

STATE OF WISCONSIN
BEFORE THE GOVERNMENT ACCOUNTABILITY BOARD

IN RE PETITION TO
RECALL SENATOR ALBERTA DARLING
OF THE 8th SENATE DISTRICT

WGAB ID# 0600009

**MEMORANDUM OF LAW IN SUPPORT OF SENATOR ALBERTA DARLING'S
WRITTEN CHALLENGE TO THE RECALL PETITION OFFERED
FOR FILING ON APRIL 21, 2011**

INTRODUCTION

The recall petition offered for filing on April 21, 2011 purporting to seek the recall of State Senator Alberta Darling (the "Recall Petition") must be rejected in its entirety as insufficient. The Recall Petition is fatally defective because the Petitioner, Naomi Cobb, failed to complete the registration process before circulating the petition, as required by Wis. Stat. § 9.10(2)(d).

BACKGROUND

On March 2, 2011, Naomi Cobb signed and filed with the Government Accountability Board ("GAB") a Statement of Intent to Circulate Recall Petition ("Statement of Intent"), by which Ms. Cobb stated her intention to circulate a petition to recall Alberta Darling, State Senator District 8.¹ The Statement of Intent identifies Naomi Cobb as the "Recall Petitioner" and Naomi Cobb signed the Statement of Intent on the line designated for "Signature of Petitioner."

On April 22, 2011, State Senator Alberta Darling was notified by GAB staff that the Committee to Recall Darling ("Recall Committee") had "filed their signed recall petition" with

¹ A copy of Ms. Cobb's Statement of Intent to Circulate Recall Petition is attached to this Memorandum at Exh. A.

GAB on the previous day, April 21. GAB attached to its April 21, 2011 letter² a copy of a “Recall Petition Receipt” which indicated that the Recall Petition was delivered by Naomi Cobb and consisted of approximately 4,700 pages and approximately 30,000 signatures.

ARGUMENT

I. The Recall Petition Process Contains No Meaningful Mechanism To Ensure The Integrity Of The Process

Ms. Cobb’s willingness to submit a recall petition that has been signed by Adolf Hitler, resident of Berlin, evidences the extent to which the entire recall petition process is devoid of any meaningful check or balance. While the Wisconsin Constitution guarantees the electors of this state the right to recall elective officials, the process that has been established provides scant protection against abuse, misdeeds and outright fraud. Adolf Hitler’s signature can easily be discounted by GAB because a) it is widely known that Adolf Hitler has been dead since 1945 and b) Berlin is not in the 8th Senate District. But the fact that Ms. Cobb submitted a recall petition purportedly bearing his signature shows the ease with which she and other circulators of petitions seeking to recall Senator Darling can manipulate the process.

Neither Senator Darling, GAB nor the actual electors of the 8th Senate District have any way of knowing whether the other nine names that accompanied Adolf Hitler’s signature on page 3504 of the Recall Petition, or, in fact, any of the over 30,000 names submitted with his signature represent persons who actually signed the petition, are fictitious or real, dead or alive, juvenile or adult or resident or non-resident of the 8th Senate District. Given that no inquiry is made by GAB of the circulators, such as Ms. Cobb, to determine if any of the signatures are valid, the only meaningful method for determining the validity of the Recall Petition is to visit each and

² A copy of the April 21, 2011 letter and the Recall Petition Receipt is included at Exh. B. On April 22, 2011, counsel for Senator Darling received from GAB staff the April 21 letter and an electronic copy of the Recall Petition.

every purported residence listed on the petition and ask the inhabitant(s) whether the named individual on the petition resides there. If the answer is “yes,” then, at least, there is some assurance that the signatory is a live person that resides within the district. If that person happens to be present, he or she could then confirm his or her signature on the Recall Petition.

Short of undertaking such a painstaking review process, no meaningful review of the Recall Petition can be conducted to determine whether it truly represents a petition “signed by electors equal to at least 25% of the vote cast for the office of governor at the last election.” Wis. Stat. § 9.10(1)(b). The ease with which bogus names and/or signatures can be appended to a recall petition greatly surpasses any manner of fraud that can be perpetrated on the electors during an election. During an election a live body needs to present himself or herself at the polling place and identify the name and address of a qualified elector before casting a ballot. In contrast, any name can be included on a recall petition, provided that a street address is provided that, on its face, appears to be located within the relevant electoral district.

