

# **OBJECTIONS BEFORE THE STATE BALLOT LAW COMMISSION**

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**Introduction**

The State Ballot Law Commission (hereinafter referred to as Commission) is a quasi-judicial body created by the legislature pursuant to General Law chapter 55B. The Commission hears objections to and renders decisions on issues relative to ballot access for both candidates and ballot questions. Although the Commission’s activities take place only seasonally, objections are filed, heard and decided by the Commission within a brief time-frame.

Since objections and proceedings before the Commission often involve fairly technical and complicated legal matters, it is strongly recommended that potential objectors and respondents consult and/or retain a lawyer to represent them.

**Overview of the State Ballot Law Commission**

The Commission consists of five persons appointed by the governor. No more than three members of the Commission can be members of the same political party. The chairperson must be a retired justice of the supreme judicial court, appeals court, superior court or district courts of the commonwealth. The Secretary of the Commonwealth serves as the secretary of the Commission. G. L. c. 55B, § 1 (2000 ed.).

### **Jurisdiction of the Commission**

The Commission has the authority to investigate the legality, validity, completeness and accuracy of all nomination papers and actions required by law to give a candidate access to a state ballot or to place an initiative or referendum on a state ballot.

Additionally, the Commission has jurisdiction over and renders decisions on any matter referred to it pertaining to the: (1) statutory and constitutional qualifications of any nominee for state, national or county office; (2) the certificates of nomination or nomination papers filed in any presidential or state primary, state election, or special state primary or election, (3) the withdrawal of nomination for any state, county or federal office after the time to do so has expired or any ineffective withdrawal; (4) the filing of nomination papers under a false name, or fictitious nominees; (5) and the fraudulent or forged signing of statewide initiative or referendum petitions, and (6) any other objection relating to the signatures on such petitions. G. L. c. 55B, § 4 (2000 ed.).

The Commission **does not** have jurisdiction of nominations or petitions which are not in apparent conformity with law, have accordingly been invalidated by the Secretary, and thus now are seeking access to the ballot. Further, the Commission **does not** have jurisdiction of matters concerning the content of state ballots, including ballot statements as provided in General Law chapter 53, section 45. The Commission also **does not** have jurisdiction with respect to public policy questions, nor city or town candidates and ballot questions. 950 C.M.R. § 59.02(1)(c).

### **Objections**

An objection is a formal complaint alleging that the name of a candidate or a ballot question should not be printed on an election ballot.

The most common objections filed are for one or more of the following reasons:

1. Certified signatures on nomination papers or petitions are not those of eligible registered voters, or were forged or obtained by fraud.
2. The candidate lacks the legal qualifications for the office he/she seeks.
3. The candidate is a nonexistent or fictitious person.

All objections filed with the Commission must be filed with the Office of the Secretary of the Commonwealth, Elections Division. The mailing address for the Commission is:

State Ballot Law Commission  
c/o Office of the Secretary of the Commonwealth  
Elections Division  
One Ashburton Place, Room 1705  
Boston, Massachusetts 02108

## **Contents of Objections**

An objection is a legal document that establishes the issues that will be decided by the Commission. It must include in detail each ground for protest as to why the candidate should not be considered nominated or why the question should not appear on the ballot. G. L. c. 55B, § 5 (2000 ed.); 801 C.M.R. § 1.01(6)(b), *as modified by* 950 C.M.R. § 59.03(10). This is intended to give adequate notice to the “respondent,” the person or persons against whom the objection is made. The Commission provides a form for use in filing an objection, however, an objector can produce their own form.

The objection is not considered filed until it is actually received in the Elections Division.

Anyone filing an objection must, no later than the day after the objection is filed, send a copy of the objection to the respondent(s) by registered or certified mail, return receipt requested. The person filing the objection must also hand-deliver or mail a copy of it to every other party in the case, including all candidates for office and any affected party state committee. G. L. c. 55B, § 5 (2000 ed.); 950 C.M.R. § 59.02(4)(1). A statement signed under the penalties of perjury that this has been done must appear on the filed objection. This is generally called a certificate of service. A certificate of service must be filed with all legal papers filed in the case.

