BEFORE THE WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD

IN RE: PETITION FOR RECALL OF STATE SENATOR JIM HOLPERIN OF THE 12th SENATE DISTRICT

WGAB ID# 0600004

MEMORANDUM IN SUPPORT OF SENATOR HOLPERIN'S CHALLENGES TO PETITIONS

INTRODUCTION

Methodical, far reaching inquiry confirms that the recall petitions offered for filing against Senator Holperin do not reflect the actual intent of electors sufficient to authorize a recall election. The evidence establishes a pattern of pervasive and systemic fraud in the signature gather process. Both the signatures tainted by fraud and all petitions purportedly attributed to circulators who used fraudulent tactics should be excluded. They do not reflect electors' desire for a recall election; they reflect only the product of a for-profit signature drive largely concerned with filling pages as quickly as possible without regard for Wisconsin's laws or residents. In addition to pervasive fraud, this process generated a large universe of otherwise invalid signatures attributable, if not to fraud, to indifference and recklessness.

Lacking meaningful, local support among Wisconsin electors, the Republican Party hired a notorious out-of-state business to orchestrate the illusion of a recall effort. So far, the RPW has disclosed paying Kennedy Enterprises, a Colorado business, approximately $ 100,000.00.[1] In return, the RPW was provided with a small army of people recruited from across the country to

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[1] *See* Republican Party of Wisconsin's Special Pre-Election 2011 report filed with the GAB. See also Ex. 2. (documenting misconduct and controversy generated by Kennedy Enterprises' activities).

descend on Wisconsin and get recall petitions filled with signatures. These professional, nomadic circulators were paid per signature; they were involved solely to make money. Ex. 3; II(D), *infra*. And many brought with them dubious credentials, including long and colorful criminal histories that include robbery, assault, trafficking in methamphetamine and cocaine, and voter registration fraud.[2]

While there is nothing *per se* unlawful about making a living circulating petitions, the RPW's hired army of out-of-state circulators was motivated solely by the desire to get paid. They had no stake in Wisconsin politics, in who represents its residents in the State Senate, or in the vigorous debate of policy issues that created a public backlash against the current Republican members of the Senate. Most important, these circulators had no stake in the recall efforts being deemed sufficient and proper. The only incentive was to fill petitions with purported signatures. They filled pages of petitions with names; they got paid; and they left Wisconsin with absolutely no reason to care whether a recall election is actually called.

The fact that paying circulators on a per signature basis provides an incentive for fraud, trickery, and outright indifference is why the legislature made it a crime in the voter registration context several years ago. *See* § 12.13(3)(ze), Wis. Stats. As the unprecedented recall efforts at hand have shown, gaps exist in the controlling law because previous recall efforts have historically been so rare and limited. Just as no statute appears to specifically criminalize bribing people to sign petitions, § 12.13(3)(ze), Wis. Stats., does not specifically criminalize paying recall petition circulators on a per-signature basis. The recall process is even more vulnerable to the evils that the statute sought to prevent in the voter registration basis because it can be most

[2] *See* Ex. 4 and 5.

crassly reduced to simply filling pages with purported signatures and addresses as quickly as possible.

And even if paying recall petition circulators on a per-signature basis is not a crime, it incentivizes conduct that conflicts with the letter and spirit of the laws governing recalls. The inevitable result is a recall effort rife with fraud, misrepresentation, wholesale indifference, and a variety of other misconduct that is often criminal and in any event confirms the absence of sufficient support among Wisconsin electors for a recall election in the 12th Senate District.

The offering of recall petitions against Senator Holperin fails because, after discounting invalid signatures and petitions, it falls short of the threshold for a recall election.

I. THOUGH PAY-PER-SIGNATURE MAY NOT BE A CRIME IN A RECALL AS IT IS IN VOTER REGISTRATION, IT INVALIDATES THE PETITIONS CIRCULATED BY RECRUITED, PAID CIRCULATORS

There is nothing *per se* improper about doing something for pay. And it may be that paying recall petition circulators on a per-signature basis is not a crime as it in the voter registration context. As a separate issue, petitions certified by out-of-state, professional circulators paid on a per signature basis are invalid because these facts demonstrate that the certifications on those petitions are materially false.

