

State of Wisconsin\Government Accountability Board

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JUDGE WILLIAM EICH
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue, Third Floor

Madison, Wisconsin

March 23, 2010 - 9:30 a.m.

March 24, 2010 - 9:00 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
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Present: Judge William Eich, Judge Gordon Myse, Judge Thomas Barland, Judge Thomas Cane, Judge Gerald Nichol, Judge Michael Brennan.

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Shane Falk, Michael Haas, Barbara Hansen, Sharrie Hauge, Tommy Winkler, and Reid Magney

A. Call to Order

Chairperson Eich called the meeting to order at 9:30 a.m.

B. Director's Report of Appropriate Meeting Notice

G.A.B. Director Kevin Kennedy informed the Board that proper notice was given for the meeting.

C. Approval of Minutes of Previous Meeting

MOTION: Approve the minutes of the January 14, 2010 meeting of the Government Accountability Board. Moved by Judge Barland, seconded by Judge Cane. Motion carried unanimously.

D. University of Wisconsin Department of Political Science Presentation on Evaluation of Wisconsin Election Data Collection Grant

Elections Division Administrator Nat Robinson introduced University of Wisconsin Department of Political Science Professors Barry Burden, David Cannon and Ken

Mayer and graduate student Stephane Lavertu, who presented the 2008 Wisconsin Election Data Collection System's Program Evaluation Report to the Board.

The report describes the G.A.B.'s successful use of a \$2 million U.S. Election Administration grant to develop the Wisconsin Election Data Collection System. By spending less than budgeted, the G.A.B. was able to leverage grant funds to accomplish other tasks related to election data collection and clerk training.

Discussion by Board members, staff and the report's authors.

By consensus, the Board accepted the report with gratitude.

E. Public Comment

1. **Attorney Mike B. Wittenwyler** of Madison, representing Godfrey & Kahn S.C., commended the Board staff on its recommendations regarding the U.S. Supreme Court decision in the *Citizens United* case. He questioned the Board's need to proceed with the administrative rule defining the scope of regulated activity, GAB 1.28 (Issue Ad Regulation).
2. **Mike McCabe** of Madison, representing the Wisconsin Democracy Campaign, said the Board staff has developed a sensible response to the *Citizens United* case decision, and urged the Board to proceed with GAB 1.28.
3. **Ardis Cerny** of Pewaukee addressed concerns about early voting and voter identity theft. She urged the Board to allow registered voters to request that their local clerk require them to show a photo ID.
4. **Mary Ann Hanson** of Brookfield discussed her concerns about Retro HAVA checks and the fact that 70,000 voters continue to be non-matches. She suggested that local clerks need to do Retro HAVA checks.
5. **Ginny Graham** of Waukesha commented that she is getting resistance to her efforts to get municipal clerks to select poll workers from lists provided by the political parties, as required by law.
6. **Annette Kuglich** of Waukesha commented on the need for fair election administration. She said she found disturbing similarities between the Board's five-year election administration plan and the agendas of progressive organizations.
7. **Diane Hermann-Brown** of Sun Prairie appeared on behalf of the City of Sun Prairie to urge the Board members to visit polling places during the Spring Election. She said clerks appreciated the G.A.B.'s extended hours leading up to the elections

F. Report on Impact of Citizens United v. Federal Election Commission

(Presented by Jonathan Becker and Shane Falk)

Jonathan Becker and Shane Falk made a presentation to the Board about the impact of the U.S. Supreme Court decision in *Citizens United v. Federal Election Commission*, which struck down the federal ban on corporate independent expenditures.

Board staff proposed several motions to bring Wisconsin into compliance with the decision, which provide for as much disclosure and transparency as possible within the agency's statutory authority.

Discussion.

MOTION: Adopt a policy statement providing that the Government Accountability Board will not enforce the §11.38(1)(a)1., Wis. Stats., prohibition on corporate independent expenditures (disbursements) for political purposes. This policy statement shall be made widely public and distributed to all District Attorneys, in coordination and cooperation with the Wisconsin Department of Justice.

MOTION: Staff is directed to request an Advisory Opinion from the Wisconsin Attorney General regarding the impact of *Citizens United* as to enforcement of ch. 11, Wis. Stats., specifically §11.38(1)(a)1., Wis. Stats.