The result is that those electors who oppose the recall have been disenfranchised in the process. Adolf Hitler clearly is not a qualified elector, but the truly worrisome fact is that GAB and the electors of the 8th Senate District have absolutely no way of knowing how many other equally bogus signatures will be accepted in support of the Recall Petition’s sufficiency.

II. Ms. Cobb Has Failed To Follow The Mandatory Statutory Prerequisites For Filing A Recall Petition

In addition to the pall cast over the entire Recall Petition by the submission of Adolf Hitler’s signature, the entire Recall Petition must be deemed insufficient because the recall petitioner never completed the mandatory registration process. Notwithstanding GAB staff’s statement in its April 21, 2011 letter that the Recall Committee filed the Recall Petition, it is clear that Naomi Cobb is the recall Petitioner. Ms. Cobb is the only individual who has filed a

statement of intent to circulate a recall petition related to Senator Darling. At no time has the Recall Committee filed a statement of its intent to circulate a recall petition, nor could it because, as addressed below, the recall statutes do not allow a committee to be the recall petitioner.

Ms. Cobb has not, however, filed a registration statement under either Wis. Stat. §11.05(1) or (2). This failure is fatal to the Recall Petition, because Wis. Stat. § 9.10(2)(d) states unequivocally that “[n]o petition may be offered for filing for the recall of an officer unless the petitioner first files a registration statement” More importantly, Ms. Cobb is barred from “circulat[ing] a petition for the recall of [Senator Darling] prior to completing registration.” Wis. Stat. § 9.10(2)(d). Since Ms. Cobb has not filed a registration statement, the circulation period has not begun and none of the signatures on the Recall Petition may be counted. Wis. Stat. § 9.10(2)(e)2. (“an individual signature on a petition sheet may not be counted if . . . the signature is dated outside the circulation period”).

III. Wisconsin Law Clearly Requires That A Recall Petitioner Be An Individual

Despite the Recall Committee’s attempt to function as the recall petitioner, Wisconsin’s recall statute clearly requires that “the petitioner” must be an individual. The statutory scheme governing the recall of elective officials is replete with references to individuals. For example, only qualified electors are permitted to collectively petition for the recall of a State Senator (Wis. Stat. § 9.10(1)) and each individual page of the Recall Petition must be certified by an adult who either is a qualified elector or would be a qualified elector but for the fact that they reside outside the 8th Senate District (Wis. Stat. §§ 5.02(16g), 9.10(2)(em)2.). Most significantly, each recall effort must be initiated by an individual who indicates “his or her intent to circulate a recall petition” and who ultimately offers the recall petition for filing. Wis. Stat. § 9.10(2)(d).

The statutory requirement that “the petitioner” must indicate “his or her intent” in order to trigger the sixty-day circulation period unambiguously establishes that only an *individual* can serve as “the petitioner.” GAB staff’s erroneous conclusion that the Recall Committee is the petitioner rests on an interpretation of Wis. Stat. § 9.10(2)(d) that completely ignores the legislature’s use of the phrase “his or her.”³ Fundamental rules of statutory construction do not allow GAB staff or the Government Accountability Board to delete this phrase from the statute. *Johnson v. State*, 76 Wis. 2d 672, 676, 251 N.W.2d 834 (1977) (“a law should be so construed that no word or clause shall be rendered surplusage . . . every word appearing in a statute should contribute to the construction of the statute in accordance with its ordinary and customary meaning”) (internal quotes and citations omitted); *see also Donaldson v. State*, 93 Wis. 2d 306, 315, 286 N.W.2d 817 (1980) (“a statute should be construed so that no word or clause shall be rendered surplusage and every word if possible should be given effect”).

