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STATE OF WISCONSIN
BEFORE THE GOVERNMENT ACCOUNTABILITY BOARD

IN RE PETITION TO
RECALL SENATOR ROBERT WIRCH
OF THE 22nd SENATE DISTRICT

SENATOR WIRCH'S REPLY IN SUPPORT OF HIS CHALLENGE TO THE PETITION

Senator Wirch, by his attorney Jeremy P. Levinson, hereby submits this reply in support of his challenge to the petition offered for filing against him.

Senator Wirch's challenge documented fatal defects and fraud that pervade and dominate the recall effort. These evidenced defects confirm that the petitions offered for filing do not reliably reflect the will of electors so as to trigger a recall election pursuant to Wisconsin law. "Substantial compliance requires that petitions be circulated in a manner that protects against fraud," and "[i]n the absence of a proper affidavit, the person filing a petition bears the burden of proving substantial compliance by other evidence." *In re Jensen*, 121 Wis.2d 467, 469-470, 360 N.W.2d 535 (Ct. App. 1984). The recall effort has not met this "substantial compliance" threshold.

The challenges fall into two broad categories: The first includes pervasive instances of fraud: fraudulent addresses, forgery, and misrepresentation. These documented instances of misconduct not only show the invalidity of a large universe of signatures and petition pages – they demonstrate as fact the decision by a number of individuals to deliberately fill pages with purported signatures in a manner that violates the law and fails to reflect the intent of electors.

The second category includes a large collection of defects that may well reflect fraud but, in all fairness, may instead reflect indifference and carelessness. While this second universe of defects may not reflect intentional decisions to skirt the law, they nonetheless render the affected signatures and pages invalid and prevent them from documenting the will of the electorate.

The rebuttal to these challenges pivots on the notion that a perpetually indignant tone and broad, unqualified, declarations of law and fact undermine concrete evidence and the GAB's authority and duty to administer the law. At best, these arguments reflect hypocrisy. In response to recall efforts against Republican Senators, the Committee's counsel argues that every single signature must be invalidated for a hypertechnical reason unrelated to any signature.[1] Here, counsel advances a contradictory and equally baseless (but rather startling) argument: even where pervasive or systemic fraud is shown, the GAB has no power to act unless a challenger impeaches each individual signature with evidence specific to it. This not only dramatically misapprehends the law, it demonstrates a complete indifference to the integrity of process.

The rebuttal follows several themes. First, despite the irrefutable evidence that the recall effort was fueled in substantial part by for-profit circulators, paid by the signature and recruited from across the nation, the rebuttal attempts to portray the recall effort as a homespun, "grassroots" phenomenon. Second, the rebuttal frequently misstates the evidence and even the

[1] Specifically, the Republicans' counsel argues that, in addition to recall committees' campaign registration statements (GAB-1), the individuals who execute the "statements of intent" appended to the committee's GAB-1 forms must file their ***own*** GAB-1 as individuals. Counsel argues that the failure to file redundant individual GAB-1 forms requires invalidation of all signatures. This argument is more than simply antithetical to the argument counsel makes in the instant rebuttal. Had it any merit, it would invalidate all Republican recall efforts because there were no second, individual GAB-1 registration forms filed for those.

content of specific petitions.[2] Third, the rebuttal both (i) attacks the GAB's ability to protect the electoral process and the public in the face of substantial fraud, misconduct, and nonfeasance; and (ii) makes a mockery of the carefully established legal requirements for valid signatures and petitions by denigrating them as trivial or purporting to "fix" substantial defects and fraudulent information with mischaracterization, invective, and generic "affidavits" devoid of any probative value.

The evidenced assertions of fraud, forgery, or misrepresentation were not made cavalierly, but were compelled by the evidence gathered through the efforts of hundreds of people. The rebuttal ignores the evidence and misstates the law to argue that the GAB is powerless to protect the integrity of this process absent a signature-by-signature showing.[3] In doing so, it misapprehends the nature of this aspect of the challenge. Where the evidence shows that circulators (or unidentified persons involved in the recall effort) have, in the face of known and clear legal duties, intentionally employed fraudulent and improper means to fill as many pages as quickly as possible, pages attributable to such individuals cannot be understood as reflecting the *bona fide* will of electors as required by law. This is a straightforward and well-evidenced factual contention.