Failure to do so will invalidate any objection filed with the Commission. The Commission is also required to give notice to affected parties upon the filing of an objection, see below for more information. 950 C.M.R. § 59.02(4)(b).

## **Who May File an Objection**

Any registered voter of the Commonwealth may make objections to signatures appearing on an initiative or referendum petition. G. L. c. 55B, § 5 (2000 ed.).

Objections to nomination papers of candidates to be voted for at the primaries or general elections may be made by any registered voter of the district in which a candidate seeks nomination. G. L. c. 55B, § 5 (2000 ed.); 950 C.M.R. § 59.02(2).

The objection must be accompanied by a certificate of voter registration issued by the appropriate election official in the city or town in which the voter resides, stating that he or she is currently a registered voter, and stating his or her address as registered. Further, a \$25.00 filing fee must accompany the filing of an objection, which shall be refunded only if the Commission declines jurisdiction of the objection.

## **Time For Filing Objections**

A brief, strict time frame exists for filing, hearing, and rendering decisions on objections. Failure to comply with the deadlines may result in dismissal by the Commission.

When computing time periods, Saturdays, Sundays and holidays are generally included, unless the term “weekday” is used. However, when the last day for performing an act is a Saturday, Sunday or a holiday, the filing deadline will be on the next weekday. 950 C.M.R. § 59.01(3)(a).

**For Federal, State and County Offices:**

Objections to certificates of nomination and nomination papers for candidates at a presidential primary, state primary, or state election shall be filed with the Commission within 72 hours succeeding five o'clock post meridian time of the last day fixed for filing nomination papers. G. L. c. 55B, § 5 (2000 ed.); 950 C.M.R. § 59.02(3)(a).

**For Nominations Made at a State Primary:**

Objections to nominations made at state primaries shall be filed with the Commission within six days succeeding five o'clock in the afternoon of the day of holding such primaries. G. L. c. 55B, § 5 (2000 ed.); 950 C.M.R. § 59.02(3)(d).

**For State Initiative or Referendum Petitions:**

Objections relating to the original signers of an initiative or referendum petition must be filed with the state secretary within five days after the original petition has been filed with the Commission. G. L. c. 55B, § 5 (2000 ed.).

Objections that the additional signatures appearing on an initiative or referendum petition have been forged or placed thereon by fraud and that in consequence thereof the petition has not been signed by a sufficient number of qualified voters actually supporting the petition, or any other objection relating to signatures on such petitions, must be filed with the Commission not later than 5 o'clock post meridian on the thirtieth day succeeding the last day for filing such petitions. G. L. c. 55B, § 5 (2000 ed.); 950 C.M.R. § 59.02(3)(b).

**For Supplemental Signatures Needed to Place a State Initiative Question on the Ballot After Rejection by the Legislature:**

Objections that the supplemental signatures necessary to place an initiative petition on the ballot after rejection by the legislature, have been forged or placed thereon by fraud and that in consequence thereof the petition has not been signed by a sufficient number of qualified voters actually supporting such petition, or any other objection relating signatures on such petitions, as required by the constitution must be filed with the Commission not later than five o'clock post meridian on the seventh day succeeding the last day for filing such additional signatures. G. L. c. 55B, § 5 (2000 ed.); 950 C.M.R. § 59.02(3)(c).

**Notice of Objections**

The Secretary of the Commonwealth's Office, which acts as clerk to the Commission, sends notice to all parties in the case of the time, date and place of the Commission's hearing, as well as a copy of the objection and of the rules or

procedures that are used in conducting such hearings. Notification must be made by registered or certified mail, return receipt requested. Notifications are addressed to the individuals at the residences as given on the certificates of nomination, nomination papers, and to the initial ten signers of a petition as the case may be. Except in an emergency, notice of all Commission meetings, including hearings, is given to the public as required by General Law chapter 30A, section 11A, by filing with the Secretary of the Commonwealth's Rules and Regulations Division and by posting in the Executive Office of Administration and Finance, at least forty-eight hours before any meeting. G. L. c. 55B, § 8 (2000 ed.); 950 C.M.R. § 59.01(8).