The legislature’s unambiguous requirement that “the petitioner” must be an individual who is capable of expressing “his or her intent” also cannot be isolated and confined to a single sentence within § 9.10. Rather, the word “petitioner” must be given the same meaning throughout the recall petition statute. *Donaldson v. Bd. of Comm’rs of Rock-Koshkonong Lake Dist.*, 2003 WI App 26, ¶ 13, 260 Wis. 2d 238, 659 N.W.2d 66 (“words appearing multiple times in the same statute are given the same meaning unless the context clearly requires a different meaning”) (reversed on other grounds). Therefore, references in § 9.10 to “the petitioner” refer to an individual and not a corporate or other unnatural entity. GAB’s recall manual expresses this same conclusion and states that only an individual can be the recall petitioner. Under the

³ In statutory interpretation, the words “his” and “her” are to be “construed according to common and approved usage.” Wis. Stat. § 990.01(1). The Recall Committee does not assert that it can manifest “his or her” intent, nor could it. By statutory definition, the Recall Committee cannot be a single individual. Wis. Stat. § 11.01(4).

heading “Who Can Initiate a Recall?” it states: “Any qualified elector of the election district from which the officeholder was elected may initiate a recall. . . . The person who files the recall petition is referred to as the petitioner.” Recall of Congressional, County and State Officials (June 2009) at 3.

Nowhere in the recall statutes is a committee or any other unnatural person permitted to be the recall petitioner.⁴ Rather, committees can be formed for the purpose of supporting or opposing recall efforts. *See, e.g.*, Wis. Stat. § 11.02(3m) (identifying the appropriate “‘filing officer’ for . . . [a] committee which supports or opposes an effort to circulate and file a petition to recall an individual who holds an office”); Wis. Stat. § 11.20(4m) (requiring that a “committee which supports or opposes an effort to circulate and file a petition to recall an officer shall file a report . . . no later than 30 days after registration of the petitioner for recall of the officer”). Indeed, the Recall Committee registered as just such a committee.⁵

There is no doubt that under the clear, unambiguous language of Wis. Stat. § 9.10(2)(d), Ms. Cobb is the petitioner.

IV. Ms. Cobb Failed To Comply With The Statutory Requirements Set Forth In Wis. Stat. § 9.10(2)(d).

A. Ms. Cobb Was Required To File A Campaign Registration Form.

Section 9.10(2) sets forth various requirements that must be met in order for the qualified electors of the 8th Senate District to exercise their right to recall Senator Darling. For example, a recall petition may not be offered for filing during the first year of an elective term. Wis. Stat.

⁴ Note that because the recall petitioner must be a single individual, there is no danger of the petitioner completing the registration process multiple times in an effort to create a rolling circulation period that exceeds sixty days. Neither is there any danger of confusion regarding when a petition is “offered for filing,” since it is “the petitioner” that must present the petition to the filing officer. The clear language of § 9.10(2)(d) adequately addresses these issues, which GAB staff has recently attempted to clarify.

⁵ The Committee to Recall Darling’s GAB-1 Campaign Registration Statement, dated February 28, 2011, specifies that it is a recall committee registering for the purpose of supporting the effort to recall Senator Darling.

§ 9.10(2)(s). An otherwise valid signature on a recall petition may not be counted if the petition page it is on is not validly certified by a qualified circulator. Wis. Stat. § 9.10(2)(em). A qualified elector's signature on a recall petition may not be counted if his or her residency cannot be determined by the address provided on the petition. Wis. Stat. § 9.10(2)(e)4. And, a qualified elector's signature on a recall petition may not be counted if the elector signed the petition either too soon or too late, which is determined by the date the petitioner completes the required registration. Wis. Stat. § 9.10(2)(d), (e)2.

The petitioner's act of properly registering according to the requirements of § 9.10 is critical to the sufficiency of a recall petition, because the petitioner may not circulate a petition "prior to completing registration." Wis. Stat. § 9.10(2)(d). Section 9.10(2)(d) states:

No petition may be offered for filing for the recall of an officer unless the petitioner first files a registration statement under s. 11.05 (1) or (2) with the filing officer with whom the petition is filed. The petitioner shall append to the registration a statement indicating his or her intent to circulate a recall petition, the name of the officer for whom recall is sought and, in the case of a petition for the recall of a city, village, town, town sanitary district, or school district officer, a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought. No petitioner may circulate a petition for the recall of an officer prior to completing registration. The last date that a petition for the recall of an officer may be offered for filing is 5 p.m. on the 60th day commencing after registration. After the recall petition has been offered for filing, no name may be added or removed. No signature may be counted unless the date of the signature is within the period provided in this paragraph.

(Emphasis added.) This provision imposes a distinct registration requirement on an individual who seeks to begin circulating a petition to recall a state senator. To satisfy this requirement, the petitioner must register under either Wis. Stat. § 11.05(1) or Wis. Stat. § 11.05(2).

