



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR STEVE NASS AND REPRESENTATIVE JOAN BALLWEG

Emergency Rule 2408 **2025 Assembly Bill 14**

Report to the Legislature
Emergency Rule 2408
The Joint Committee for Review of Administrative Rules
Produced pursuant to 227.26 (2) (g), Stats.

Emergency Rule 2408, promulgated by the Wisconsin Elections Commission (WEC), prescribes challenge procedures to be required by WEC for declarations of candidacy.

Description of Problem

The Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing on Emergency Rule 2408, relating to challenge procedures for declarations of candidacy, on July 22, 2024, at the request of Senator Steve Nass to review concerns that the rule violated legislative intent and failed to meet the statutory threshold of an “emergency” justifying the use of the emergency rule process.

Arguments In Favor of Suspension

- *WEC’s claim of an emergency falls woefully short of the statutory definition for invoking an “emergency” to justify an emergency rule. The Commission had every opportunity to follow the standard permanent rule process, which provides for increased transparency, public input, and legislative review.*
- *Wisconsin has had closely contested and high voter turnout election cycles since at least 2000. WEC provided no evidence of factors relating to the November 2024 election that jeopardized the public peace, health, safety, or welfare that is any different than past elections.*
- *A lack of planning by the Wisconsin Elections Commission does not create an emergency justifying the circumvention of the normal permanent rule process. The Commission, and indeed everyone else, knew the scheduled dates of the 2024 election, and that there would be significant voter turnout. They had every opportunity to use the permanent rule process if they thought additional rules necessary, yet inexplicably waited until a few months before the election to act on a purported emergency basis.*
- *The Commission’s claims of high levels of scrutiny and high voter turnout does not justify rushed procedures. If anything, the Commission should proceed in a methodical and ordinary manner if it is truly worried. When the Commission waits until a few months before an election and then acts on a purported emergency basis, its conduct creates an appearance of impropriety.*

- *Legislative Council analysis found drafting issues with the emergency rule relating to form, style, adequacy of references, and identified instances of provisions that lacked clarity. Issues of clarity and the lack of plain language could create serious challenges for voters, candidates, and clerks in understanding and complying with this emergency rule.*

Arguments Against Suspension

- *No one from the Wisconsin Elections Commission attended the public hearing to explain, defend, or justify their rationale for the emergency rule, despite notice and invitation by JCRAR to them.*
- *In written comments, submitted immediately before the start of the public hearing, one Commissioner argued the rules provided more consistency and predictability, reduced the possibility for surprises, increased fairness in how elections are run, and ensured that a candidate's placement on the ballot could not be threatened by strategies that both major political parties had rejected.*

Action by Joint Committee for Review of Administrative Rules

On July 22, 2024, the Joint Committee for Review of Administrative Rules held an executive session on Emergency Rule 2408. The committee passed the following motion on a 6-4 vote, temporarily suspending the rule (YES: Nass, Neylon, Stroebel, Bradley, Petersen, Spiros; NO: Roys, Larson, Conley, Baldeh):

Moved, that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26 (2) (d), Stats., suspend an emergency rule of the Wisconsin Elections Commission, relating to challenge procedures for declarations of candidacy (EmR 2408), on the grounds that the rule fails to comply with legislative intent.

On August 20, 2024, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Nass, Neylon, Stroebel, Bradley, Petersen, Spiros; NO: Roys, Larson, Conley, Baldeh) to introduce LRB 6214/1 and LRB 6229/1, which support the suspension of Emergency Rule 2408 by the joint committee. Pursuant to 227.26 (2) (j), the bills were not introduced during the 2023-24 legislative session, and need to be introduced in the next regular session of the legislature.

On January 29, 2025, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Nass, Neylon, Bradley, Tomczyk, Petersen, Spiros; NO: Roys, Ratcliff, Snodgrass, Arney) to introduce LRB 0683/1 and LRB 0686/1, which support the suspension of Emergency Rule 2408 by the joint committee. The bills were introduced as Senate Bill 47 and Assembly Bill 14 in the 2025-26 legislative session.

Passage of one of these bills in support of the JCRAR suspension would permanently remove the Wisconsin Elections Commission's ability to promulgate Emergency Rule 2408.