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[2] In contrast to the high-handed approach of the recall committee, Senator Wirch acknowledges that, in a handful of instances, the rebuttal rehabilitates isolated signatures. These exceptions to the rule, however, come nowhere near changing the outcome mandated by the evidence and the law.

[3] To give credit where it is due even in small amounts, the rebuttal includes a footnote acknowledging that, in fact, the statutes providing for invalidating pages of signatures under certain circumstances. This, together with, § 9.10 (2)(q) (challenges not limited to those specified by statute), and the case law set forth in the memorandum supporting the challenge, confirm that the GAB has both the authority and duty to protect the public and the process from fraud and misconduct where it is shown to exist.

Overall, the rebuttal misapprehends the nature of this proceeding. The GAB is not merely refereeing a private dispute; its authority and duties go far beyond the recall committees and their targets. The public interest and the integrity of the unfolding process is paramount. To be sure, where sufficient electors have reliably expressed the desire for a recall election, one should be ordered. Likewise, where a recall effort is shown not to be a reliable reflection of the electors' intent because it is rife with invalid signatures and petitions and tainted by fraud, it is just as important that the representation of over one hundred thousand Wisconsinites not be thrown into question. Here, the necessary exclusion of specifically identified invalid signatures and pages, and those pages circulated by individuals shown to have used fraud, forgery, and misrepresentation, confirms that the recall committee has failed to meet the legal requirements for an election.

I. THE RECALL EFFORT IS SO RIDDLED WITH FRAUD AND RELATED MISCONDUCT THAT IT DOES NOT RELIABLY REFLECT THE WILL OF THE ELECTORATE AND SHOULD BE DEEMED INSUFFICIENT

In the strongest imaginable language, the rebuttal declares the exclusion of petitions circulated by individuals who intentionally used fraud, forgery, and misrepresentation to be "nonsense," "outrageous," and (somewhat confusingly) "at best intentionally misleading and at worst entirely frivolous." Regardless of how pervasive or systemic this misconduct is, the recall committee argues that the GAB has no authority to address it unless the recall target impeaches every implicated signature with "direct proof"[4] specific to each.

[4] As is well known among attorneys and judges, "direct" evidence does not mean "better" evidence. Circumstantial evidence can often be stronger than direct evidence. Where probative, both are valuable.

This line of argument misapprehends (i) the controlling statutes and cases; (ii) the GAB's authority and duty to serve the public's interest in ensuring the integrity of the process; and (iii) the probative and logical force of an evidenced intentional use of unlawful means to fill petition pages.

Contrary to the Committee's argument, § 9.10(2), Wis. Stats., does not limit challenges to those based only on evidence specific to individual signatures on a signature-by-signature basis. Rather, the statute sets forth grounds for striking individual signatures and then expressly provides that challenges are explicitly not limited to those enumerated categories. § 9.10(2)(q), Wis. Stats. The statute specifically requires a consideration of validity that goes beyond individual signatures, focusing (as the challenges do in part) on the qualifications and conduct of circulators. *See* § 9.10(2)(em), Wis. Stats. ("No signature on a petition sheet may be counted if: 1) The circulator fails to sign the certification of the circulator. 2) The circulator is not a qualified circulator."); § 9.10(2)(m), Wis. Stats. (permitting exclusion of signatures obtained by misrepresentation).

Petitions that do not satisfy the statutory formalities do not enjoy a presumption of validity. *See In re Jensen*, 121 Wis. 2d at 469-70. The present recall effort shows why: The statutory requirements ensure the circulation of petitions is done "in a manner that protects against fraud and that assures that signers know the content of the petition." *Id.* The rebuttal asserts repeatedly that signatures on recall petitions should be "counted whenever possible." This overstatement reflects the Committee's treatment of the statutory requirements as meaningless niceties that can be cast aside. More accurately, signatures should be counted when they and the petitions meet the statutory requirements providing some indicia of the integrity of

the process and where the indicia of integrity is not negated by evidence to the contrary. *See Beckstrom v. Kornsi*, 63 Wis. 2d 375, 387, 217 N.W.2d 283 (1974) ("noncompliance with a statutory provision intended to safeguard the operation of constitutional recall procedures is fatal to the validity of a recall petition") (internal citations omitted).