B. Ms. Cobb Has Never Registered With The Government Accountability Board.

As the petitioner, Ms. Cobb had two registration options. She could have registered a committee, pursuant to Wis. Stat. § 11.05(1), or she could have registered as an individual, pursuant to Wis. Stat. § 11.05(2). It is undisputed that she never registered under either section.

Ms. Cobb has not registered as an individual under sub (2). Furthermore, Ms. Cobb has not registered a committee that covers her campaign finance activities. As the petitioner, Ms. Cobb has simply failed to fulfill the requirement that “the petitioner first file[] a registration statement.” Wis. Stat. § 9.10(2)(d).

C. Ms. Cobb Did Not Satisfy Her Obligation To Register By Filing The Recall Committee’s Registration Statement.

Ms. Cobb and/or the Recall Committee may argue that Ms. Cobb satisfied the requirements of § 9.10(2)(d) by filing a registration on behalf of the Recall Committee. Such an argument would fail because Ms. Cobb is not a member of the Recall Committee. No reasonable construction of § 9.10(2)(d) would countenance the petitioner satisfying his or her registration obligation by filing a GAB-1 form for a separate entity.⁶

If a recall petitioner chooses to satisfy the registration requirement by registering as a committee pursuant to Wis. Stat. § 11.05(1), as opposed to registering as an individual under sub. (2), then “he or she” must satisfy the requirements of the definition of a committee. A simple reading of the relevant statutory provisions provides clear guidance. A committee can be either “any person other than an individual” (which a petitioner may not be) or “any combination of 2 or more persons.” Wis. Stat. § 11.01(4). Had Ms. Cobb registered as a committee, she would have to be one of the “2 or more persons” forming the committee. Yet, Ms. Cobb has not provided GAB with any evidence that she is one of the “2 or more persons” that comprise the Recall Committee.⁷

⁶ This conclusion is confirmed by Wis. Stat. § 11.05(1), which provides that a committee’s registration statement “shall be filed by the treasurer,” and § 11.05(5m), which provides that the individual filing a registration statement must certify “that all information contained in a statement is true, correct and complete.”

⁷ Ms. Cobb is not identified anywhere on the Recall Committee’s registration statement, despite the fact that the law requires the Recall Committee to specifically identify all of its principal officers in addition to its treasurer. Wis. Stat. § 11.05(3)(f).

As with registration under Wis. Stat. § 11.05 generally, a principal purpose of registering under § 9.10(2)(d) is to inform the Government Accountability Board whether the petitioner intends to accept contributions and make disbursements in an amount sufficient to require the filing of finance reports or if the petitioner is exempt pursuant to Wis. Stat. § 11.05(2r). While the Recall Committee registered, the Government Accountability Board has no way of knowing whether or not the petitioner, Ms. Cobb, will “accept contributions, make disbursements or incur obligations in an aggregate amount of more than \$1,000 in a calendar year or accept any contribution or cumulative contributions of more than \$100 from a single source during the calendar year...” (GAB-1 form.) Accordingly, as expressly required in Wis. Stat. § 9.10(2)(d), the petitioner must register.

V. **The Statutory Requirements Must Be Followed In Order To Compel A Recall Election.**

The fact that the electors’ right of recall is constitutionally provided does not excuse Ms. Cobb’s failure to follow the requirements of the recall statute. If the Government Accountability Board looks past this fundamental flaw in the effort to recall Senator Darling, there will be no logical stopping point for determining which essential statutory requirements must be followed and which nonessential statutory requirements can be ignored. The statutory requirements outlined in § 9.10 place numerous limitations on the electors’ right of recall; yet, the general right does not excuse failure to follow those prescribed requirements.

Here, the recall petitioner, Ms. Cobb, did not first file a registration statement. If this error can be excused then perhaps the failure to file a statement of intent should also constitute excusable error. Perhaps a petition that is offered for filing on the 65th day after registration should be accepted, despite the clear procedural deficiency. These deficiencies could only be ignored if the entire statute were to be ignored.

Any argument that the Wisconsin Constitution compels the Government Accountability Board to determine that the Recall Petition is sufficient, despite the petitioner's failure to comply with Wis. Stat. § 9.10(2)(d), would constitute an attack on the constitutionality of the statute. As a state agency, the Board has no authority to attack the constitutionality of a statute, but is bound to apply it. *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, ¶ 108, 307 Wis. 2d 1, 745 N.W.2d 1 (finding that public officers charged with enforcing a statute have a duty to uphold the validity of the challenged statute); *Metz v. Veterinary Examining Bd.*, 2007 WI App 220, ¶ 21, 305 Wis. 2d 788, 741 N.W.2d 244 (“administrative agencies do not have the power to declare statutes unconstitutional”).

