

Meeting of the Board
 Friday, March 30, 2012
 9:00 A.M.

Agenda
 Open Session

Room 412 East, State Capitol
 Madison, Wisconsin

Friday, March 30, 2012

9:00 A.M.

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A.	Call to Order	
B.	Director’s Report of Appropriate Meeting Notice	
C.	Personal Appearances from Members of the Public (Appearances will be limited to Comments on Recall Procedure)	
D.	Staff Reports on Recall Procedures	
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I.	Closed Session	
5.05 (6a) and 19.85 (1) (h)	The Board’s deliberations on requests for advice under the ethics code, lobbying law, and campaign finance law shall be in closed session.	
19.85 (1) (g)	The Board may confer with legal counsel concerning litigation strategy.	
19.851	The Board’s deliberations concerning investigations of any violation of the ethics code, lobbying law, and campaign finance law shall be in closed session.	
19.85 (1) (c)	The Board may consider performance evaluation data of a public employee over which it exercises responsibility.	

The Government Accountability Board has scheduled its next meeting for Tuesday, May 15, 2012 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:00 a.m.

The Government Accountability Board may conduct a roll call vote, a voice vote, or otherwise decide to approve, reject, or modify any item on this agenda.

State of Wisconsin \ Government Accountability Board

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JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of March 30, 2012

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

Prepared and Presented by:

Michael Haas, Staff Counsel

SUBJECT: Summary of Meeting Action Items

Because the Board is receiving its materials for review one day in advance of the meeting, and due to high public interest in the conclusion of the recall petition review process, this memorandum summarizes the actions the Board will be asked to take at its March 30, 2012 meeting:

1. Based upon its findings of March 12, 2012, formally certify the recall elections in four State Senate Districts, which will result in elections being scheduled on May 8, 2012. If more than one candidate in any political party qualifies for the ballot, a recall primary election will be held in that district and the recall election will be held on June 5, 2012. A list of Senate officeholders and districts affected is attached.
2. As reflected on the attachment, determine that the recall petition submitted on January 17, 2012, against Governor Scott Walker contains a sufficient number of valid signatures and certify the sufficiency of the petition, which will result in a recall election based upon the same May 8th and June 5th schedule.
3. As reflected on the attachment, determine that the recall petition submitted on January 17, 2012, against Lieutenant Governor Rebecca Kleefisch contains a sufficient number of valid signatures and certify the sufficiency of the petition, which will result in a recall election based upon the same May 8th and June 5th schedule.
4. Determine whether the searchable database created by the Board during the recall petition review process should be posted on the Board's website for public access.

Summary of Recall Petition Review and Recommended Board Action

<u>Office</u>	<u>Incumbent</u>	<u>Valid Signatures Required</u>	<u>Valid Signatures Certified</u>
Senate District 13	Scott Fitzgerald	16,742	At least 18,282*
Senate District 21	Van Wanggaard	15,353	At least 19,142*
Senate District 23	Terry Moulton	14,958	At least 18,657*
Senate District 29	Pam Galloway	15,647	At least 18,511*
Governor	Scott Walker	540,208	900,938
Lieutenant Governor	Rebecca Kleefisch	540,208	808,990

*In its March 12, 2012 findings regarding the Senate recall petitions, the Board determined a minimum number of valid signatures because the number of remaining challenges filed by the respective officeholders mathematically could not result in an insufficient number of valid signatures. The actual numbers of valid signatures in the Senate recall petitions are likely greater than those stated above.

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MEMORANDUM

DATE: For the March 30, 2012 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

Prepared and Presented by:
Michael Haas, Staff Counsel
Jonathan Paliwal, Assistant Staff Counsel

SUBJECT: Challenge Procedures and Exhibits

I. INTRODUCTION

On January 17, 2012, recall petitions were submitted to the Government Accountability Board against Governor Scott Walker and Lieutenant Governor Rebecca Kleefisch. Invariably, after recall petitions are offered for filing, challenges to those recall petitions are also filed. The Board will be asked to rule on the staff's recommendations regarding the validity of signatures and those challenges at the March 30, 2012 meeting. The challenges received timely were posted to the G.A.B. website, where the Board may find each actual challenge document, rebuttal, and reply. The Board may view these filed documents on the G.A.B.'s website at <http://webapps.wi.gov/sites/recall/default.aspx>.

The Board's staff has prepared a memorandum regarding its initial review of the petitions and the challenges and any available rebuttals or replies for each recall petition. Prior to the Board meeting, staff will distribute these memoranda and related documents to the Board and the attorneys for the recall committees and officers subject to the recalls. In addition, attorneys for the parties will receive an electronic spreadsheet which documents the signature lines which staff recommends striking as a result of the initial review and any challenges, as well as the reasons for those decisions. Due to the size of those spreadsheets, paper copies are not being distributed but they will be made available as part of the Board's hearing record.

Pursuant to GAB §2.07(2)(b), Wis. Adm. Code, as applied to challenges of election petitions, including recall petitions, by GAB §2.11(1), Wis. Adm. Code, the G.A.B. may decide the challenges with or without a hearing. The Board has determined that it will decide the challenges and sufficiency of the petitions filed against the Governor and Lt. Governor with a hearing as provided below.

The following review of the recall challenge procedures and relevant exhibits is provided as a guide for the Board regarding hearing procedures. These procedures are consistent with those adopted by the Board in processing recall petitions in 2011 and 2012. The recommended procedures as well as the summary regarding governing law for this hearing (contained in Exhibit 3) are adapted from materials first prepared by Staff Counsel, Shane Falk in preparation for the 2011 Board hearings.

II. HEARING PROCEDURE AND EXHIBITS:

Since these challenge hearings are administrative proceedings subject to statutory administrative procedures and potential court review, the Board's analysis of each recall petition shall be handled separately. In other words, rather than having the Board listen to presentations from counsel on all cases before considering staff recommendations, the Board Chair should announce each recall petition, request any presentations on behalf of the officeholder and then the recall committee regarding that matter, consider the staff recommendation, and then vote on each case prior to calling the next recall petition. This procedure will help the Board to retain the facts of each case and the related presentations at the time of the Board's decision, and to create a concise record for any potential court review of a particular decision.

Board staff recommends that the Board not allow public comment during the hearing process except from representatives of the officeholder and the recall committee as set out below (the meeting agenda does contemplate accommodating public appearances limited to comments on the petition review procedures).

1. After each individual petition matter is called, Board staff will briefly outline the recommendations of staff. The challenger (officer subject to the recall) or his or her representative shall be provided an opportunity to address the Board and present a statement or argument, up to a maximum of 10 minutes.
2. The petitioner or his or her representative shall be provided an opportunity to address the Board and present a statement or argument, up to a maximum of 10 minutes.
3. G.A.B. staff shall present its written report and recommendations to the Board for consideration.
4. The Board may ask additional questions of either the challenger or the petitioner, or their representatives, at any point in the proceedings.