The certification on each recall petition states:

> I personally circulated this recall petition and personally obtained each of the signatures on this paper. I know that the signers are electors of the jurisdiction or district represented by the officeholder named in this petition. I know that each person signed the paper with full knowledge of its content on the date indicated opposite his or her name. I know their respective residences given. **I support this recall petition**. I am aware that falsifying this certification is punishable under § 12.13(3)(a), Wis. Stats.

(emphasis supplied). The highlighted statement of fact has an important purpose: A circulator that supports the recall petition is asserting a commitment to its success and, therefore, to the proper and lawful circulation and offer for filing of petitions. In contrast, circulators who were recruited to descend on Wisconsin in return for pay on a per-signature basis are not circulating petitions because they "support" the effort but because they are paid to do so. In such instances, each certification is false and each page bearing such a certification should be discounted.

As the discussion below confirms, the wisdom of including a statement of support in the certification is concrete and serious. It seeks to ensure that recall petitions reflect the will of Wisconsin's qualified electors rather than nomadic circulators' desire to make money.

II. All Petitions Purportedly Circulated by Professional Circulators are Invalid as a Result of Pervasive and Systemic Fraud, Misrepresentation, and Other Improprieties

While it is conceivable that some of the material defects in the petitions are the result of negligence, indifference, and carelessness, there is also a large universe of material defects that necessarily represent deliberate and knowing misconduct aimed at inflating the number of signatures and rate of collection (and circulators' pay) and at concealing circulators' identities and eligibility to circulate.

First, a number of circulators provided false addresses in the certifications they executed, rendering them ineligible to circulate and rendering the petitions they certified invalid. Second, a number of circulators used unlawful and fraudulent tactics to fill petition sheets with purported signatures. While such individual signatures and sheets are invalid, the proof of a circulator's use of such tactics in numerous, specific instances renders all petitions certified by the circulator unreliable and invalid.

A. Many Circulators Concealed their Identity and their Eligibility to Circulate Petitions Through the Use of Fraudulent Addresses – Invalidating Every Petition Each Purported to Circulate

The circulators' certification requires circulators to include their names and residential addresses, including number, street, and municipality. *See also* § 8.40, Wis. Stats. Likewise, a circulator must be a qualified elector of Wisconsin or must be eligible to be one if he or she was a resident. *Id.* The following out-of-state paid circulators falsified certifications and concealed their identities, residential addresses, and eligibility to be qualified electors by asserting fraudulent or otherwise improper residential addresses for themselves. [WHY IMPORTANT] Consequently, all petitions purportedly circulated by each are invalid.

Richard Madrill. Madrill certified that his residence is 1065 S. Ames Street, Lakewood, CO 80226. *See, e.g.*, Ex. 6 (example of petition certified by Madrill). During one of Madrill's several interactions with Wisconsin law enforcement while he was in the state circulating petitions, officers confirmed as 1828 Depew Street, Lakewood, CO 80214. Ex. 7 (police report). Presumably the police report reflects law enforcement's review of an official document establishing Madrill's identity, birthdate, and residence. Further, if Madrill provided false information to law enforcement, he would have committed criminal obstruction of an officer. See § 946.41, Wis. Stats. The evidence confirms that Madrill repeatedly certified a fraudulent address and all petitions attributed to him should be excluded.

Richard Salaway certified two entirely different addresses on petitions he purported to circulated. In Senate District 22, he certified on pain of prosecution pursuant to § 12.13, Wis. Stats., that his residence is: 23A Johnson Rd, Latham, NY 12110. *See* Ex. 8 at 1 (example of

Salaway petition from SD 22). He certified this address in SD 22 132 times.[3] In Senate District 30, Salaway, again expressly subject to § 12.13, Wis. Stats., certified his residence as 5826 Brierly Ln., Houston, TX 77084. *Id.* at 2 (example of Salaway petition from SD 30). In SD 30, he certified this address 31 times.[4] Finally, Salaway opted for the Houston address in his certification of petition numbered 3201 in Senate District 12. *Id.* at 3. All of these petitions across the three districts should be excluded.