A. Contrary to the Rebuttal's Main Argument, the GAB has the Authority and the Duty to Deem a Recall Petition Insufficient when it is Shown to be Rife with Fraud and Related Misconduct

The memorandum in support of the challenge set out authorities from Wisconsin and across the country demonstrating that petition efforts found to be tainted by fraud and violations of the legally mandated process are deemed insufficient. Surprisingly, the rebuttal's core argument is that the GAB is powerless to protect the integrity of the process and the electorate even where widespread and pervasive fraud is shown. The rebuttal, which simply ignores the numerous authorities discussed in the challenge, is wrong.

It references *Stahovic v. Rajchel*, 122 Wis. 2d 370, 363 N.W.2d 243 (Ct. App. 1984) and a case cited in that opinion, *State ex rel. Baxter v. Beckley*, 192 Wis. 367, 212 N.W. 792 (1927). *Stahovic* holds that the discovery of a single signature that is merely invalid does not warrant disallowance of the entire page of signatures. 122 Wis. 2d at 380. *Baxter* does discuss signatures being separate and independent but does so in setting out reasoning as to why deficiencies with one signature cannot be filled in with inferences drawn from surrounding signatures. 192 Wis. at 371. *Stahovic* anticipated a much different circumstance than that which presents itself here. It specifically recognized the principle of each signature standing on its own would be inapplicable in the face 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 (emphasis supplied).

As discussed above, the statutes themselves require consideration of validity of each signature. And the reality that fraud, intentional violation of the legal requirements, and related misconduct can so poison each signature contained on a petition as to render the entire petition insufficient is not nearly as unfamiliar as the rebuttal suggests. A pattern of deliberate misconduct raises an inference about the propriety of the actor's related conduct. The logic and probity of this is embodied in the universal and age-old *falsus in uno* doctrine which specifically instructs fact-finders that one deliberate falsehood may justify finding other statements by the same speaker to be false.

Here, the factual link is far more direct. The evidence shows a defective, pervasively tainted process and it exposes many examples of the invalid signatures and pages of that process. This impeaches signatures and pages simultaneously produced by the same process. The undisputed evidence shows many hundreds of false statements made under explicit threat of criminal prosecution. Obviously, given the volume of signatures, not every single one could be subjected to searching investigation. The Committee's insistence that the GAB is obligated to accept signatures gathered through the same tainted process - and commingled with hundreds of intentional false statements and thousands of improper signatures - conflicts with the law, the evidence and the inferences drawn from it, and the most basic purpose of the recall process and the GAB's duties concerning it.

As best it can be known, Wisconsin has never seen an election-related process proven to be so tainted by systemic fraud and deliberate non-compliance. But the challenge lays out the

precedents for protecting the integrity of the process and the public in the face of such evidence. One is stunning in its similarity, *Montanans for Justice v. State*, 146 P. 3d 759, 777 (Mont. 2006). There, as here, a petition effort was fueled in large part by paid, out-of-state circulators and gave rise to "a pervasive and general pattern and practice of fraud and procedural noncompliance." *Id.* In invalidating the petition, the Court recognized that some otherwise valid signatures would be among those invalidated. It held that invalidation of the tainted process was necessary "if the initiative process is to remain viable and retain its integrity." *Id.* at 778.

This is no less true here. And given the threshold needed to trigger recall elections, the pattern of misconduct makes it impossible to conclude that enough electors have actually expressed the desire for a recall to permit an election to take place. The reliability of the recall process rests on compliance with the statutory requirements and formalities. As discussed above, where these requirements and formalities are not met, a petition is disentitled to any presumption of reliability. Because those requirements and formalities fell victim to a pattern of intentional and fraudulent conduct, as well as to massive indifference and carelessness, the petition should be deemed insufficient.