Several documents will be introduced as exhibits at the hearing which are not included in the Board materials due to their size or because they have been previously reviewed and adopted by the Board. Those exhibits are as follows:

1. Exhibit 1 Determination of Sufficiency of Recall Petitions. This document summarizes the standards used by Board staff in reviewing the recall petitions.
2. Exhibit 2 Duplicate Review Protocol. This document summarizes the method staff used to determine whether an individual signed a petition more than one time.
3. Exhibit 3 Summary of Governing Law. This document summarizes Wisconsin law governing the circulation of petitions and the Board's review of the petitions and any challenges.
4. Exhibit A-Walker. Spreadsheet summarizing staff's findings regarding the petition filed against Governor Walker (also in Board packet).
5. Exhibit B-Walker. Written Challenge filed by Governor Walker.

6. Exhibit C-Walker. Response filed by Walker Recall Committee.
7. Exhibit D-Walker. Reply filed by Governor Walker.
8. Exhibit E-Walker. Spreadsheet summarizing staff's determinations regarding signatures to be struck and the reasons for striking.
9. Exhibit A-Kleefisch. Spreadsheet summarizing staff's findings regarding the petition filed against Lt. Governor Kleefisch (also in Board packet).
10. Exhibit B-Kleefisch. Written Challenge filed by Lt. Governor Kleefisch.
11. Exhibit C-Kleefisch. Response filed by Kleefisch Recall Committee.
12. Exhibit D-Kleefisch. Spreadsheet summarizing staff's findings regarding signatures to be struck and the reasons for striking.

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JUDGE DAVID G. DEININGER
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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of March 30, 2012

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

Prepared and Presented by:

Michael Haas, Staff Counsel
Jonathan Paliwal, Assistant Staff Counsel

SUBJECT: Senate Recall Petitions – Certification of Sufficiency

At its meeting of March 12, 2010, the Board determined that recall petitions offered for filing against four state senators contained sufficient valid signatures to require calling recall elections in each Senate district. The Board directed staff to file each recall petition and attach a certificate of sufficiency on a date to be determined by the Board in accordance with any court order governing the recall petitions. The Board further authorized and directed staff to request an additional extension of time to formally certify the petitions from the previously court-ordered date of March 19, 2012 to March 30, 2012. On March 14, 2012, Dane County Circuit Court Judge Richard G. Niess approved the Board's request.

To complete the process of reviewing the Senate recall petitions, the Board is required to certify the sufficiency of each petition, which establishes election dates and triggers the period for candidates to circulate nomination papers. Certifying the petitions on March 30, 2012 results in the Senate recall elections being scheduled for May 8, 2012. In the event that the ballot includes more than one candidate in political party, that date becomes the recall primary election and the recall election would take place four weeks later, on June 5, 2012.

The Senate officeholders subject to the recall petitions and their respective districts are as follows:

Senator Scott Fitzgerald	13 th Senate District
Senator Van Wanggaard	21 st Senate District
Senator Terry Moulton	23 rd Senate District
Senator Pam Galloway	29 th Senate District

Pursuant to Wis. Stat. §9.10(3)(c), each incumbent officeholder shall be a candidate at the recall election without the requirement of circulating and filing nomination papers unless the official resigns within 10 days after the election has been certified. On March 12, 2012,

Senator Galloway informed the Senate Chief Clerk that she was resigning her office effective on March 16, 2012. Therefore Senator Galloway will not be a candidate in the recall election in Senate District 29.

Recommended Motion: The Board directs staff to file the recall petitions in Senate Districts 13, 21, 23, and 29, and to attach a certificate of sufficiency to each petition on March 30, 2012.

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DATE: For the March 30, 2012 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

Prepared and Presented by:

Michael Haas, Staff Counsel
Jonathan Paliwal, Assistant Staff Counsel

SUBJECT: Recall Petition Review: Governor Scott Walker

I. Introduction:

This Memorandum summarizes Board staff's review of the recall petition submitted against Governor Scott Walker and any challenges, rebuttals, or replies filed by the petitioner and the Governor. The staff's analysis and recommendations regarding the sufficiency of the recall petition are summarized on the spreadsheet attached as Exhibit A – Walker. Where staff decided to strike an individual signature, the reason why it was struck and its location are indicated in the document being submitted as Exhibit D-Walker for this hearing.

In Wisconsin, to execute the right for a recall election against the Governor, a petition signed by electors equal to at least 25% of the total vote cast in the last gubernatorial contest is required; or, here, a submission of at least 540,208 valid signatures. Wis. Stat. § 9.10(1)(b). Following analysis of the 931,053 total signatures submitted by the petitioners, Board staff recommends striking 26,114 on initial review for reasons cited on the attached Exhibit A – Walker and an additional 4,001 duplicate signatures discovered on subsequent analysis.

Although each signature was personally reviewed at least twice, staff did not separately assess the recommendations of the independent organization "Verify the Recall" as Governor Walker requested in his Written Challenge. It is staff's conclusion that state law does not grant the Board authority to accept challenges filed by a party other than the office holder. This opinion was presented to and adopted by the Board at its Meeting of March 12, 2012. In order to present a complete hearing record, the analysis of that challenge is also included in this memorandum.

Based upon its review of the Walker recall petition and the challenge documents, Board staff recommends that the Board recognize 900,938 signatures as valid and certify that the petition is sufficient to order a recall election.

Summary of Challenge Documents:

A. Governor Walker's Written Challenge

Governor Walker's Written Challenge is submitted as Exhibit B – Walker to the hearing record. The primary legal issue raised in the Governor's Written Challenge is whether the Board can or should review any information or challenges filed by the Verify the Recall organization. The Governor's Written Challenge states that it "incorporates" the results of the Citizen Verification Process made publically available by the Verify the Recall organization as a separate written challenge. The Written Challenge also demands that the Board take reasonable affirmative steps to (1) identify and strike duplicative names; (2) identify and strike fictitious names; and (3) identify and strike names where the GAB cannot determine that the signatory is a qualified elector, including where an address or a municipality cannot be determined.

B. Recall Committee's Response to Governor Walker's Written Challenge

The Recall Committee's Response to Governor Walker's Submission is submitted as Exhibit C – Walker to the hearing record. The Response contends that Governor Walker's incorporation of the Verify the Recall efforts are contrary to state law in that the statute allows only for the official targeted for recall to file a challenge, not a third party. The Recall Committee further asserts that Governor Walker could have adopted the Verify the Recall analysis and submitted it as his own verified challenge but chose not to do so. On this basis, the Recall Committee avers that the Board should not be called upon to conduct a thorough analysis of the Verify the Recall effort.

C. Governor Walker's Reply In Support of His Written Challenge

Governor Walker's Reply in Support of his Written Challenge is submitted as Exhibit D – Walker to the hearing record. The Governor's Reply reiterates that the Board should adhere to the Waukesha County Circuit Court order in *Friends of Scott Walker, et al. v. Wisconsin GAB et al.*, Case No. 11-CV-4195, and should also consider any third-party challenges. The Governor states that even if he was unable to incorporate those results into his challenge, that nothing "precludes GAB from considering such publically available information as part of its statutory review." The Reply asserts that G.A.B. staff specifically directed members of the public to forward their petition-related concerns to Verify the Recall, and therefore it is appropriate that the Board consider Verify the Recall's data as part of its careful examination of the recall petition.

