section and not by ch. ElBd 10.

(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.

INITIAL REGULATORY FLEXIBILITY ANALYSIS


The creation of this rule does not affect business.

FISCAL ESTIMATE

The creation of this rule has no fiscal effect.

The creation of this rule takes effect on the first day of the month following its publication in the Wisconsin Administrative Register pursuant to s.227.22(2), Stats.

Dated November 23rd, 1993


Kevin J. Kennedy
Executive Director
State Elections Board