B. The Evidence Confirms that Numerous Out-of-State, Paid Circulators Certified Fraudulent Residences

As established by Senator Wirch's challenge, numerous circulators, typically out-of-state circulators paid per-signature, certified fraudulent residences throughout their efforts. *SEe also* Exs. 64-67.[5] The Committee's rebuttal confirms some of these and leaves the evidence of fraud uncontradicted with respect to others. The signatures submitted by these circulators must be

[5] The exhibits to Senator Wirch's Reply are numbered in continuation from those exhibits submitted with his challenge. Exhibits 64 through 67 contain additional affidavits supporting allegations raised by Senator Wirch's challenge.

discounted: "[n]o signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper." GAB 2.05(15) Wis. Admin. Code. The evidence shows that numerous circulators did not merely leave their residency impossible to determine. They engaged in consistent and deliberate fraud by certifying false information. Like so many other instances of fraud raised by the challenge, this false information so pervades the recall effort that it cannot be said to represent the will of the electorate and the entire petition should be deemed insufficient. *See Huskey v. Municipal Officers Electoral Bd. for Village of Oak Lawn,* 156 Ill. App. 3d 201, 205, 509 N.E.2d 555, 557 (Ill. App. 1987) ("The circulator's affidavit is one of the primary safeguards against fraudulent nomination petitions"); *Citizens Committee to Recall Rizzo v. Board of Elections*, 367 A.2d 232, 241 (Pa. 1976) (citation omitted) ("This Court will take a strict approach when the probity of the process is involved. Any falsity in an affidavit [of a circulator] casts doubt on the accuracy of the entire affidavit and thus, the authenticity of the petition"). At an absolute minimum, all pages attributed to circulators who chose to use fraud, forgery, and misrepresentation to fill as many pages as quickly as possible must be excluded.

Richard Madrill

The challenge established beyond dispute that Madrill certified one residence (under threat of criminal prosecution) while providing a different residential address to Wisconsin law enforcement (also under threat of criminal prosecution) while in the state circulating petitions.

The rebuttal's sole attempt to address Madrill's decision to conceal his identity and real residence by using a fraudulent address is to misstate it, asserting that the challenge asserts that Madrill "may have identified difference residences in the past." This is an unvarnished

falsehood: **the challenge is precise in documenting that Madrill was certifying one address and law enforcement obtained a completely different one during the time Madrill was circulating petitions – literally.**[6] Exhibit 7 to the challenge is the police report, which makes clear that Madrill was literally in the act of circulating petitions when he was confronted by law enforcement and told he could not circulate petitions in a certain area. **He had in his hands petitions on which he would certify one address at the very moment he provided police with another.**

Madrill fraudulently certified every petition attributed to him, committing a crime and requiring exclusion of every page. The rebuttal's resort to misstatement to conceal this pattern of fraud does no more than help confirm that such tactics pervade this recall effort.

Jay Taylor

The challenge established beyond dispute that Jay Taylor consistently certified a false residence. On all of his petition pages, he certified what appeared to be a residence but was in fact a mail forwarding service, Mail Boxes Times which boasts that it "can send your mail to you anywhere" from its "Prestigious Beverly Hills Address." In knee-jerk opposition, the rebuttal reinvents that challenge as showing that Taylor does "not keep a home or apartment at all times."

The challenge was direct: Taylor consistently certified under penalty of criminal prosecution that he resided at an address that was in fact a business that provided mail forwarding services in a fashion that permits one to conceal his or her residence. Like the statute and the rule, the circulator's certification is precise:

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[6] It should be noted that the rebuttal offers no affidavit from Madrill, offering only selective affidavits from out-of-state circulators. No explanation is offered, creating the same inference that selectively missing evidence does in all legal proceedings, the inference that the missing evidence would undermine the position asserted.

Certification of Circulator

I, _____, certify:
(name of circulator)

I reside at _____.
(circulator's residence - include number, street, and municipality)

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 S. 12.13(3)(a), Wis. Stats.

_____ _____
(date) (signature of circulator)

Taylor consistently falsified the certification. The rebuttal effectively concedes as much but suggests that this pattern of fraud in connection with a critical and basic requirement of the recall procedure should be ignored. The law in Wisconsin and across the nation holds otherwise. Like Madrill, every petition attributed to Taylor is founded on fraud and should be excluded.

Richard Riscol

As with Taylor, the rebuttal suggests that someone who moves with some frequency is excused from the basic legal obligations of a circulator and is permitted to provide false information under penalty of criminal prosecution. Interestingly, the memorandum cites to a "Riscol Aff." but no such affidavit appears to have been submitted, indicating that what Riscol had to say would have undermined the rebuttal. Riscol consistently certified a false residence.

Like Madrill and Taylor, every petition attributed to Riscol is founded on fraud and should be excluded.