II. Evaluation of Challenges

A. Duplicates and Fictitious Names

During the first and second reviews, staff does not specifically examine the recall petition for duplicate signatures; however, after staff's initial review was complete, staff identified duplicate signatures which resulted in 4,001 additional signatures being struck.

Following the January 5, 2012, order of the Waukesha County Circuit Court in *Friends of Scott of Walker v. Wisconsin GAB*, Board staff adopted protocols that identified duplicate signatures in all of the recall petitions. Historically, Board staff judged petition signatures individually, not in relation to other signatures contained within the numerous pages of the submissions. Due to the time and resources this level of review would require, the burden of identifying and proving duplications had been left to the officeholder and was the subject of challenges. Following the order of the circuit court, Board staff established methods to produce a database of names with the goal of efficiently identifying duplicate signatures on the recall petitions. This court-ordered duty added another phase to the staff's review and required significant time and resources.

Board staff had already devoted considerable resources to this effort when the Court of Appeals directed the Circuit Court to vacate its order on February 3, 2012. Given the uncertainty as to the final outcome of the litigation and for reasons of consistency, Board staff determined that the prudent course was to continue implementing a duplicate check for this set of recall petitions. The Circuit Court has not yet vacated its order or scheduled further proceedings, although the remittitur period expired on March 5, 2012.

All six 2012 recall petitions were analyzed for duplicate signatures requiring many additional staff-hours and state resources. The duplicate review that staff conducted was based on a protocol that was submitted to the Board at its last Meeting of March 12, 2012, and is being submitted as Exhibit 2 for this hearing.

In addition to the duplicate check, staff attempted to detect and strike potentially fictitious signatures as part of its initial review. Determining fictitious names is an inherently subjective process because there is no master list of residents to compare against names that are identical or similar to names of historical figures, celebrities, or fictitious characters. In reviewing the Walker recall petition, staff identified as fictitious and recommends striking the following names: Adolf Hitler, Mick E. Mous, Donald L. Duck, Funky Van Den Elzen, and I Love Scott Walker Thanks. Several other signatures were flagged as potentially fictitious, such as Princess High and Mohammed Ali, but were ultimately accepted when staff located these individuals through either the State Voter Registration System (SVRS) or telephone directories.

In total, staff identified 4,001 duplications and 5 fictitious signatures in addition to the 26,109 signatures staff has already recommended striking for various insufficiencies.

Recommendation – Strike 4,006 signatures from the total submitted signatures as duplicates or fictitious names.

B. Verify the Recall Analysis

The primary legal issue raised in Governor Walker's Written Challenge is whether the Board can or should review any information or challenges filed by the Verify the Recall organization. The Challenge states that it "incorporates" the results of the Citizen Verification Process made publically available by the Verify the Recall organization as a separate written challenge. The Board has previously discussed the work of Verify the Recall at its meetings of February 7, 2012 and March 12, 2012. Verify the Recall is a joint effort of two non-profit corporations, Wisconsin GrandSons of Liberty and We the People of the Republic. The Governor indicated that the results of the Citizen Verification Process would be made publically available and that existing campaign finance laws prohibited the two nonprofit organizations from directly providing him their results or otherwise coordinating with him. Referring to the Board's February 7, 2012 meeting, the Governor alleges that the Board staff has referred individuals who believe their names were improperly signed to any petition to contact the Verify the Recall organization. By doing so, the Governor claims that the Board's actions may have prevented valuable information from being shared directly with the Governor Walker's campaign committee.

Board staff has received several inquiries from people regarding whether their names appeared on the petitions. Staff referred those callers to the Republican Party of Wisconsin's "no sign list" and to the Verify the Recall website. If people called with a specific concern about information on a recall page, they were referred to the officeholder. The statement by staff cited in the Challenge can be viewed in the video coverage of the Board's February 7, 2012 meeting on the website of Wisconsin Eye at <http://wiseye.org/videoplayer/vp.html?sid=7612>. At approximately 35:30 of that coverage, Board member Judge Barland asks staff what response is given to individuals who contact the Board concerned that their name may have been fraudulently added to a recall petition. In response, Public Information Officer Reid Magney states, "When people call us and ask what they can do, we refer them to the officeholder or the Verify the Recall web page." Board staff did not prevent any such information from being shared directly with the Governor's campaign committee.

At its meeting of February 7, 2012, the Board discussed the request of Verify the Recall or other organizations to submit challenges on behalf of officeholders. The Board noted that there is no statutory basis for the Board to accept challenges or rebuttal documents from any party other than the officeholder and the petitioners. In fact, Wis. Stat. § 9.10(3)(b) states only that "[w]ithin 10 days after the petition is offered for filing, the officer against whom the petition is filed may file a written challenge" with the filing officer. The deadline for the Governor to file a written challenge was February 27, 2012.

Board staff has indicated the Board may review any information submitted by Verify the Recall for evidence of fraud, as a check on its own work, or to assess whether its own procedures were deficient and could be improved. Nevertheless, staff recommended and the Board has concluded that it is not authorized to accept challenges of recall petition signatures from any party other than the officeholder. Even if such challenges were permitted, the analysis of Verify the Recall was not submitted to the Board until March 23, 2012, when the staff's review of Governor Walker's petition was complete, even though Governor Walker's sworn written challenge attempted to incorporate and include that information on February 27, 2012. When submitting their analyses of the recall petitions, representatives of Verify the Recall stated that they did not

intend for their work to be considered or accepted as proper legal challenges to the sufficiency of the petition to recall the Governor.

Finally, Verify the Recall was and is not prohibited from sharing information or coordinating efforts with the Governor's campaign under Wisconsin campaign finance law; they are only prohibited from providing their services to the Governor's campaign committee without charge because of the corporate status of the two non-profit organizations. Wisconsin Statutes § 11.38 prohibits foreign and domestic corporations from making a political contribution to a candidate or a political committee. At the outset of their efforts, Board staff advised representatives of Verify the Recall that the organization could share its results with officeholders if they were purchased by the campaign committees. Board staff was aware of no effort or agreement between Verify the Recall and the Governor's campaign in this regard.

For these reasons, Board staff has not reviewed the analysis submitted by Verify the Recall as part of the challenge process and has not considered it incorporated into the Written Challenge filed by Governor Walker. Based upon these factors and the Board's previous rulings, no signatures were struck based upon the work of Verify the Recall.

Recommendation -- Deny challenges by Governor Walker which are based on the assertion that information produced by the Verify the Recall organization is incorporated into the Written Challenges.

III. Staff Recommendations Regarding Sufficiency of Recall Petition:

A total of 540,208 valid signatures are required for a certification of sufficiency of the petition to recall Governor Walker. Following staff's first and second review of the recall petition, a total of 904,939 valid signatures were verified, but subsequent to checking for duplicate signatures, that total was adjusted downwards to 900,938 verified signatures, which is 360,730 more than the statute requires to certify as sufficient. As reflected in the attached Exhibit A – Walker, Board staff determined the petition was sufficient.

Based upon the above findings, Board staff recommends that the Board strike 4,001 signatures as duplicate names and an additional 26,114 signatures from the recall petition filed against Governor Walker as invalid for the reasons listed on Exhibit A – Walker, and find that 900,938 signatures are valid. Staff also recommends that the Board accept the recommendations of staff regarding resolution of Governor Walker's challenges, specifically denying any challenges which purport to incorporate the findings of Verify the Recall. Staff further recommends that the Board certify the recall petition as sufficient, file the petition, and order a recall election for the Office of Governor pursuant to Wis. Stat. § 9.10((3)).