### **Timing of Notice**

With respect to objections made to certificates of nominations or nomination papers except those for a special primary or election, the Commission must notify all parties involved that an objection has been made to their certificates of nomination or nomination papers by five o'clock post meridian of the Wednesday following the last day for filing such objections.

With respect to objections to signatures or initiative or referendum petitions, the Commission must notify all parties involved that objection has been made to their initiative or referendum petitions by five o'clock post meridian of the Wednesday following the last day for filing such objections.

With respect to objections to supplemental signatures necessary to place an initiative petition on the ballot after rejection by the legislature, the Commission must notify all parties involved that objection has been made to their additional signatures shall by five o'clock post meridian of the Friday following the last day for filing such objections.

With respect to objections to nominations at state primaries, except special primaries, the Commission must notify all candidates affected thereby that objection has been made to their nomination shall by five o'clock post meridian of the Tuesday following the last day for filing such objections.

### **Hearings on Objections**

All meetings of the Commission including a hearing are open to the public, except that any deliberation regarding a decision in an adjudicatory proceeding is not required to be open to the public. G. L. c. 55B, § 9 (2000 ed.); 950 C.M.R. § 59.01(9).

#### **Before the Hearing:**

Often, after an objection is filed, the Commission will schedule a pre-hearing conference. Accordingly, notice sent by the Commission may also include the date of a prehearing, or an assignment session, at which the Commission may dispose of preliminary matters. 950 C.M.R. § 59.02(4)(d). The notice will inform the parties of any matters the Commission feels should be discussed. The Commission, in the past, has

addressed issues such as estimated length of time for each case and types of evidence to be presented. Preliminary motions are made at such pre-hearing conferences.

### **Filings Due to the Commission Before the Hearing**

#### **Answer:**

The respondent must file an “answer” which should admit or deny every allegation made in the objection, at any time before the hearing.

#### **Notice of Appearance:**

Every party to the case must file a form called an “appearance” at or before the hearing, or they will no longer be considered a party. 950 C.M.R. § 59.02(4)(c). An appearance form is available from the Commission, but that form is not required for an appearance to be considered valid.

#### **List of Challenged Signatures:**

If the case involves a challenge to the validity of signatures, the person filing the objection must file with the Commission and deliver to the respondent a list of all challenged signatures, showing the page and line where each challenged signature is located and the reason why each is alleged to be improper. 801 C.M.R. § 1.01(8)(f) as *modified by* 950 C.M.R. § 59.03(18). This list must be filed no later than the third weekday preceding the date of the hearing shown in the Secretary’s notice.

### **Timing of Hearings**

Hearings on objections are also subject to a rigorous statutory schedule. General Law chapter 55B, section 9 sets forth the various time frames during which the Commission may hold hearings. G. L. c. 55B, § 9 (2000 ed.).

Hearings on objections to certificates of nomination or nomination papers, except for special primaries and elections, shall not be held prior to the second Monday following the Friday for filing such objections.

Hearings on objections to signatures on initiative or referendum petitions shall not be held prior to the second Monday following the last day for filing such objections.

Hearings on objections to supplemental signature filings for initiative petitions shall not be held prior to the first Wednesday following the last day for filing such objections.

Hearings on objections to nominations at regular state primaries shall not be held prior to the Monday following the last day for filing such objections.

### **The Hearing**

At the hearing, all parties have the opportunity to present evidence to the Commission. Each may call and cross-examine witnesses under oath (their attendance may be compelled by subpoena, if necessary), introduce documentary evidence, and present any arguments of law. The objector has the burden of proving his or her case by a preponderance of the evidence.

The Commission may summons witnesses, administer oaths, and require production of books, records and papers at a hearing before it rules upon any matter within its jurisdiction. The Commission may summon witnesses in the same manner and pay the same fees, and subject witnesses to the same penalties as witnesses in civil cases before the courts. Any member of the Commission may sign a summons or administer an oath. At the hearing, all parties may also introduce documentary evidence and present any arguments of law. G. L. c. 55B, § 4 (2000 ed.).