Jonathan Megie

With Megie, the rebuttal takes the notion of moving frequently to a new level. 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. Last year, when working with Kennedy Enterprises in on a Colorado petition drive, Megie "resided"

at 3612 W. Colorado Ave., Colorado Springs, Colorado – a motel. *Id.* Megie has used 10-15 addresses, often simultaneously, in recent years and currently a number of these are associated with him.

Throughout February, 2011 Megie represented himself in Florida state court using the address 523 E. Tennessee St., Tallahassee, Florida. *See* Ex. 68 (*Leon County Case* No. 2004DR3884, filing and docket). Megie submitted a rebuttal affidavit in which he claims that he resided at the address he certified (in Miami, Florida located in Miami-Dade County) in February, March, and April 2011, and that he currently resides there. This affidavit was executed in Leon County – in which Tallahassee is found.

Though the rebuttal does not explain, it can only be understood as arguing that (i) Megie once resided at the address he certified (the business address of his now defunct LLC); (ii) moved many times, residing in Colorado last year while working for Kennedy Enterprises and in Tallahassee until he traveled to Wisconsin; and (iii) at the same time he arrived in Wisconsin to collect signatures for pay he somehow abandoned the Tallahassee residence he gave the Leon County court and *returned to the address of his defunct business* taking up residence there once again – all while traveling to and collecting signatures in Wisconsin.[7]

On its face, this self-serving, unexplained story is beyond credulity and it certainly cannot wipe out the objective evidence of Megie residing at addresses difference than that which he certified. On top of everything else, the Tax Assessor for Dade, Florida confirms that the

[7] In the Megie affidavit submitted to rebut the challenges, he testifies that he began circulating petitions in Wisconsin in February. He was present at a hearing in Leon County Circuit Court on February 17, 2011. The docket for Leon County Case No. 2004DR3884 is available at http://cvweb.clerk.leon.fl.us/index.asp.

property located at 2125 NW 124th Street in Miami is a single family home owned by an elderly woman, Elsa Becker, who bought it approximately 30 years ago and who lives there. *See* Ex. 69.

While Megie's fraud contains a more complex story web of unexplained and false information, this does not change the fact Megie consistently certified a fraudulent address. Like Madrill, Taylor, and Riscol, every petition attributed to Megie is founded on fraud and should be excluded.

Richard Louis Salway

Richard Salway's affidavit (executed in Washington) sets forth the self-serving story that he lived at 23A Johnson Road in Latham, New York when he arrived in Wisconsin. While here collecting signatures, his residence changed without his involvement such that before he left Wisconsin, he resided in Houston, Texas. He states that this occurred in "early April" of 2011. This tale is too convenient and self-serving, inexplicable, and devoid of detail that it cannot be credited.

But there is more. First, his certifications did not simply change from Latham to Houston on a particular day in "early April." He executed certifications alternately using both addresses between April 16 and April 18. On April 18, Salway actually used both addresses. This shows someone claiming residency and knowing it does not matter because the addresses are false.

Finally, the public record confirms the lie. Salway's current New York address is 144 Dunsbach Road, Clifton Park, New York, where he has lived since 2009. *See* Ex. 70. The same record shows that 23A Johnson Road, Latham, New York was his address a number of years earlier. *Id.* Salway certified two different residences simultaneously, in a manner that discredits

his affidavit, and the public record shows they are both fraudulent. Like Madrill, Taylor, Riscol, and Megie, every petition attributed to Megie is founded on fraud and should be excluded.

Jacqueline Morales

The challenge showed that Jacqueline Morales claimed residency in Colorado while working for Kennedy Enterprises using a false residential address that turned out to be a hotel. Though the absence of an affidavit from her is conspicuous and telling, the rebuttal memorandum hypothesizes that maybe she recently moved. Actual evidence to this effect that explained the different addresses (and her willingness to use a false one in the Colorado petition drive) might have raised an issue. But the rebuttal offers no evidence whatsoever. The challenge is totally unrebutted and rebuttal's selective use of affidavits from out-of-state circulators raises the standard "missing evidence" inference.

Michael Alexander

Alexander certified that his residence is 56 Murdock St., Brighton, Massachusetts. Public records show that he resides at 22 N. Kirk, St., North Falmouth, Massachusetts and that his automobile is registered to that address. *See* Ex. 71. Like the others, the petitions attributed to Alexander rests on a fraudulent certification and should be excluded.