Recommended Motion:

The Board accepts staff's recommendation as outlined above: to admit into the hearing record Exhibits 1-3 and A-Walker through E-Walker, which staff has produced in support of its findings, to deny certain challenges filed by Governor Walker for the reasons stated above, to strike 4,001 signatures as duplicate names; and, to strike an additional 26,114 invalid signatures. The Board verifies 900,938 valid signatures are contained in the recall petition offered for filing

against Governor Walker. The Board further directs staff to file the recall petition and attach a certificate of sufficiency on this date, March 30, 2012.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 30, 2012 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

Prepared and Presented by:

Michael Haas, Staff Counsel
Jonathan Paliwal, Assistant Staff Counsel

SUBJECT: Recall Petition Review: Lieutenant Governor Rebecca Kleefisch

I. Introduction:

This Memorandum summarizes Board staff's review of the recall petition submitted against Lieutenant Governor Rebecca Kleefisch and any challenges, rebuttals, or replies filed by the petitioner and the Lt. Governor. The staff's analysis and recommendations regarding the sufficiency of the recall petition are documented on the spreadsheet attached as Exhibit A – Kleefisch. Where staff decided to strike an individual signature, the reason why it was struck and its location are indicated in the document being submitted as Exhibit D-Kleefisch for this hearing.

In Wisconsin, to execute the right for a recall election against the Lt. Governor, a petition signed by electors equal to at least 25% of the total vote cast in the last gubernatorial contest is required; or, here, a submission of at least 540,208 valid signatures. Wis. Stat. § 9.10(1)(b). Following analysis of the 842,854 total signatures submitted by petitioners, Board staff recommends striking 29,601 on initial review for reasons cited on the attached Exhibit A – Kleefisch and an additional 4,263 duplicate signatures and fictitious names discovered on subsequent analysis.

Although each signature was personally reviewed at least twice, staff did not separately assess the recommendations of the independent organization "Verify the Recall" as Lt. Governor Kleefisch requested in her Written Challenge. It is staff's conclusion that state law does not grant the Board authority to accept challenges filed by a party other than the officeholder. This opinion was presented to and adopted by the Board at its meeting of March 12, 2012. In order to present a complete hearing record, the analysis of that challenge is also included in this memorandum.

Based upon its review of the Kleefisch recall petition and the challenge documents, Board staff recommends that the Board recognize 808,990 as valid and certify that the petition is sufficient to order a recall election.

Summary of Challenge Documents:

A. Lieutenant Governor Kleefisch's Written Challenge

Lt. Governor Kleefisch's Written Challenge is submitted as Exhibit B – Kleefisch to the hearing record. The primary legal issue raised in the Lt. Governor's Written Challenge is whether the Board can or should review any information or challenges filed by the Verify the Recall organization. The Lt. Governor's Written Challenge states that it "incorporates" the results of the Citizen Verification Process made publically available by the Verify the Recall organization as a separate written challenge. The Written Challenge also demands that the Board take reasonable affirmative steps to (1) identify and strike duplicative names; (2) identify and strike fictitious names; and (3) identify and strike names where the G.A.B. cannot determine that the signatory is a qualified elector, including where an address or a municipality cannot be determined.

B. Recall Committee's Response to Lieutenant Governor Kleefisch's Written Challenge

The Recall Committee's Response to Lt. Governor Kleefisch's Submission is submitted as Exhibit C – Kleefisch to the hearing record. The Response contends that Lt. Governor Kleefisch's incorporation of the Verify the Recall efforts are contrary to state law in that the statute allows only for the official targeted for recall to file a challenge, not a third party. The Recall Committee further asserts that Lt. Governor Kleefisch could have adopted the Verify the Recall analysis and submitted it as her own verified challenge but chose not to do so. On this basis, the Recall Committee avers that the Board should not be called upon to conduct a thorough analysis of the Verify the Recall effort.

II. Evaluation of Challenges

A. Duplicates and Fictitious Names

During the first and second reviews, staff does not specifically examine the recall petition for duplicate signatures; however, after staff's initial review was complete, staff identified duplicate signatures which resulted in 4,263 additional signatures being struck.

Following the January 5, 2012, order of the Waukesha County Circuit Court in *Friends of Scott of Walker v. Wisconsin GAB*, Case No. 11-CV-4195, Board staff adopted protocols that identified duplicate signatures in all of the recall petitions. Historically, Board staff judged petition signatures individually, not in relation to other signatures contained within the numerous pages of the submissions. Due to the time and resources this level of review would require, the burden of identifying and proving duplications had been left to the officeholder and was the subject of challenges. Following the order of the circuit court, Board staff established methods to produce a database of names with the goal of efficiently identifying duplicate signatures on the recall petitions. This court-ordered duty added another phase to the staff's review and required significant time and resources.

Board staff had already devoted considerable resources to this effort when the Court of Appeals directed the Circuit Court to vacate its order on February 3, 2012. Given the uncertainty as to the final outcome of the litigation and for reasons of consistency, Board staff determined that the prudent course was to continue implementing a duplicate check for this set of recall petitions. The Circuit Court has not yet vacated its order or scheduled further proceedings, although the remittitur period expired on March 5, 2012.

All six 2012 recall petitions were analyzed for duplicate signatures requiring many additional staff-hours and state resources. The duplicate review that staff conducted was based on a protocol that was submitted to the Board at its last Meeting of March 12, 2012, and is being submitted as Exhibit 2 for this hearing.

In addition to the duplicate check, staff attempted to detect and strike potentially fictitious signatures during its initial review. Determining fictitious names is an inherently subjective process because there is no master list of residents to compare against names that are identical or similar to names of historical figures, celebrities, or fictitious characters. In reviewing the Kleefisch recall petition, staff identified several signatures that were flagged as potentially fictitious but were ultimately accepted when staff located these individuals through either the State Voter Registration System (SVRS) or telephone directories.

In total, staff identified 4,263 duplications and 0 fictitious signatures in addition to the 29,601 signatures staff has already recommended striking for various insufficiencies

Recommendation – Strike 4,263 signatures from the total submitted signatures as duplicate names.

B. Verify the Recall Analysis

The primary legal issue raised in Lt. Governor Kleefisch's Written Challenge is whether the Board can or should review any information or challenges filed by the Verify the Recall organization. The Challenge states that it "incorporates" the results of the Citizen Verification Process made publically available by the Verify the Recall organization as a separate written challenge. The Board has previously discussed the work of Verify the Recall at its meetings of February 7, 2012 and March 12, 2012. Verify the Recall is a joint effort of two non-profit corporations, Wisconsin GrandSons of Liberty and We the People of the Republic. The Lt. Governor indicated that the results of the Citizen Verification Process would be made publically available and that existing campaign finance laws prohibited the two nonprofit organizations from directly providing her their results or otherwise coordinating with her. Referring to the Board's February 7, 2012 meeting, the Lt. Governor alleges that the Board staff has referred individuals who believe their names were improperly signed to any petition to contact the Verify the Recall organization. By doing so, the Lt. Governor claims that the Board's actions may have prevented valuable information from being shared directly with the Lt. Governor Kleefisch's campaign committee.