Jay Taylor certified his residence as 9461 Charleville Blvd. #204, Beverly Hills, CA 90212. Ex. 9. This is the address of a business named "Mail Boxes Times," a mail forwarding service, not a residence. Ex. 10. It "is your total mail solution" in which the unit number, i.e., "#204," refers to a mailbox number. *Id.* Mail Boxes Times "can send your mail to you anywhere" from its "Prestigious Beverly Hills Address." This deliberate and fraudulent use of an address specifically designed to create the false appearance of a residence requires the exclusion of all petitions attributed to Taylor.

Jonathan Megie certified his residence as 2125 NW 124th Street, Miami, FL 33167. Ex. 11. At best, this address belongs to a now defunct limited liability company with which he was associated. Ex. 12 at 1. Mr. Megie boast a series of current "residences," 630 W. Virginia Street, Tallahassee, FL 32304, *id.* at 2., 4605 NW 191st Street, Miami Gardens, FL 33055. *Id.* at

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[3] SD 22 petitions numbered: 2001, 2002, 2006, 2007, 2034, 2042, 2043, 2044, 2053, 2054, 2085, 2087, 2090, 2098, 2101, 2102, 2103, 2104, 2115, 2116, 2131, 2137, 2140, 2150, 2151, 2152, 2165, 2166, 2179, 2180, 2183, 2185, 2190, 2192, 2193, 2203, 2210, 2211, 2212, 2213, 2214, 2216, 2217, 2218, 2219, 2227, 2228, 2229, 2230, 2231, 2232, 2243, 2244, 2250, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2324, 2325, 2326, 2329, 2330, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2350, 2354, 2355, 2370, 2371, 2372, 2375, 2376, 2378, 2379, 2382, 2383, 2393, 2394, 2396, 2404, 2406, 2409, 2410, 2411, 2416, 2417, 2418, 2443, 2446, 2447, 2448, 2452, 2453, 2454, 2456, 2457, 2460, 2461, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2472, 2473, 2475, 2476, 2477, 2479, 2481, 2483, 2490, 2491, 2492, 2493, 2494, and 2511.

[4] SD 30 petitions numbered 374, 1062, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1100, 1751, 1752, 1759, 1765, 1783, 1788, 1799, and 1912.

3. Last year, when working with Kennedy Enterprises in on a Colorado petition drive, Megie "resided" at 3612 W. Colorado Ave., Colorado Springs, Colorado. All in all, approximately 15 addresses are associated with Megie. *Id.* at 4. Megie's petitions should be excluded.

Jacqueline Morales certified her residence as 7271 NW 174 Terrace, Hialeah, FL 33015. Ex. 13. Like Megie, when she circulated petitions in Colorado last year, she claimed to "reside" at 3612 W. Colorado Ave., Colorado Springs, Colorado. Ex. 12.

Jean Stussie certified her municipality of residence as St. John, Missouri. Ex. 14 at 1. She resides in St. Louis Missouri. *Id.* at 2. Her petitions should be excluded.

Richard Riscol certified that his residence is 1201 S. Nevada Street, Colorado Springs, CO 80903. In fact, located at this address is the "Chateau Motel." See Ex. 15. Petitions certified to Riscol should be excluded.

B. Petitions Certified by Circulators who Obtained Fraudulent Signatures are Invalid

Consistent with the narrow incentive to fill petition pages with purported signatures as fast as possible, the evidence establishes a pattern of (i) fraudulent signatures, e.g., purporting to be signatures of people who never signed and of deceased people; and (ii) signatures obtained through fraud, *e.g.*, by circulators' statements that petitions supported the target of the recall or sought recall of Governor Walker. These include the signature of a long deceased member of a prominent family. Ex. 1. This pattern invalidates each of the implicated signatures, contradicts the circulators' certification, and establishes that the following circulators' fraudulent means of obtaining signatures invalidates all petitions purportedly circulated by each.

Two powerful bodies of evidence confirm these patterns of fraud. First, almost two hundred Wisconsin residents executed sworn affidavits or provided written, signed, and witnessed statements[5] that they were victims of circulators' fraud or forgery. Second, signatures were subjected to a methodical telephone survey which revealed astonishing rates of fraud for a great many circulators. The affidavits and written statements can be found in Exhibits 16-58. The telephone survey methodology and results are contained in Exhibit 59.

