Affidavit of Identity Challenger Guide

I. Introduction to the guide

This guide summarizes the process to challenge the validity and/or adequacy of an Affidavit of Identity, or "AOI", which candidates for nearly every elected office in the state of Michigan must file in order to appear on ballots for the relevant election.[1] The Secretary of State encourages candidates and potential candidates to become familiar with this process, as a successful challenge can result in the removal of a candidate from a ballot.

While this guide focuses on the challenge process, other publications from the Secretary of State address the AOI filing requirements for candidates and the processing of candidate filings, including AOIs, by filing officials.[2]

II. The two categories of information contained in an AOI

Candidate filing requirements, including the AOI, are governed by Section 168.558 of the Michigan Election Law, as well as rules R 168.1 to R 168.6 in the Michigan Administrative Code.

The law requires a candidate to provide two broad categories of information on an AOI.

First, the candidate must sign and have notarized a statement that all statements, reports, filing fees, any late filing fees, and any fines owed by the candidate or their committee have been filed or paid. (The administrative rules refer to this as the "compliance statement").

Second, the candidate must provide additional information about the candidate and the position sought, including name, address, title and term of the office sought, election date, and the candidate's party affiliation, if any. In addition, the candidate must state that they meet the qualifications for the position and are a U.S. citizen. In some situations, the candidate must also disclose prior names they have used. Collectively, this information is called "other information on the affidavit of identity" in the relevant rules, and this guide will refer to it simply as other information.

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[1] Candidates running for President or Vice President of the United States do not need to file AOIs. See *Holliday v. Secretary of State*, unpublished order of the Court of Appeals, entered August 27, 2024 (Docket Nos. 372241, 372255, and 372256).

[2] Additional resources, including manuals and forms, are available on the Campaign Finance Disclosure page, available here: https://www.michigan.gov/sos/elections/disclosure/cfr.

III. **Issues that can be a valid basis for an AOI challenge**

Candidates must strictly comply with the requirements of the law in order to be placed on a ballot. Failure to do so may result in a successful challenge and consequently, disqualification.

Three types of issues can be the basis of a valid AOI challenge: (1) outstanding campaign reports, statements, fines, or fees, (2) omissions in either the compliance statement or other information provided, or (3) false statements regarding either the compliance statement or other information provided.

a. Outstanding campaign reports, statements, fines, or fees

   A candidate may be disqualified for owing any outstanding statements, reports, late filing fees, and/or fines. Importantly, while a filing official may have issued a notice of error or omission for any of these issues, the *notice itself* is not an adequate basis for challenge. Only the *underlying error or omission* may be a basis. For that reason, a candidate's failure to respond to a notice of error or omission as of the date of signing the AOI also cannot *itself* be a basis for a challenge.

b. Omissions in compliance statements or other information

   An AOI that contains omissions in either the compliance statement or in the other information section may also be the basis of a challenge. For example, a candidate may fail to sign a compliance statement or have it notarized. Or a candidate may fail to provide information regarding the position sought, or other information required on the AOI.

In both of the preceding situations, (a) and (b), a candidate may correct the omission by filing a new AOI, so long as the candidate does so prior to the filing deadline.

c. False statements in compliance statements or other information

   Any candidate who falsely states there are no outstanding statements, reports, fines, or fees as of the date of the AOI is disqualified. Similarly, a candidate who provides the other information required that is false as of the date of signing the AOI must also be disqualified.

Unlike omissions, there is no way to correct falsely made statements on the AOI. This means the candidate cannot reverse disqualification by filing an amended or corrected AOI.

IV. Issues that cannot be a valid basis for an AOI challenge

The rules explicitly exempt two issues from the AOI challenge process. First, and as previously mentioned, a notice of error or omission cannot itself be relied upon to establish a successful challenge; nor can a candidate's failure to respond to such a notice. Second, although the AOI form requires a candidate to disclose the prior jurisdictions in which the candidate has previously sought nomination or election, a candidate's failure to do is not a basis for disqualification and so also cannot be the basis for a successful challenge.

V. The challenge process

a. Challenge format

Anyone seeking to challenge an AOI must submit the challenge in the form of a signed and notarized complaint to the filing official. The filing official is the entity with which the AOI itself is filed, which could be a township, city, or county clerk, or the Secretary of State. The challenge must be received by the filing official within seven days of the deadline for the candidate to submit the AOI.

b. Where to submit a challenge

For challenges against candidates who file with the state, the filing official is the Secretary of State, and a challenge should be submitted by email to BOERegulatory@Michigan.gov. If the candidate files with a local clerk, then challengers should submit the challenge to that clerk.[3] The Secretary of State cannot and will not forward challenges improperly filed with it to the correct clerk.

c. Reasons for rejection of challenge

A filing official must reject any complaint challenging an AOI that is not signed and notarized and must reject any complaint received more than seven days after the AOI filing deadline.

d. Candidate response

A filing official must provide the candidate with a copy of a challenge and an opportunity to respond prior to issuing a decision. A candidate wishing to respond must submit a signed response within seven days of receipt of the challenge.

[3] The Secretary of State website includes a tool to search for local clerks, available here: https://mvic.sos.state.mi.us/Voter/Index/#yourclerk.

e. Reasons for rejection of candidate response

A filing official must decide on the AOI challenge without consideration of a candidate's response if that response is not signed, or if it is received more than seven days after the candidate was provided with the challenge.

f. Timelines

Challenges must be received by the filing official within seven days of the deadline for the candidate to submit the AOI.

Candidates' responses, if any, must be received by the filing official within seven days from the date that the candidates are provided with the challenge by the filing official.

VI. **Consequences of successful challenge**

If a filing official upholds a challenge to an AOI, the candidate will be removed from the ballot. A candidate may submit a new AOI only if the filing deadline has not expired and the challenged element is an element that may be corrected, as previously explained.

As a reminder, a candidate providing false information on the AOI cannot submit a new AOI to avoid disqualification.

A disqualified candidate may still seek to run as a write-in candidate. See MCL 168.737a.