Board staff has received several inquiries from people regarding whether their names appeared on the petitions. Staff referred those callers to the Republican Party of Wisconsin's "no sign list" and to the Verify the Recall website. If people called with a specific concern about information

on a recall page, they were referred to the officeholder. The statement by staff cited in the Challenge can be viewed in the video coverage of the Board's February 7, 2012 meeting on the website of Wisconsin Eye at <http://wiseye.org/videoplayer/vp.html?sid=7612>. At approximately 35:30 of that coverage, Board member Judge Barland asks staff what response is given to individuals who contact the Board concerned that their name may have been fraudulently added to a recall petition. In response, Public Information Officer Reid Magney states, "When people call us and ask what they can do, we refer them to the officeholder or the Verify the Recall web page." Board staff did not prevent any such information from being shared directly with the Lt. Governor's campaign committee.

At its meeting of February 7, 2012, the Board discussed the request of Verify the Recall or other organizations to submit challenges on behalf of officeholders. The Board noted that there is no statutory basis for the Board to accept challenges or rebuttal documents from any party other than the officeholder and the petitioners. In fact, Wis. Stat. § 9.10(3)(b) states only that "[w]ithin 10 days after the petition is offered for filing, the officer against whom the petition is filed may file a written challenge" with the filing officer. The deadline for the Lt. Governor to file a written challenge was March 5, 2012.

Board staff has indicated the Board may review any information submitted by Verify the Recall for evidence of fraud, as a check on its own work, or to assess whether its own procedures were deficient and could be improved. Nevertheless, staff recommended and the Board has concluded that it is not authorized to accept challenges of recall petition signatures from any party other than the officeholder. Even if such challenges were permitted, the analysis of Verify the Recall was not submitted to the Board until March 23, 2012, when the staff's review of Lt. Governor Kleefisch's petition was nearly complete, even though Lt. Governor Kleefisch's sworn written challenge attempted to incorporate and include that information on March 1, 2012. When submitting their analyses of the recall petitions, representatives of Verify the Recall stated that they did not intend for their work to be considered or accepted as proper legal challenges to the sufficiency of the petition to recall the Lt. Governor.

Finally, Verify the Recall was and is not prohibited from sharing information or coordinating efforts with the Lt. Governor's campaign under Wisconsin campaign finance law; they are only prohibited from providing their services to the Lt. Governor's campaign committee without charge because of the corporate status of the two non-profit organizations. Wis. Stat. § 11.38 prohibits foreign and domestic corporations from making a political contribution to a candidate or a political committee. At the outset of their efforts, Board staff advised representatives of Verify the Recall that the organization could share its results with officeholders if they were purchased by the campaign committees. Board staff was aware of no effort or agreement between Verify the Recall and the Lt. Governor's campaign in this regard.

For these reasons, Board staff has not reviewed the analysis submitted by Verify the Recall as part of the challenge process and has not considered it incorporated into the Written Challenge filed by Lt. Governor Kleefisch. Based upon these factors and the Board's previous rulings, no signatures were struck based upon the work of Verify the Recall.

Recommendation -- Deny challenges by Lt. Governor Kleefisch which are based on the assertion that information produced by the Verify the Recall organization is incorporated into the Written Challenges.

III. Staff Recommendations Regarding Sufficiency of Recall Petition:

A total of 540,208 valid signatures are required for a certification of sufficiency of the petition to recall Lt. Governor Kleefisch. Following staff's first and second review of the recall petition, a total of 813,253 valid signatures were verified, but subsequent to checking for duplicate signatures, that total was adjusted downwards to 808,990 verified signatures, which is 268,782 more than the statute requires to certify as sufficient. As reflected in the attached Exhibit A – Kleefisch, Board staff determined the petition was sufficient.

Based upon the above findings, Board staff recommends that the Board strike 4,263 signatures as either duplicate names and an additional 29,601 signatures from the recall petition filed against Lt. Governor Kleefisch as invalid for the reasons listed on Exhibit A –Kleefisch, and find that 808,990 signatures are valid. Staff also recommends that the Board accept the recommendations of staff regarding resolution of Governor Kleefisch's challenges, specifically denying any challenges which purport to incorporate the findings of Verify the Recall. Staff further recommends that the Board certify the recall petition as sufficient, file the petition, and order a recall election for the Office of Lt. Governor pursuant to Wis. Stat. § 9.10(3).

Recommended Motion:

The Board accepts staff's recommendation as outlined above: to admit into the hearing record Exhibits 1-3 and A-Kleefisch through D-Kleefisch, which staff has produced in support of its findings; to deny certain challenges filed by Lt. Governor Kleefisch for the reasons stated above; to strike 4,263 signatures as duplicate names; and, to strike an additional 29,601 invalid signatures. The Board verifies 808,990 valid signatures are contained in the recall petition offered for filing against Governor Walker. The Board further directs staff to file the recall petition and attach a certificate of sufficiency on this date, March 30, 2012.

State of Wisconsin\Government Accountability Board

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JUDGE DAVID G. DEININGER
Chair

KEVIN J. KENNEDY
Director and General Counsel

Date: For the March 30, 2012, Meeting

To: Government Accountability Board Members

From: Kevin J. Kennedy, Director and General Counsel

Subject: Posting Searchable Database of Petition Signers on Agency Website

The Government Accountability Board (G.A.B.) has created two sets of databases to facilitate our careful examination of the recall petitions. Both database sets were designed by G.A.B. technical staff in consultation with our recall review team. The agency staff is asking the Board to determine if the databases should be made available to the public on the agency website. The databases are public records and will be provided to individual requesters in response to a public records request.

The first database for each petition tracks each petition page, each line on each page and the treatment of each signature by page and line number. This database enables us to tally the number of signatures submitted, the number of valid signatures, the number of invalid signatures and the reasons why signatures were not counted. Circulator information is also part of the database. Data was entered into this database by workers at our recall review center.

Information from the databases was provided to the officeholders and petitioners before the Board meetings to determine the sufficiency of the recall petitions. This information identified which lines on which petition pages had been struck and the reasons for striking. It also reflected the treatment of any challenges submitted by the officeholders.

The second set of databases consists of the names of petition signers including the page and line number for each signature. The database does not include signers' addresses. The information in this database was entered by a contract data entry vendor. Workers at our recall review center and other G.A.B. staff also entered some of this data to ensure a timely completion of the duplicate review process.

This data was used to create a list of potential duplicate signatures on each recall petition. The potential duplicate signatures were evaluated for actual duplicates by workers at our recall center. This effort was undertaken to address the order of the Waukesha County Circuit Court directing the G.A.B. to make reasonable efforts to search for duplicates among the signatures on Governor Walker's recall petition pages.

This information is now available for posting. We could not develop this tool overnight. We also could not populate the data immediately. Data entry of the names of all petition signers was not completed until March 15, 2012. The duplicate review was completed on March 28, 2012, and final numbers were calculated that date as well.

The agency did not have the resources to enter the data in a searchable format immediately after the petitions were filed. Even Verify the Recall, with its thousands of volunteers took several weeks to make its information available for the public.