A. Compliance With The Statutory Requirements Cannot Be Waived By GAB Staff Guidance.

The fact that the Recall Committee may have relied on the GAB staff's erroneous interpretation of the registration requirements in gathering the signatures does not grant the Board the ability to circumvent the clear and unambiguous language of the statute.⁸ In *State ex rel. McIntyre v. Bd. of Election Comm'rs of the City of Milwaukee*, 273 Wis. 395, 78 N.W.2d 752 (1956), the plaintiff made a similar argument when he failed to timely file his petition for a recount. *McIntyre*, 273 Wis. at 399. There, the plaintiff missed the statutory filing deadline because he relied on advice of the Board of Election Commissioners, which stated that the filing deadline was a full day after the statutorily proscribed deadline. *Id.* Nevertheless, the court

⁸ Indeed, GAB has taken this very position in a related matter. With respect to the recall petition offered April 1, 2011 for filing against Senator Dan Kapanke, GAB staff initially informed counsel for Senator Kapanke that the 10-day challenge period under Wis. Stat. § 9.10(3)(b) would be counted as business days rather than calendar days, thereby extending the length of that time period by four days. Six days into the challenge period, GAB staff informed Senator Kapanke's counsel it had been mistaken and that it lacked authority to extend the time period. Regardless of any reliance on GAB's prior guidance, GAB staff informed counsel for Senator Kapanke that the shorter time period applied. (See Exh. C, attached hereto.)

found that the filing deadline must be strictly adhered to, even where the petitioner relied on the erroneous interpretation of the Board of Election Commissioners. *Id.* at 402.

B. The Government Accountability Board Cannot Rewrite The Statutory Scheme That Provides For Individual Petitioners.

The Government Accountability Board is without authority to amend the clear mandate of § 9.10(2)(d), either through formal rulemaking or informal staff interpretations. Administrative agencies are charged with the implementation of statutes duly enacted by the legislature. *See Plain v. Harder*, 268 Wis. 507, 512, 68 N.W.2d 47 (1955). However, there are clear limitations on the scope of an agency’s power to implement and interpret legislation. *See State ex rel. Castaneda v. Welch*, 2007 WI 103, ¶ 26, 303 Wis. 2d 570, 735 N.W.2d 131. The power of a state agency is strictly limited to power conferred upon it by the legislature through an enabling statute. *Id.* An agency’s enabling statute is strictly construed, and “any reasonable doubt pertaining to an agency’s implied powers” must be resolved against the agency. *Id.* (citing *Wisconsin Citizens Concerned for Cranes & Doves v. DNR*, 2004 WI 40, ¶14, 270 Wis. 2d 318, 677 N.W.2d 612). While an agency has the power to interpret legislative enactments, it may not do so where legislative intent is clearly stated in the statute. *Basic Products Corp. v. Wisconsin Dept. of Taxation*, 19 Wis. 2d 183, 186, 120 N.W.2d 161 (1963); *Plain*, 268 Wis. at 511 (holding that an agency’s rulemaking power “does not extend beyond the power to carry into effect the purpose as expressed in the enactment of the legislature”).

As expressed above, “agencies must follow unambiguously expressed legislative intent.” *Oneida County v. Converse*, 180 Wis. 2d 120, 125, 508 N.W.2d 416 (1993). Indeed, while reviewing courts often afford some degree of deference to an agency’s interpretation of a statute, such deference is not afforded where an interpretation directly contravenes the words of the statute or is clearly contrary to the intent of the legislature. *Lisney v. Labor & Indus. Review*

Comm'n, 171 Wis. 2d 499, 506, 493 N.W.2d 14 (1992); *Volvo Trucks North America v. State of Wisconsin Dept. of Transportation*, 2010 WI 15, ¶ 18, 323 Wis. 2d 294, 779 N.W.2d 423 (holding that an agency's interpretation and application of a statute may be upheld "if it is not contrary to the clear meaning of the statute") (citation omitted); *Mallo v. Wisconsin Dept. of Revenue*, 202 WI 70, ¶ 16, 253 Wis. 2d 391, 645 N.W.2d 85 (holding that a reviewing court's first duty is to the legislature and, as such, a court will not "uphold a rule that is contrary to the language of the statute").