MOTION: Adopt staff's interim policy regarding registration, disclosure and disclaimer procedures for a corporation, or association organized under ch. 185 or 193, Wis. Stats., wishing to make independent expenditures (disbursements) for a political purpose in Wisconsin as set out at pages 10 and 11 of the March 23, 2010 G.A.B. Meeting materials.

MOTION: Staff shall prepare, for consideration at May 2010 Board meeting, proposed emergency and permanent rules codifying a policy regarding registration, disclosure and disclaimer procedures for a corporation, or association organized under ch. 185 or 193, Wis. Stats., wishing to make independent expenditures (disbursements) for a political purpose in Wisconsin.

MOTION: Staff shall continue working with the Legislature to develop legislation to address the implications of *Citizens United*.

All motions moved by Judge Cane, seconded by Judge Barland. Motions carried unanimously.

G. Administrative Rules

1. Status Report on Administrative Rule Defining Scope of Regulated Activity, GAB 1.28 (Issue Ad Regulation)

Shane Falk made a presentation regarding changes to GAB 1.28, which expands the definition of a political purpose as permitted by the *WRTLII* decision. He noted that the *Citizens United* decision does not change the need to adopt the rule, only that spending by corporations is now included.

Discussion.

MOTION: Approve revisions to GAB 1.28 in the rule analysis section and reaffirm the text of the rule. Pursuant to §227.19(4)(b)3m., staff shall resubmit GAB 1.28 to the Legislature with the amended rule analysis. Staff shall continue all other steps necessary to complete promulgation of GAB 1.28. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

Chairman Eich called a lunch recess at 12:13 p.m.

The Board reconvened at 12:45 p.m.

4. Proposed GAB 1.90 – Regulation of Nonprofit Corporations Organized Solely for Political Activity (MCFL Corporations)

Shane Falk presented motions to the Board to regulate nonprofit corporations organized solely for political activity.

Discussion. Judge Barland suggested a more descriptive name than MCFL Corporations. Jonathan Becker suggested “non-business corporation.”

MOTION: Pursuant to §§5.05(1)(f), 227.11(2)(a), 227.14(4m), 227.15(1), and 227.16-17, Wis. Stats., the Board formally approves the attached Notice of Proposed Order Adopting Rule, Notice of Submittal to Legislative Council Clearinghouse, and Notice of Hearing for the creation of ch. GAB §1.90, Wis. Adm. Code, and directs staff to proceed with promulgation of the rules.

MOTION: Staff shall take all other steps necessary to complete promulgation of the rules creating ch. GAB §1.90, Wis. Adm. Code.

MOTION: Staff shall revise Form GAB-1, as necessary, to include MCFL corporations as an option for registration.

MOTION: Formally withdraw the four informal MCFL opinions upon publication and official effective date of ch. GAB §1.90.

All motions moved by Judge Nichol, seconded by Judge Cane. Motions carried unanimously.

3. Status Report on Pending Administrative Rules

A written report was included in the Board materials.

H. Review of Approval of Engineering Changes to Approved Electronic Voting Systems

Shane Falk made a presentation to the Board regarding problems with voting systems approved in the past that are now subject to upgrades. Because of parts supply issues, voting equipment manufacturers often need to use slightly different components when they make repairs. In addition, due to the nature of these electronic voting systems, periodic and ongoing hardware, firmware, and software upgrades are likely to occur.

The issue is whether each of these minor engineering changes requires approval by the Board.

Discussion.

MOTION: Approve interim policy for application and approval of voting systems modifications to systems previously approved for use in Wisconsin as set out at pages 68 and 69 of the March 23, 2010 G.A.B. Meeting materials.

MOTION: Pursuant to §5.05(1)(e), Wis. Stats., and his role as agency head and chief state election official, the Government Accountability Board delegates authority to its Director and General Counsel to accept, review, and exercise discretion to approve applications for voting systems modifications to systems previously approved for use in Wisconsin. The Director and General Counsel shall consult with the Board Chair to determine whether Board members should be polled or a special meeting conducted before action is taken. The Director and General Counsel shall also report, at the Board meeting immediately following action on this delegated authority, the specifics for the action taken, the basis for taking the action, and the outcome of that action.

MOTION: Staff shall prepare, for consideration at a future Board meeting, proposed administrative rules codifying a policy for application and approval of voting systems modifications to systems previously approved in Wisconsin.