We are in the process of consolidating the data in these databases into a single data set for each recall petition. This will provide us with the capability of permitting public access to this information in an easily searchable manner from the agency website. We have the capability of permitting members of the public to access information on our website by typing a name into a search function. The search would deliver a name along with links to the petition page and line number associated with that name. If there were multiple signers with the same name, the search would provide multiple links. The search could also provide information on whether the signature was counted and if not, why.

The issue presented is whether the G.A.B. should provide access to the recall data in this format for the public on its website. There are valid reasons to provide this access or to refrain from providing this access.

Reasons for Not Posting Searchable Recall Data on the Agency Website

The Government Accountability Board has no legal obligation to provide access to this data on our website. The records created for this recall in the form of databases are public records which must be made available for inspection and copying in response to a public records request pursuant to Wis. Stats. §19.35. The public records law does not require the agency to post the records on a website.

The records contain personal information of individual petition signers. A search will provide the individual doing the search with the signer's name and access to the signer's address. The reason a signature was not counted could also be available.

Agency staff has received numerous protestations about providing website access to all of the petition pages in the current format, which does not have a search capability. The bases for these objections include concerns about privacy; commercial exploitation of the data; fears of threats, harassment or reprisal; and exposing victims of domestic violence, sexual assault and stalking to the possibility of re-victimization. Several legislators also raised concerns about making this information easily accessible on our website.

After conducting a balancing test under the public records law, the agency determined the public interest in providing access to the recall petitions outweighed the public interest in withholding this information, including the underlying reasons for these individuals' concerns. A copy of the letter containing the staff analysis accompanies this memorandum. One factor in the staff's conclusion at the time was that the posted recall petitions would not be searchable on the G.A.B.'s website.

If the Board chooses to post the searchable database, it should have an understanding of its limitations and potential drawbacks. Since the database does not include addresses, anyone searching for a name would need to use the petition page links to look at the actual petition pages and determine the address associated with the name. There are inevitable data entry errors and illegible signatures that could not be converted into a typed name, which may hamper searches.

Depending on interest in the database, Board staff may receive numerous inquiries from the public regarding use of the database and concerns about the information available from it. Those inquiries may unduly add to the already onerous workload facing the staff at this time.

Recently, Verify the Recall posted a searchable database of the recall petitions created by the data entry work of several thousand volunteers from Wisconsin and elsewhere. <http://verifytherecall.com/GovWalker.aspx> Verify the Recall posted searchable databases for each of the four State Senate recalls as well as the gubernatorial recall petition. It did not post any information on the petition to recall the Lt. Governor. News media have used the information to conduct independent searches for the signatures of judges, public officials and their own employees. While Verify the Recall volunteers were entering data, a few would send “suspicious” entries to our office. In many cases the signature deficiencies were in the “eye of the beholder” and would not be a valid basis for striking a signature. While not required to do so, Verify the Recall publicized an offer to redact information of confidential voters who had signed a recall petition.

Given that much of the information is already available in a searchable format (although without verification of its accuracy); one could argue the agency does not need to post its work. It is also possible that someone else will post our work on a website after receiving the database in response to a public records request. We have no control over how a party uses a public record after it is released. Also, if the Board posts a searchable database, it will remove one of the reasons we originally cited for posting the petitions, namely that the petitions themselves were not in a searchable form which provided some measure of protection to persons concerned about their privacy.

Reasons for Posting Searchable Recall Data on the Agency Website

The Government Accountability Board has committed to providing as much transparency as is feasible and consistent with the law governing its duties. During the petition circulation period, we made it clear our intention was to continue our practice of posting copies of the recall petitions on our website. In addition to the objections by individuals with the concerns described above, we had many requests to provide the petition information in a searchable format. This included requests from the Assembly Chair of the Joint Committee on Finance and other Legislators.

The information and data tools were an integral part of our careful examination of the recall petitions. We built in a number of quality control processes to ensure the accuracy of the information we relied on to make our determinations of sufficiency.

The database is a public record and the Board retains control over how it is presented by hosting it on our website. The public may be interested in observing one of the results of its investment in the recall petition review process. Individuals who are curious as to whether their name appears on the petition pages which were submitted may conduct their own search in an efficient manner.

Providing access to the extensive public data available related to our examination of the recall petitions will enhance the transparency of our review process. This should provide members of the public with a better understanding of the complexity and challenges which the agency

addressed in carrying out its statutory duties. It also provides a window for the public to evaluate our efforts.

Depending on interest in the database, Board staff may receive numerous inquiries from the public regarding use of the database and concerns about the information available from it. We have 19 confidential voters in the Statewide Voter Registration System (SVRS). Before posting we would remove those names.

Recommendation:

Staff is not unanimous in this recommendation, but we believe the public interest in providing access to the extensive public data available related to our examination of the recall petitions is the best decision. The 2012 recall initiatives is unprecedented not only in Wisconsin, but in the country. The workload imposed on agency staff combined with the tight statutory time period for review presented an extraordinary challenge that was successfully accomplished under exacting scrutiny from the participants and the public. Making as much information as possible available to the public furthers the Government Accountability Board's commitment to transparency and integrity in carrying out its mission.

Proposed Motion:

The Government Accountability Board directs its staff to provide public access on the agency website to the data developed in its careful examination of the recall petitions in a searchable format.

State of Wisconsin\Government Accountability Board

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JUDGE DAVID G. DEININGER
Chair

KEVIN J. KENNEDY
Director and General Counsel

January 31, 2012

Attorney Monica Riederer
Hansen Riederer Dickinson Crueger LLC
316 N. Milwaukee St. Ste 200
Milwaukee, WI 53202-5885

Dear Attorney Riederer:

You have requested a copy of the petition which has been submitted to our agency seeking the recall of Governor Scott Walker, in an electronic format. We are prepared to provide four disks containing the entire contents of the petition filed with the Government Accountability Board. Given that we have received numerous objections to releasing the names and/or addresses of individuals who have signed the petition, we must carefully consider your request in light of Wisconsin's Public Records Law. After doing so, we have determined that the G.A.B. will provide you with the entire contents of the recall petition as you requested, without redacting information identifying the name and address of specific individuals who signed the petition.

There is no question that the recall petitions submitted to our office are records which are subject to the Public Records Law, as defined by Wis. Stat. §19.32(2). Consistent with the Legislature's declaration of policy in Wis. Stat. §19.31, Wisconsin law presumes that governmental records shall be open to public inspection. "Except as otherwise provided by law, any requester has a right to inspect any record." Wis. Stat. §19.35.

No statute specifically states that recall petitions are either subject to public release or are exempt from public release, except to the extent that officeholders are entitled to the petition in order to assess the validity of signatures and determine whether petition signatures should be challenged. Wis. Stat. §9.10(3)(b). Also, no statutory provision specifically authorizes the G.A.B. to redact information from the petition prior to release to the officeholder, or prevents the officeholder from subsequently distributing the petition to others to assist with the challenge process.