Further, it is clear that "[a]n agency cannot promulgate a rule inconsistent with an unambiguous statute." *Oneida County*, 180 Wis. 2d at 125; *Mallo*, 2002 WI 70, ¶ 15 (holding that "[n]o agency may promulgate a rule which conflicts with state law") (citations omitted). In fact, the Wisconsin Supreme Court has held that "a rule out of harmony with the statute is a mere nullity." *Plain*, 268 Wis. at 511 (citations omitted). As such, it is abundantly clear that "[a]n administrative rule, even of long duration, may not stand at variance with an unambiguous statute." *Basic Products Corp.*, 19 Wis. 2d at 186.

It follows that an agency's method of practice or interpretation that ignores the plain language of a statute cannot stand. In *State ex rel. Stearns v. Zimmerman*, the plaintiff failed to file his nomination papers for the senate primary election within the timeframe mandated by statute. *State ex rel. Stearns v. Zimmerman*, 257 Wis. 443, 445, 43 N.W.2d 681 (1950). In denying the plaintiff's prayer for relief, the Wisconsin Supreme Court held that "the time limit set by the legislature for the filing of nomination papers must be strictly enforced." *Id.* This is so because the legislature has expressly provided a firm deadline for the filing of nomination papers, and any interpretation in conflict with that firm deadline cannot stand. *Id.* at 446. According to the court, to hold otherwise would be tantamount to allowing an agency to amend

the statute, not construe it. *Id.* Ultimately, “[t]he interests of the electors are served by a strict compliance” with the language of a statute where that language evinces a clear legislative intent. *State ex rel. McIntyre v. Bd. of Election Commissioners of the City of Milwaukee*, 273 Wis. 395, 402, 78 N.W.2d 752 (1956) (holding that the principles articulated in *Stearns* apply to deadlines for seeking a recount where the legislature has explicitly provided filing deadlines).

Here, to allow a petition for recall which has not been offered for filing in compliance with the plain language of Wis. Stat. § 9.10(2)(d) to go forward would be tantamount to amending, rather than interpreting, the statute. *See State ex rel. Stearns*, 257 Wis. at 446. Like the statutes at issue in *Stearns* and *McIntyre*, Wis. Stat. § 9.10(2)(d) is “so specific and so within the realm of the legislative that there is no occasion to resort to construction or interpretation.” *State ex rel. McIntyre*, 273 Wis. at 402. Wis. Stat. § 9.10(2)(d) specifically states that “[n]o petitioner may circulate a petition for the recall of an officer prior to completing registration.” The legislative intent in this section is clear – a petitioner *must* register under Wis. Stat. § 11.05. Here, the petitioner, Ms. Cobb did not register.

CONCLUSION

The Recall Petition is invalid because the petitioner failed to follow the mandatory procedures of Wis. Stat. § 9.10(2)(d) in order to trigger the start of the circulation period. No signature on the Recall Petition may be counted and the entire petition is, therefore, insufficient.

Dated this 5th day of May, 2011.

MICHAEL BEST & FRIEDRICH LLP
Attorneys for Senator Alberta Darling

By: 
Eric M. McLeod, State Bar No. 1021530
Raymond P. Taffora, State Bar No. 1017166
Michael P. Screnock, State Bar No. 1055271

MICHAEL BEST & FRIEDRICH LLP
One South Pinckney Street, Suite 700
Post Office Box 1806
Madison, WI 53701-1806
Telephone: 608.257.3501
Facsimile: 608.283.2275

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STATE OF WISCONSIN

MILWAUKEE
(Name of County)

VILLAGE OF SHOREWOOD
(Name of Municipality)

STATEMENT OF INTENT TO CIRCULATE RECALL PETITION

THE UNDERSIGNED RECALL PETITIONER **NAOMI COBB**
(Print Name)

STATES HIS/HER INTENT TO CIRCULATE, PURSUANT TO S.9.10 OF THE
WISCONSIN STATUTES, A PETITION TO RECALL,

ALBERTA DARLING, STATE SENATOR DISTRICT 08

(Indicate the name of and office held by, the official being recalled),

(This statement should be appended to the Campaign Registration Statement (GAB-1) filed with the filing officer.)