C. Petitions Attributed to "Mark Vigil" were Circulated by Rubin S. Avila

The challenge demonstrated that numerous pages circulated by Rubin S. Avila were fraudulently certified by Mark Vigil. Again, the rebuttal refrained from countering the challenge's evidence. Instead, the memorandum merely hypothesizes that Mark Vigil used Rubin as a "nickname" which is to say that he misrepresented his identity. This hypothesis

ignores that Rubin S. Avila exists and that he stayed with the Kennedy Enterprises band of circulators at a motel in Green Bay. It may be that Mark Vigil does not exist, but that would not salvage the fraudulent certifications.

A group of paid, out-of-state circulators stayed at the Roadstar Inn in Green Bay, Wisconsin during their stay in Wisconsin. The petition offered for filing did not include the pages circulated by at least two, Ken Williams of Texas and Brent Harrell of Colorado. While in Wisconsin, Harrell was arrested for stealing a backpack at Lambeau Field. The Police Report, Ex. 4, confirms that he was an out of state circulator staying at the Roadstar, that he is a felon on probation (and thus legally prohibited from circulating), and that Williams was a circulator staying with him at the Roadstar.[8] The police retrieved some of the stolen property from Williams' room.

Williams turns up again in another police report generated when officers had to calm an alcohol-fueled verbal altercation at the Roadstar Inn. Ex. 61 at 6. The other participant in the altercation in Williams' room was none other than Rubin S. Avila of Colorado. Far from the "nickname" the rebuttal theorizes about, Rubin was a human being, one of a number of circulators from Colorado working out of the Roadstar Inn. And the evidence laid out in the challenge shows that petitions Rubin circulated were fraudulently certified by "Mark Vigil," if he exists. The Committee opted to forego an affidavit from Vigil leaving that part a mystery. But the fraudulent nature of the petitions bearing his name circulator does not. They are all invalid.

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[8] Witnesses confirm that Williams was a circulator. Exs. 72-73. After this ugly incident, Harrell and Williams appear to have left Wisconsin. And for obvious reasons, none of their petition pages were included in those offered for filing.

D. Contrary to the Committee's Request that the GAB Ignore the Telephone Survey Evidence, the GAB Should Consider All Evidence Helpful to an Accurate Determination

The Committee makes a one paragraph argument that the challenge's telephone survey evidence should be ignored. This argument does not claim much explain that the evidence is not probative or otherwise helpful in the search for the truth and the most accurate outcome possible. Rather, the Committee asserts it should be ignored based solely on its misguided notion that only evidence specific to individual signatures may be considered. As discussed, that argument is baseless and so too is the plea to ignore evidence. The GAB is entitled to consider any evidence that aids its inquiry and determination.

E. In Explaining that Sets of Signatures with Identical Names and Addresses, Identified by the Challenge as Duplicates, Were Written by Different People, the Rebuttal Establishes that another Large Set of Signatures and Pages are Fraudulent

As discussed below, the Committee's response to the large number of duplicate names and addresses that appear in the pages offered for filing is astonishing. The rebuttal argues that these are not "duplicates" because many sets of identical names and addresses appear in totally different hand-writing. That is, the Committee demonstrates that these duplicates are, in fact, forgeries. They are invalid and they render the certification on each page on which they appear false, invalidating each page.

F. Apart from the Rebuttal's Other Shortcomings, it Concedes Many Hundreds of Instances of Fraud and Impropriety

The vast majority of the Rebuttal's attacks on the challenges fail. As important, it concedes an enormous number of instances of fraud and impropriety. A few examples:

- Apart from asking GAB to ignore the telephone survey evidence, the Committee offers no **factual** response to the many hundreds of instance of fraud document by that evidence and by affidavits and witnessed statements. Just one the out-of-state circulators attributed to the largest number of pages, Sherri Farrell, is the subject of hundreds of instances of fraud alone.

- Other than to deny the circulator wrote the name of the deceased William Pocan on a petition he circulated, no explanation is given, confirming not only the forgery but also calling the circulator into question. The circulator certified that he personally obtained all signatures and knew the individuals signing.

- The rebuttal ignores the hundreds of cases in which multiple persons' handwriting appears in circulator certifications.