With regard to the requests that the Board has received to redact individual names and addresses of petition signers, the Board must balance the strong public interest in disclosure of the entire recall petition against any public interest favoring nondisclosure of the individuals' names and addresses. *State ex rel. Journal Co. v. County Court*, 43 Wis.2d 297, 305 (1969). We must consider all relevant factors to determine whether permitting access to the entire petition would result in harm to the public interest that outweighs the legislative policy recognizing the strong public interest in allowing access. Wis. Stat. §19.35(1)(a). The Wisconsin Supreme Court has held that a records custodian must determine whether the particular circumstances surrounding a records request create an "exceptional case" not governed by the strong presumption of openness. *Hempel v. City of Baraboo*, 2005 WI 120, ¶63. An exceptional case exists when the circumstances are such that the public policy interests favoring nondisclosure outweigh the public policy interests favoring disclosure, *notwithstanding the strong presumption favoring disclosure*. Hempel at ¶63.

The Wisconsin Supreme Court has also noted that the private interest of a person identified in a record is only indirectly related to the balancing test; it is the public interest in redacting information which is directly relevant in the balancing test. If there is a public interest in protecting an individual's privacy as a general matter, there is a public interest favoring the protection of the individual's privacy interest. *Linzmeier v. Forcey*, 2002 WI 84, ¶31. Therefore, as part of the balancing test, the Board must weigh public policies that can be identified through their expression in other areas of the law or that may be practical or common sense reasons applicable in the totality of the circumstances. Because the requests from individuals requesting redaction of their names and addresses affect our response to your records request, we must evaluate any relevant public policies and practical or common sense reasons that apply to the circumstances of those individuals.

The redaction requests we have received fall into three general categories:

1. Individuals who are concerned that public release of their names and addresses will subject them to harassment and threats from people who disagree with the political position expressed in the recall petition.
2. Individuals who are concerned that public release of their name, address, and signature will subject them to greater potential for identity theft.
3. Individuals who have indicated they are victims of past domestic abuse or violence and fear for their personal safety if their address location is disclosed to the public. They have expressed concern that disclosure of their address will undo all of their efforts to protect themselves and their children from prior abusers and will result in additional harassment, threats, abuse, and physical harm.

In the Board's opinion the greatest claim to privacy can be made by the last category – individuals who have been victims of domestic abuse or violence, and that claim will be addressed below. A recent U.S. Supreme Court decision more directly addressed the first category of individuals, and that decision is also relevant to our analysis of the other two categories.

In *Doe v. Reed*, 130 S. Ct. 2811 (2010), the U.S. Supreme Court held that public disclosure of referendum petitions does not as a general matter violate the First Amendment. In that case the plaintiffs had circulated a petition seeking the repeal of a law which expanded the rights and responsibilities of state-registered domestic partners, including same-sex domestic partners. After the State certified the petition as sufficient, several petition signers sought a court injunction to enjoin the public release of the petition, arguing that there is a reasonable probability that the signatories would be subjected to threats, harassment, and reprisals due to the political position expressed in the petition.

Without outlining a detailed analysis of the factual and legal issues involved in the *Doe* case, the Board believes that the Court's decision governs our actions regarding release of names and addresses of individuals in the first category described above. In addressing the plaintiffs' argument that Washington's Public Records Act violated the First Amendment, the Supreme Court noted that the law was not a prohibition on free speech, but a disclosure requirement. As such, proceeding under the law's mandate to publicly disclose the referendum petition required the government to document a substantial relationship between the disclosure requirement and a

sufficiently important governmental interest. *Doe* at 7. By way of comparison, the Court noted the constitutionality and significance of disclosure requirements in the context of campaign finance laws. *Doe* at 6-7.

For several reasons, the Court found that the State's interest in preserving the integrity of the electoral process was sufficient to defeat the plaintiffs' argument that Washington's Public Records Act was unconstitutional with respect to referendum petitions in general. Those reasons included not only detecting potential fraud but also detecting simple mistakes in the petition-gathering or in the State's review of the petition, such as detecting duplicate signatures or signatures of individuals who claim to have been deceived by the petition circulator. *Doe* at 8-9. Significantly, the Court stated that the State's interest also extends more generally to promoting transparency and accountability in the electoral process in ways that other measures cannot. *Doe* at 10.

The plaintiffs in the *Doe* case argued that, once the State posted the petitions on the Internet, the petition signers' names and addresses could be combined with publicly available phone numbers and maps to effectively create "a blueprint for harassment and intimidation." *Doe* at 11. The Court held that in general the public release of a referendum petition does not violate the First Amendment, and that the plaintiffs would need to demonstrate a reasonable probability that the government's disclosure would result in threats, harassment, or reprisals from government officials or private parties. *Doe* at 11. The facts necessary to support such a conclusion had not been established at that stage of the lawsuit but the Court noted that the plaintiffs would have the opportunity to present such evidence before the trial court.

Regarding the first category of petitioners listed above and applying the balancing test of the Public Records Law, it is the Board's opinion that the Supreme Court's decision in *Doe v. Reed* requires a release of the full petition contents pursuant to Wisconsin's Public Records Law. The petition contains the signer's printed name, signature, and address as well as the date of the signature. Most, but not all, of the petition pages omit other personal information such as telephone numbers or email addresses, because the petitioning committee attempted to cut it off from the petition pages prior to their submission to our office.

Wis. Stat. §19.35(1)(a) states that "Except as otherwise provided by law, any requester has a right to inspect any record." There is a strong public interest in releasing all of the information contained on the recall petition in that it may assist in detecting potential fraud and mistakes in the petition or the Board's review of the petition. It will also promote transparency and accountability in the electoral process by permitting individuals from both sides of the recall debate to assess the sufficiency of the petition for themselves and therefore evaluate the Board's determination of whether a recall election must be called.

In reviewing the requests of those petition signers concerned about harassment or retaliation due to their political views, we have not identified or received information that meets the "reasonable probability" standard described in the *Doe* decision, to the extent that such concerns outweigh the substantial public interests in releasing the entire contents of the recall petition submitted against Governor Walker. We have also not identified any State public policies expressed in other areas of Wisconsin law or based upon common or practical sense which elevate the harassment concerns of the individual petition signers above the public interest in disclosure. Petition signers have voluntarily chosen to participate in the political process in a public manner. No expectation of privacy is implied or justified under the Statutes when an individual chooses

to sign a public recall petition rather than simply expressing that conviction in the privacy of the voting booth.

The second category of petition signers who have contacted our office have expressed concerns regarding increased potential for identity theft due to their names, addresses and signatures being made public by the G.A.B. It is again worth noting that these individuals made the deliberate choice to engage in the recall process and the face of the petition makes clear that to do so requires submitting their name, address and signature to a governmental agency. Neither the petitions nor any pronouncement of the Board provide an indication that the signers' information would remain confidential once submitted to the Board. To the contrary, the Board's practice during the 2011 recalls established the Board's policy of making the petitions available to the public and posting them online. In addition, information disseminated by the Board as well as reported by the media described the process by which petition information would be reviewed by the officeholder to determine whether and which challenges to file.

The fact that the officeholder has a right to the information and may make it publicly available as part of the challenge process also weakens the argument for the G.A.B. to withhold the same information. *Milwaukee Journal Sentinel v. Wisconsin Dep't. of Admin.*, 2009 WI 79, ¶61. Because names and addresses of individuals are also widely available through other public sources such as government databases or telephone directories, the main concern of this group of signers appears to be the public release of signatures as a way to enable identity theft.