Sherri Ferrell - Sherri Ferrell provides a stunning example of systemic fraud and misconduct as a means of filling petition sheets as quickly as possible. Recall committees in Senate Districts 12 and 30 offered petitions certified by Ferrell that contained 2810 purported signatures.

Ferrell's signatures were subjected to methodical review through structured telephone calls to purported signors. Out of a sample of 384 signers, approximately 35.42% (136 signers) reported that Ferrell misrepresented the nature and purpose of the petition, and that they would not have signed had they known the petitions were seeking to recall Senators Hansen and Holperin. (See Ex. 59 at 3.)

Ferrell was very deliberate in her fraud, tailoring her message to each audience in order to induce them to sign. In Senate District 12, she fraudulently obtained hundreds of signatures from the Menominee tribe members by representing that the purpose of the petition was to "support Indians," "support schools," and "support Democrats." (See Ex. 16). Almost one hundred Wisconsin residents executed affidavits or written statements evidencing that each was a victim of fraud or forgery.

[5] Initially, efforts were made to obtain all witness statements in the form of sworn, notarized affidavits. In short order, the number of victims of circulator fraud or forgery ballooned such that it became impossible to have notaries get to each one during the short time period given to prepare this challenge.

While Ferrell may be one of the more dramatic examples of the deliberate and systemic use of fraud in the recall efforts, the telephone survey data and witness affidavits and statements demonstrate that petitions attributed to dozens of circulators reflect similar patterns.

These circulators chose to maximize the number and collection rate of signatures by employing tactics that were unlawful and that ensured that the resulting petitions do **not** reflect the intent of electors. All petitions attributed to these circulators should be excluded.

C. Petitions Certified by Circulators who Used Others to Gather Signatures are Invalid

Certain circulators engaged in a form of subcontracting whereby they certified signatures obtained by others. This is fraudulent, contrary to statute, and in conflict with the circulators' certifications. All petitions purportedly certified by circulators who chose to engage in this unlawful practice should be invalidated as tainted and unreliable.

Mark Vigil certified petitions circulated independently by an individual named Rubin S. Avila. On April 5, 2011, an individual who identified himself as "Rubin" was circulating a petition to recall Senator Hanson at the Green Bat Community Church. Ex. 60. A photograph of a petition taken at the time establishes that it was offered for filing against Senator Hanson as page number 1007. It was certified by Mark Vigil, not Rubin.[6] That same day, Rubin S. Avila obtained recall signatures at the Howard Village Hall. Photographs of a petition on which he was gathering signatures establishes that it was offered for filing against Senator Hanson as page number 1010 – again, certified by "Mark Vigil." Ex. 61.

[6] The full name, Rubin S. Avila, was confirmed by a police report generated during a law enforcement contact in Wisconsin. Ex. 61.

Christopher Baxter certified petitions offered for filing against Senator Wirch that included signatures of people who state under oath their signatures were obtained by a female. Ex. 62.

A purported circulator's decision to certify, on pain of criminal prosecution pursuant to § 12.13, Wis. Stats., that he or she personally circulated petitions circulated by someone else is fraud and it should disqualify all petitions "certified" by the perpetrator.

D. The Recall Efforts were Dominated by Fraud and Other Misconduct and All Implicated Petitions and Circulators Must be Excluded

The very results of the recalls efforts – staggering fraud rates, fraudulent circulator certifications, and almost 200 Wisconsin residents who have stepped forward and identified themselves as circulators' victims – requires exclusion of so many petitions and signatures that the efforts fail.[7] They do not and cannot reflect the intent of the electors.

In the absence of substantial support among Wisconsin residents, the recall effort was fueled by a per-signature payment scheme and a nomadic band of professional circulators motivated solely to fill petition pages as quickly as possible. Their only stake was the best payday they could garner. The evidence shows that respect for Wisconsin's laws, traditions, and residents was cast aside as an impediment to the best payday these circulators could create for themselves. The validity and lawfulness of the larger effort was another casualty. Fraud and other misconduct require exclusion of so many petitions and circulators that the petitions fail to trigger recall elections.