- The rebuttal concedes that a woman circulated petitions fraudulently certified by Christopher Baxter.

- And generally, they offer no **factual** defense to or explanation of either the consistent pattern of fraud determined by the telephone survey data and the catalogue of affidavits and witnessed statements.

These are merely examples. In the end, the rebuttal offers unsupportable legal arguments on connection with limited aspects of the challenge and a modest collection of data that overwhelmingly fails to turn back the challenge. The rebuttal focuses on what the Committee contends GAB is permitted to consider as evidence and what it argues is GAB's powerlessness to carry-out its institutional mission. Conspicuous in its absence, the rebuttal makes no attempt whatsoever to demonstrate on a **factual** level that the recall effort was free of the pervasive and widespread fraud and impropriety the evidence establishes.

II. THE REBUTTAL'S ATTEMPT TO REHABILITATE INDIVIDUAL SIGNATURES AND PAGES LARGELY FAILS

The Committee's efforts at rehabilitation fail in overwhelming part because they are based on conclusory "affidavits," not from witnesses but from the Committee organizer, and because the rebuttal gets most of the facts wrong. Section 9.10(2)(r), Wis. Stats., permits the use of "affidavits or other proof correcting" certain "insufficiencies." GAB §2.05(4), Wis. Admin. Code., specifies that such affidavits must come from the relevant signor or circulator and that they must be based upon personal knowledge.

While in some instances the Committee seeks to supply missing information, in others it seeks to alter false information. The former can be "rehabilitation," the latter is something far different. False information is not an "insufficiency." As discussed throughout, if the process means anything, the falsity of the information cannot be wiped away with the stroke of a pen and is, itself, further evidence that the recall process was defective throughout.

In overwhelming part, the rebuttal's effort at rehabilitation rests on the "affidavit" of Erin Decker, the Committee organizer and the affidavit of John Hogan, Director of the Committee to Elect a Republican Senate. The former affidavit is incapable of serving as meaningful rehabilitation. In essence, it merely indicates Decker's willingness to sign a document that declares certain deficiencies remedied. If this is all it were to take to overcome otherwise disqualifying defects, the statutory requirements would have little meaning.

For its part, the Hogan affidavit is largely inaccurate. All in all, the rebuttal falls short in its attempt to salvage a recall doomed by both fraud and indifference. As a whole the rebuttal ignores critical legal requirements.

A. The Rebuttal's Focus on "Post Offices" and Mailing Addresses Acknowledges a Large Universe of Fatal Defects

Electors who sign petitions are required to provide their **residential** addresses. Circulators are required to certify their own **residential** addresses – under penalty of criminal prosecution. *See* § 6.10, Wis. Stats., (setting the legal standard for a "residence"); § 9.10, Wis. Stats., (permits counting a signature only if the signor provides an address showing that the standard is met) and § 8.40, Wis. Stats. (requiring certification of residential address by circulators). There is a straightforward and critical reason for this: it is residence that determines qualification as an elector and only an accurate residential address permits verification of eligibility to sign and to circulate. The provision of mailing addresses contradicts statute, rule, and the recall petition form itself and they do not serve the same substantive purpose of residential addresses in this context. The Committee's insistence that purported mailing addresses suffice ignores the letter and the substance of the law, a requirement consistently repeated on the form petitions and elsewhere.

The Committee's argument that residential addresses were incorrectly challenged residential addresses fails on the basis that the Committee's own witness failed to demonstrate that many of these addresses were valid or within the district. *See* Ex. 74, Pfohl Affidavit, ¶¶ 6-8.

Senator Wirch's Challenge established that a number of petitions were invalid due to improper circulator certifications, because circulators had failed to provide a full residential address or provided multiple, conflicting information. § 9.10(2)(em), Wis. Stats.; GAB Rule 2.05(14) (signatures may not be counted when the residency of the circulator cannot be determined by the information given on the petition). The Committee attempts to correct these

invalid certifications through the affidavit of Erin Decker, Treasurer of the Committee. *See* Decker Aff., Exs. B, C. However, Decker provides no information in Exhibit B, thus the Committee has failed to correct any circulator addresses which were missing municipality information.