We acknowledge that other areas of Wisconsin law illustrate some concern that the government should minimize the risk that its information might be used to commit identity theft, or to generally protect the privacy of citizens. For instance, individuals may opt out of having their personal information disclosed by the Department of Motor Vehicles in information containing personal identifiers of ten or more individuals. Wis. Stat. §85.103. Residents may also register for the State's "Do Not Call" list to avoid receiving unsolicited telemarketing calls from businesses (although calls for political purposes are exempt from this restriction). Wis. Stat. §100.52.

The existence of these statutory provisions, however, contrasts with the Statutes' silence regarding the ability of the G.A.B. to withhold the name, address, or signature of an individual who signed a recall petition. In addition, the focus of the petition review process is centered on the signature of the petitioners. Therefore the generalized concerns of individuals who have voluntarily signed a recall petition regarding identity theft cannot outweigh the public interest in evaluating the Board's review of the recall petition, permitting a proper opportunity for officeholder challenges, and promoting transparency and accountability in the electoral process.

Finally, we analyze the category with arguably the most legitimate plea for privacy received by the Board, from individuals who have previously endured domestic abuse or violence and who have taken steps to shield their current location from their perpetrators. Board staff has heard from a number of individuals who have described the extent to which they have tried to protect themselves and their children from harm, which they fear will be undone by the G.A.B.'s release of the petition which does not redact their names, or at least their addresses. Hearing a petition signer state that a past abuser is subject to a court restraining order but would not hesitate to comb through one million signatures to find one address and cause serious injury or even death creates a legitimate concern, to say the least. No agency would desire to be connected to such an

outcome, however inadvertently, and we trust that Wisconsinites as a whole would not wish that result on any individual, regardless of political persuasion.

In conducting the balancing test under the Public Records Law, the Board recognizes other provisions of Wisconsin law as well as practical and common sense reasons which might justify the G.A.B. redacting the names and/or addresses of such individuals. For example, Article I, §9m of the Wisconsin Constitution states that crime victims should be treated with “fairness, dignity, and respect for their privacy.” The election laws themselves create the closest parallel, in that Wis. Stat. §6.47 provides certain privacy rights to victims of domestic abuse, sexual assault, or stalking. Such individuals may file documentation with a municipal clerk verifying that another person has been charged with or convicted of such an offense in which the individual was a victim and reasonably continues to be threatened by the other person. In such cases the municipal clerk must withhold the name and address of the individual from public inspection of the poll list or voter registration list. Wis. Stat. §6.47(2).

Significantly, however, the Statutes do not extend a similar right with regard to names and addresses contained on a recall petition. Whether due to oversight or a recognition that the choice to sign a recall petition is different in nature than the private act of voting, the fact remains that the Legislature did not establish a specific right to protect information on a recall petition pertaining to a confidential voter.

More generally, Wis. Stat. §995.50 recognizes the right of privacy in Wisconsin, including the right to recover compensatory damages and seek equitable relief to prevent an unreasonable invasion of privacy. But that statute specifically states that “It is not an invasion of privacy to communicate any information available to the public as a matter of public record.” Wis. Stat. §995.50(c). The Attorney General has also opined that the right to privacy does not affect the duties of custodians of public records to maintain and deliver official records. 68 Atty. Gen. 68.

Wis. Stat. §19.35(1)(am)3. also provides that the right to inspect or copy a record under that paragraph does not apply to any record containing personally identifiable information that, if disclosed, would endanger an individual’s life or safety. That provision, however, applies only when a requester seeks to inspect a record containing personally identifiable information pertaining to the requester as well as information which would endanger another person’s life or safety. It does not appear to apply to your request on behalf of an organization which does not have personally identifiable information contained in the record which is sought.

It is not difficult, therefore, to find indications where Wisconsin statutes and case law express some public policy in favor of privacy and redacting information that might endanger an individual identified in the record. Common sense also indicates that individuals with hostile or criminal motives would have an easier time locating a prior victim if the G.A.B. allows the public release of an entire recall petition rather than redacting specific information as requested by victims of domestic abuse or sexual assault. The Supreme Court decision in *Doe v. Reed* did not specifically address this circumstance where the anticipated harassment or threats arose from the personal circumstance of the petition signer rather than from the political position expressed by the petition.

The difficult question is whether the public interest favoring nondisclosure of such information outweighs the strong public interest in disclosure of the entire recall petition. We believe it is relevant that our release of the entire petition in response to public records requests, as well as our posting of it on the Internet, would be in the form of pdf files which are not automatically or

electronically searchable. Unless the individual requesting redaction of information is able to pinpoint the page number and line number of the petition containing their name, it would be a difficult chore for the G.A.B. staff to locate that information. At this time it is not a practical possibility to locate individual signatures on the petition.

We also note that the Board may create and post a database which is searchable electronically further along into our process, but that database would contain only the signer's name, without the address or any other contact information. Therefore, no contemplated action of the G.A.B. would permit an individual to easily or electronically search for a petition signer's name and obtain that person's address.

We are aware that other organizations, possibly including your clients, may wish to create their own searchable databases to be made available to the public, and the G.A.B. cannot control the dissemination of that information unless it firsts redacts names or addresses pursuant to individual requests. There are no statutes which contemplate the Board entertaining such requests or providing a time period that they may be submitted prior to fulfilling a public records request or making the information available on the Internet. To the contrary, Wis. Stat. §9.10(2)(d) states that "After the recall petition has been offered for filing, no name may be added or removed."

Based upon the information that has been submitted to our agency to date, in light of the public's right to timely access to public records, and especially given the short statutory timeline for the G.A.B. to review the recall petition, we do not believe it is a practical or prudent option to delay release of the petition in order to locate and possibly redact individual names or addresses

Weighing all of these concerns and public interests, we have concluded that the balancing test of the Public Records Law favors disclosure of the entire recall petition without redaction of information on a recall petition, even when individual signers have expressed a concern arising from prior abuse or violence committed against them by a person who is now subject to a restraining order. During recall elections in 2011, the Board posted the entire petitions in pdf format on its website, and has followed the same practice with the recall petitions currently pending against four State Senators.

Few processes in the electoral system or elsewhere are more public than the signing of recall petitions against state elected officials. Petition signers chose to participate in the public process of initiating a recall election of the Governor as well as other officeholders, and any concerns regarding their personal safety and privacy may not have been considered when signing a petition. In addition, officeholders and the public have a right to view the petitions, not only for the legal process of filing challenges to signatures, but to help ensure the transparency and accountability of the petition review process, and of Wisconsin's electoral system. Absent a court order requiring redaction of specific information, therefore, the G.A.B. intends to respond to your request by providing the entirety of the recall petition filed against the Governor.

The petition is contained on four disks and the cost is \$10 per disk. Please contact Michael Haas at 608-266-0136 or michael.haas@wi.gov to discuss arrangements for delivery of this record.

Government Accountability Board

A handwritten signature in black ink that reads "Kevin J. Kennedy". The signature is written in a cursive, flowing style.

Kevin J. Kennedy
Director and General Counsel