[7] Though the evidence above is overwhelming, testimony will be introduced at the hearing to fill out the picture. Specifically, a motel in Green Bay served as an informal camp and headquarters for circulators who descended on Wisconsin from across the nation. Circulators were paid in cash on a per-signature basis; they "filled in" blank signature lines remaining on petitions at the end of a day of circulating; and they often used the motel's phonebooks in doing so. Their extended presence at the motel required a police presence.

Precedent from Wisconsin and from across the country confirms this.

Where fraud can be established on the part of a circulator, all sheets submitted by such a circulator should be stricken. In *Stahovic v. Rajchel*, 122 Wis. 2d 370, 363 N.W.2d 243 (Ct. App. 1984), the Court refused to invalidate an entire sheet based upon a single improper signature, because it would defeat the policy that election laws are to be construed so that the will of the electorate is to be furthered. *Id.*, 122 Wis. at 370. However, the Court specifically noted that such a rule applies only "in the absence of proof of active fraud," *id.* at 379, concluding: "[W]e hold that the spirit of Wisconsin law requires that, ***absent fraud***, only invalid signatures be disallowed in a petition for recall." *Id.* at 380. In *In re Jensen*, 121 Wis. 2d 467, 360 N.W.2d 535 (Ct. App. 1984), the Court held that "no presumption of regularity arises when a petition is filed without a proper affidavit of personal circulation," and that "substantial compliance" with the requirements for executing petitions "requires that petitions be circulated in a manner that protects against fraud and that assures that signers know the content of the petition." Accordingly, where fraud is involved that "impugn[s] the integrity of the recall process," *Stahovic*, 122 Wis. 2d at 380, all sheets submitted by such an individual should be disregarded.

Consistent with this Wisconsin precedent, courts in other jurisdictions have stricken all pages submitted by a circulator where evidence demonstrated the circulator engaged in fraudulent activities. *See, e.g., Howell v. Tidwell*, 368 S.E.2d 311, 312 (Ga. 1988) ("false swearing in an affidavit voids the whole page of signatures, even valid ones"); *Citizens Committee to Recall Rizzo v. Board of Elections of City and County of Philadelphia*, 367 A. 2d 232, 239-240 (Pa. 1976) (affirming Elections Board's rejection of entire pages where circulator affidavits where "false for either of two reasons: (1) there were gross irregularities on the

petitions to which they were appended; or (2) the affiants had falsely sworn as to their addresses or their status as registered voters"); *In re Farnese*, 2011 WL 1124420, at *3 (Pa. March 29, 2011) ("Any falsity in an affidavit casts doubt on the accuracy of the entire affidavit, and, thus, the authenticity of the petition."); *id.* at *4 ("[A] false affidavit contained in a nomination petition may be egregious enough to void the petition altogether . . ."); *Huskey v. Municipal Officers Electoral Board*, 509 N.E.2d 555, 557 (Ill. App. 1987) (striking entire petitions because of a "pattern of fraud, false swearing, and a total disregard for the election law by the circulator"); *Montanans for Justice v. State*, 146 P. 3d 759, 777 (Mont. 2006) ("the district court did not err when it invalidated the signatures of Proponents' out-of-state signature gatherers that were obtained in a manner that did not comply with Montana statutes and were tainted by or associated with deceptive practices and misrepresentation."); *see generally* 116 ALR 5th 1, *Sufficiency of Technical and Procedural Aspects of Recall Petitions*, at §§ 37-41 (listing cases where petitions were held invalid for "alleged improprieties in collecting and listing signatures").