Dated this 2 day of MARCH, 2011

 Naomi Cobb
(Signature of Petitioner)

(Notary Not Required)



State of Wisconsin\Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Via Email and U.S. Mail

April 21, 2011

State Senator Darling
8th Senate District
One South Pinckney Street, Suite 700
P.O. Box 1806
Madison, WI 53701-1806

RE: Committee to Recall Darling
WGAB ID #0600009

Dear Senator Darling:

This correspondence and enclosure is to notify you that the Committee to Recall Darling filed their signed recall petition with the Government Accountability Board on 4/21/2011 and we have now begun our review process. Please find enclosed a copy of the Recall Petition Receipt issued by our staff to the Committee to Recall Darling as well as a courtesy copy of the petition itself on the enclosed CD.

The G.A.B. has 31 days from 4/21/2011 to examine the petition and make a determination as to its sufficiency, subject to a Court order extending the examination period. Our review process is a facial review that assumes the validity of the information provided. For details, please see the enclosed "Determination of Sufficiency of Recall Petitions".

Please Note: As the officeholder, you may file a written challenge with the G.A.B. specifying any alleged insufficiency of the petition within 10 days of 4/21/2011. If this falls on a holiday, the deadline will be the next business day. The petitioner will have 5 days after your challenge is filed to file a written rebuttal. As the challenger, within 2 days after the petitioner files a rebuttal, you may file a written reply to any new matter raised in the rebuttal.

If you have not already, please identify a point of contact, including mailing address, email address, and telephone number, so that we may be able to reach you in the future. If you have any questions, please feel free to call me at (608) 267-0951 or email me at David.Buerger@wisconsin.gov.

GOVERNMENT ACCOUNTABILITY BOARD

David Buerger
Elections Specialist

Enclosures



Wisconsin Government Accountability Board
Recall Petition Receipt

COPY

WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD
212 EAST WASHINGTON AVENUE, 3RD FLOOR
P.O. BOX 7984
MADISON, WI 53707-7984
(608) 261-2028

Recall Committee ID # 0600009

Committee to Recall Darling

(Recall Committee Name)

P.O. Box 1748

(address 1)

(address 2)

Madison, WI

(city)

WI

(state)

53701-1748

(zip)

Peter Larson

(contact)

recallalbertadarling@gmail.com

(email)

608-886-8439

(phone)

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Officeholder Information

Sen. Alberta Darling

(name of officeholder)

8th State Senate District

(district)

Recall Document Submission

Campaign Registration Statement (GAB-1) Filing Date: 3/2/11

Statement of Intent Filing Date: 3/2/11

Petition Filing Date: 4/21/11 Delivered by: Naomi Cobb

Approx. Number of Pages: 4,700 Approx. Number of Signatures: 30,000

Signatures

Recall Agent: X Naomi Cobb

Agency Staff: [Signature]

McLeod, Eric M (22257)

From: Falk, Shane - GAB [Shane.Falk@wisconsin.gov]
Sent: Friday, April 08, 2011 2:49 PM
To: McLeod, Eric M (22257)
Cc: Kennedy, Kevin - GAB; Robinson, Nathaniel E - GAB; Buerger, David - GAB; Haas, Michael R - GAB; Beilin, Lewis W - DOJ; Blythe, Christopher J - DOJ
Subject: Re: Confirmation 10 Day

Attorney McCleod:

This email confirms our telephone conversation early in the afternoon on Thursday, April 7, 2011.

Upon advice of our counsel, the Kapanke Recall challenges are due Monday at 4:30 p.m. rather than any previous date we communicated to you, as the civil procedure timing of Sec. 801.15, Wis. Stats., does not apply to recall matters under Sec. 9.10, Wis. Stats. The Sec. 990.001(4), Wis. Stats., provisions still apply, but that does not extend your deadline beyond Monday.

It is my understanding that you are currently working with our counsel to obtain relief from a Court regarding the statutory 10 day challenge deadline.

Thank you.

Shane W. Falk
Staff Counsel
Wisconsin Government Accountability Board
212 E. Washington Avenue, Third Floor
PO Box 7984
Madison, WI 53707-7984
Office: 266-8005
Direct: 266-2094
Shane.Falk@wisconsin.gov