All motions moved by Judge Cane, seconded by Judge Nichol. Motions carried unanimously.

I. Legislation

1. Summary of Recent Legislative Activity

Kevin Kennedy provided an update on recent legislative activity, including the omnibus election bill, which includes many technical changes requested by the Board, and the online voter registration bill, neither of which have been introduced yet. The Board also discussed two bills introduced in response to the *Citizens United* decision.

2. Legislative Status Report

The Legislative Status Report was included in the Board materials.

J. Staff Report on Retroactive HAVA Checks

Nat Robinson introduced Sarah Whitt, SVRS IT Functional Lead, who presented a report on retroactive HAVA checks run on voters who registered between January 1, 2006, and August 5, 2008. As required by law, Board staff compared voter records in the Statewide Voter Registration System with records from the Wisconsin Department of Transportation or the Social Security Administration. Of the 777,561 records checked, 89.4 percent showed a match. Voter registration data for more than 70,000 additional voters was updated. Approximately 70,000 non-matches remain. The Board and staff discussed reasons for the non-matches and strategies for recontacting non-matches.

K. Director's Report

Judge Eich, reflecting on the upcoming end of his term on the Board, thanked the staff for their service, noting that during his career, he has never encountered a staff that is so uniformly accomplished.

Division Administrator Nat Robinson presented the Elections Division report. He asked the Board for approval to apply for the next round of HAVA funding from the federal government.

MOTION: That the Board authorize staff to apply for \$1,285,090 dollars in Federal Fiscal Year (FFY) 2010 Requirements Payments. Moved by Judge Myse, second by Judge Brennan. Motion carried unanimously.

Division Administrator Jonathan Becker presented the Ethics and Accountability Division Report. He reported on the Campaign Finance Information System: that it experienced fewer problems during the filing of the January 2010 Continuing reports; however, staff is concerned about the scalability of CFIS. The Division of Enterprise Technology has evaluated the system and identified a number of ways it can be improved. Staff believes that DET can build a replacement system for a reasonable cost.

Office of the Director and General Counsel

Chief Administrative Officer Sharrie Hauge updated the Board on the ongoing performance audit of federal HAVA funds by the U.S. Election Assistance Commission, as well as recent developments with the Contract Sunshine program.

L. Closed Session

Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation.

MOTION: Move to closed session pursuant to §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation and consider performance evaluation data of a public employee of the Board. Moved by Judge Myse, seconded by Judge Nichol.

Roll call vote: Brennan:	Aye	Cane:	Aye
Eich:	Aye	Barland:	Aye
Myse:	Aye	Nichol:	Aye

Motion carried.

Hearing no objection, the Chairman called a recess at 2:45 p.m. The Board reconvened in closed session beginning at 3 p.m. and recessed for the day at 4:20 p.m.

On Wednesday, March 24, 2010, the Board reconvened in closed session at 9 a.m. until 10:55 a.m., when the Chairman called a recess. The Board reconvened in open session at 11:08 a.m.

M. Dialogue with Representative Jeff Smith

Representative Jeff Smith, Chairman of the Assembly Committee on Elections, met with the Board to discuss the Wisconsin Voter Protection Act, SB 640 and AB 895. He said the Act implements the federal Military and Overseas Voter Empowerment Act, modernizes voter registration procedures by merging information from the Department of Transportation with the statewide voter list, improves the absentee voting process, and protects voters from intimidation and deceptive practices on Election Day.

Discussion. Representative Smith said he and Senator Coggs have strong support from the Assembly and Senate leadership on the bills.

The Board returned to closed session at 11:28 a.m.

Summary of Significant Actions Taken in Closed Session:

- A. Litigation: Two pending matters considered.
- B. Investigations: Four pending matters considered and six matters closed.
- C. Requests for Advice: One pending matter considered and one matter closed.
- D. Enforcement Actions: Two matters closed.

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The next meeting of the Government Accountability Board is scheduled for 9:30 a.m. Monday, May 10, 2010 at the G.A.B. offices, 212 East Washington Avenue, Madison, Wisconsin.

March 23 and 24, 2010 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

April 19, 2010

March 23 and 24, 2010 Government Accountability Board meeting minutes certified by:

Judge Thomas Barland, Board Secretary

May 10, 2010