Montanans for Justice is of particular import here. Like that case, proponents here used a team of paid, out-of-state individuals to gather signatures in support of the recall petition. As in that case, the evidence demonstrates "a pervasive and general pattern and practice of fraud and procedural noncompliance," 146 P. 3d at 770, including issues with signatures that "were gathered by other persons outside of their presence without direct assistance from them," the use of "false addresses on their certification affidavits," and the employment of "a deceitful 'bait and switch' tactic." *Id.* at 770. The Montana Supreme Court had no problem, in the face of such pervasive wrongdoing, in rejecting all signatures collected by such out-of-state circulators. The Court explained that while some persons who validly signed the petition may feel disenfranchised, "the fact remains, however, that if the initiative process is to remain viable and

retain its integrity, those invoking it must comply with the laws passed by our legislature." *Id.* at 778. The Court noted that if it were to "excuse [or] overlook violations of these laws," it would simply "confer free rein for others to do so on other matters." *Id.* *See also In re Initiative Petition No. 379*, 155 P.3d 32, 47 (Okla. 2006) ("The importation of out-of-state residents to obtain signatures for a ballot measure in an Oklahoma state election paid for by out-of-state contributors in which these people have no interest is illegal, fraudulent and unsettling.").

III. An Enormous Number of Signatures are Otherwise Defective

Apart from the deliberate misconduct discussed above, the recall petitions are rife with material and fatal defects that, to be fair, can conceivably be explained by indifference, carelessness, and negligence. The recall petitions offered against Senator Holperin are rife with disqualifying omissions, inaccuracies, and other fatal defects. Below these are summarized by category. The underlying detail is set forth in Exhibit 63.

Signer Date Challenges:

Signature Count	Problem
147	Signatory date bad or missing.
167	Signatory date later than circulator date.
12	Signatory date bad or missing. Signatory date later than circulator date.

Total 326

Address Challenges:

Signature Count	Problem
15	Bad address.
7	Missing both city and MCD.

867	Incorrect municipality for address.
239	Missing house number. Address is a PO Box.
10	Missing street name. Address is a PO Box.
78	Missing house number.
11	Missing house number. Missing street name. Missing both city and MCD.
1	Address is a business. Incorrect municipality for address.
2	Missing house number. Missing both city and MCD. Address is a PO Box.
2	Bad address. Incorrect municipality for address.
11	Address is a PO Box.
51	Missing street name.
113	Missing house number. Missing street name.

Total 1407

Circulator Address Challenges:

Signature Count	Problem
2	Incomplete circulator address. Circulator address is a PO Box.
2751	Two different municipalities listed for circulator from different handwriting.
63	Incomplete circulator addresses.
1	Bad circulator address.
77	Incomplete circulator addresses. Two different municipalities listed for circulator from different handwriting.

Total 2894

Circulator Date Challenges:

Signature Count	Problem
139	Circulator date bad or missing

Total 139

District Challenges:

Signature Count	Problem
591	Entire signer municipality out of district.
482	Signer out of district.

Total 1073

Dupe Challenges:

Signature Count	Problem
231	Duplicate of an earlier entry.

Total 231

Eligibility Challenges:

Signature Count	Problem
2	Voter ineligible - under 18.
47	Voter ineligible - from GAB ineligibility list.

Total 49

Fakes and Forgeries:

Signature Count	Problem
3	Fake signature.
236	Signer forgery.

Total 239

Improper Form Challenges:

Signature Count	Problem
4	Improper recall form.

Total 4

Phone Challenges:

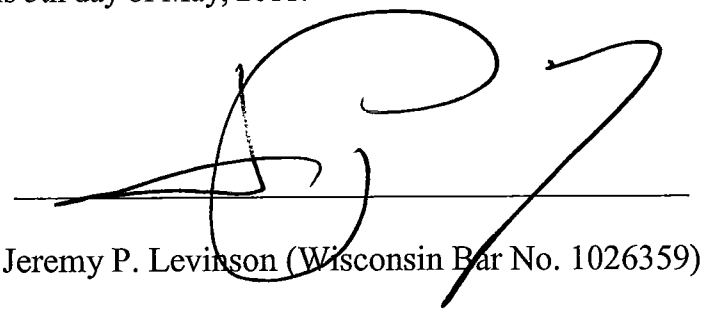
Signature Count	Problem
78	Signer claims not to have signed, name was forged
447	Signer tricked into signing.

Total 525

CONCLUSION

Based on the foregoing, Senator Jim Holperin challenges the recall petitions offered for filing against him respectfully suggests that they fail meet the threshold for a recall election established by law.

Respectfully submitted this 5th day of May, 2011.



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