Decker then attempts to rehabilitate the certifications of circulators that contain multiple municipalities by attesting that those municipalities are correct. Decker Aff., Ex. C. Decker attests that she is "familiar with the municipalities listed in the 'Municipality' column of Exhibit C and knows that residents of those municipalities utilize cities and zip codes in their mailing addresses." *Id.* at ¶ 9. This familiarity is irrelevant as it provides nothing to support correction of municipality of residence, as required by the law. Additionally, Decker's contention that she is "familiar with" the approximately 70 circulators and 111 petition pages containing invalid certifications, Decker Aff., Ex. C, such that she possesses personal knowledge to attest to their correct the addresses is incredible. For example, despite her professed "familiarity" with individual circulators, by her own testimony, Decker does not even know the names of some of the very individuals for whom she attempts to provide correcting information. *Id.* at 4 (referring to a circulator as "Cesarini(?), Daniel").

Further, cases of certifications containing multiple municipalities in the address of the circulator (frequently in multiple types of handwriting) illustrate the problems with the lack of personal knowledge of circulator residences on the part of the Committee. In some instances, one of the two municipalities listed is incorrect and it is unclear whether the circulator or a third party added the incorrect municipality. *See* Ex. 74, Pfohl Aff., ¶¶ 7-8. The Challenge identified many incorrect signature dates addresses, and municipalities which had been crossed out and

"corrected." With multiple handwritings corresponding with a single signature and/or circulator entry, it is impossible to know whether the date was crossed out and corrected by the signer, the circulator, or a third party - and if not the original signer or circulator, no proof that such a party had sufficient personal knowledge to make a correction. Indeed, based on the affidavits of Hogan and Decker, it seems that most corrections were made from Committee headquarters without ever having met the signer or circulator. Such corrections fail to meet the standard of GAB Rule 2.05, and therefore cannot save previously invalid signatures or circulator certifications.

B. The Committee's Attempts to Replace Invalid Dates with Valid Ones Without Personal Knowledge Must Fail

As discussed above, the Committee can neither rebut nor rehabilitate false and erroneous information provided on recall petitions - and that is all that the arguments made in attempts to salvage numerous invalid dates amounts to. First, the Committee argues that dates are valid where they are denoted by "ditto marks." (*See* Hogan Aff., Exs. A, B.) Wisconsin law requires an "actual complete date (month, day and year)" appear "for each and every signature on recall petition sheets." GAB Memorandum "Meaning of 'Offer to File' Recall Petition; Complete Dates Required for Each Individual Recall Petition Signature" dated March 11, 2011; § 9.10(2)(e)1, Wis. Stats. Further, a number of dates were challenged because a bad date had been crossed out or altered to become a valid date. It is clear that an invalid signature date may not be altered to change the validity of the signature. § 9.10(2)(k), Wis. Stats. Thus, signatures containing an invalid date that has been crossed off and replaced with a valid date may not be counted. *Id.*

C. In Its Attempts to Dismiss Evidence of Duplicate Signatures the Rebuttal Provides Evidence of Numerous Forgeries

The Committee argues that signatures identified as duplicates by Senator Wirch should be counted as valid because they appear as "different handwriting/signature." *See* Hogan Aff., Ex. A. The Committee provides no basis for its incredible assertion that signatures containing identical names and residential addresses are "clearly not duplicates," Hogan Aff. at ¶ 4(a), simply because they are written in different handwriting. Not only has the Committee failed to rebut Senator Wirch's challenge to these signatures on the basis that they are duplicates, it actually raises evidence of another more serious basis to find these signatures invalid - that where signatures appear multiple times in clearly different handwriting, at least one of the signatures is most likely a forgery.

The Committee's own evidence establishes approximately two dozen instances of such likely forgeries statewide. *See* Hogan Aff., Ex. A; Ex. 74, Pfohl Aff., ¶ 4. Notably, many of these instances occur on petition pages certified by out-of-state circulators, *id.*, who's conduct in circulating and certifying petitions has already been called into question throughout Senator Wirch's Challenge and Reply. Further, this discovery illustrates the necessity for an even closer look at all of the duplicate signatures identified - over 300 of which belong to out-of-state circulator's statewide. *Id.* The evidence provided by the Committee provides additional support for Senator Wirch's argument that GAB should closely scrutinize ***all*** pages submitted by such circulators for patterns of fraud.

Respectfully submitted this 16th day of May, 2011.

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