### **Decisions**

The Commission's written decision will state the specific reasons for the result. Every decision contains a statement of the reasons therefore, including a determination of every issue of fact or law necessary to the decision. Every decision must be signed by at least three commissioners, each of whom must have either attended all hearings or have read or heard the entire record. G. L. c. 55B, § 10 (2000 ed.); 801 C.M.R. § 1.01(10)(p) *as modified by* 950 C.M.R. § 59.03(23).

The Commission's decisions are mailed promptly to all parties. The Commission's decision may:

- dismiss an objection for lack of timeliness, jurisdiction, or standing, failure to state a claim upon which relief can be granted, or any other legal reason. 950 C.M.R. § 59.02(7)(a);
- enter a decision by default against any party for failure to appear, unnecessary delay or any failure to comply with any provision of 950 C.M.R. § 59.00, if that failure affects substantial rights. 950 C.M.R. § 59.02(7)(b);
- sustain the objection on the merits, and order the Secretary of the Commonwealth not to print on the ballot the name of the respondent candidate or the question supported by the respondent petitioners. 950 C.M.R. § 59.02(7)(c);
- overrule the objection on the merits. 950 C.M.R. § 59.02(7)(d);
- make informal disposition of the proceeding by stipulation, agreed settlement or consent order. 950 C.M.R. 59.02(7)(e); or
- grant whatever other relief justice requires and is within the scope of the Commission's authority. 950 C.M.R. 59.02(7)(f).

### **Timing of Decisions:**

The Commission must render decisions within a fixed period of time in accordance with G. L. c. 55B, § 10. The Commission must render a decision on any

matter referred to it, pertaining to certificates of nomination or nomination papers for any presidential or biennial state primaries or any biennial state election or to withdrawals of nomination therefore, not later than five o'clock post meridian on the twenty-first day after the last day fixed for filing objections to such certificates or papers or for filing such withdrawals, as the case may be, under the provisions of General Law chapter 55B. The Commission must render a decision on any matter referred to it pertaining to nominations made at biennial state primaries, not later than five o'clock post meridian on the fourteenth day after the last day fixed for filing objections to such nominations.

The Commission must render a decision on any matter referred to it, pertaining to objections that signatures appearing on an initiative or referendum petition have been forged or placed thereon by fraud and that in consequence thereof the petition has not been signed by a sufficient number of qualified voters actually supporting such petition, as required by the constitution, no later than the twenty-first day after the last day fixed for filing objections to such signatures. The Commission must render a decision on any objection filed with respect to the supplemental filing of signatures for initiative petition to be placed on the ballot after the rejection by the legislature of such petition no later than five o'clock post meridian in the afternoon on the fourteenth day after the last day fixed for filing objections to such signatures.

The Commission must render a decision on any matter referred to it pertaining to certificates of nomination or nomination papers for any special state primary or special state election not later than five o'clock post meridian in the afternoon on the fourth day after the last day fixed for filing objections to such certificates or papers.

### **Judicial Review**

The losing party may ask a court to review the Commission's decision by beginning a civil action within five days after receipt of the final decision of the Commission. See G. L. c. 30A, § 14 (2000 ed.).

In the event that the Commission fails to render its decision within the time period required on any matter referred to it, the state secretary must proceed forth and cause to be printed the ballots for such primaries or elections.

**For More Information**

This publication is only an informal explanation of objections and proceedings before the Commission. For exact details, please refer to the state statute, General Law chapter 55B, and the Commission regulations, 950 C.M.R. § 59.00 *et seq* and 801 C.M.R. § 1.00 *et seq*. Past decisions of the Commission are available for review at:

Elections Division  
Office of the Secretary of the Commonwealth  
One Ashburton Place, Room 1705  
Boston, Massachusetts 02108  
617-727-2828  
1-800-462-8683

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