

State of Wisconsin\Government Accountability Board

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JUDGE GORDON MYSE
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board
Joint Committee on Finance Hearing Room, 412 East
State Capitol
Madison, Wisconsin
July 21 and 22, 2010
9:30 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Selected Judge Nichol as Board Secretary	2
B. Approved staff recommendations to grant, and deny, ballot access to candidates for the fall election	2
C. Received University of Wisconsin report on Election Inspectors' Statements	5
D. Approved staff report on ballot access issues.	5
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F. Approved staff recommendation to request extension of Emergency Rule ch. GAB §1.91 and approved a public hearing notice	7
G. Approved Scope Statement to Create GAB Chapter 26 Relating to Administration of Contract Sunshine	7
H. Approved staff recommendations on administration of the Impartial Justice Act	8

Wednesday, July 21, 2010

Present: Judge Gordon Myse, Judge Thomas Barland, Judge Michael Brennan, and Judge Thomas Cane, and Judge David Deininger

Absent: Judge Gerald Nichol, arrived @ 4:12 p.m. July, 21, 2010.

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

A. Call to Order

Chairperson Myse called the meeting to order at 9:31 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 Meetings

MOTION: Approve the minutes of the May 10, 2010 meeting of the Government Accountability Board. Moved by Judge Brennan, seconded by Judge Barland. Motion carried unanimously.

CC. Selection of Board Secretary

Kevin Kennedy reported that there is a vacancy in the office of Secretary for the Board. Following established Board procedure, Chairperson Myse drew the name of Judge Nichol from the four members not currently serving as Chair or Vice-Chair.

D. Personal Appearances on Ballot Access Issues

F. Board Review of Nomination Paper Challenges and Ballot Access Issues

1. Timothy Dietrich Complaint against Rich Zipperer, Republican candidate for the 33rd Senate District. Complaint EL-10-07.

No personal appearances.

MOTION: Accept staff recommendation to dismiss the complaint. Moved by Judge Cane, seconded by Judge Brennan. Motion carried unanimously.

2. Andrew Davis Complaint against Vittorio Spadaro, Independent candidate for the 13th Senate District. Complaint EL-10-08.

Attorney Jonathan Waclawski and Judi Rhodes Engels appeared in person on behalf of Andrew Davis. Vittorio Spadaro appeared by telephone.

MOTION: Dismiss the complaint and verify 402 valid signatures. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

3. Charla Halverson Complaint against Tammy Baldwin, Democratic candidate for the 2nd Congressional District. Complaint EL-10-09.

Attorney Mark Borns appeared on behalf of Tammy Baldwin.

MOTION: Adopt staff recommendation and dismiss complaint. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

4. Nicholl Caruso Complaint against Paris Procopis, Republican candidate for the 13th Assembly District. Complaint EL-10-10.

Attorney Matthew Lerner appeared on behalf of Nicholl Caruso.

MOTION: Accept staff recommendation to sustain the challenge, verify 192 signatures, and deny ballot access. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

5. Richard Sass Complaint against Scott Feldt, Republican candidate for State Treasurer. Complaint EL-10-11.

No personal appearances.

MOTION: Accept staff recommendation to dismiss complaint and verify 2747 valid signatures. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

6. Andrew Davis Complaint against Todd Kolosso, Democratic candidate for the 5th Congressional District. Complaint EL-10-13.

Appearances by Attorney Jonathan Wacławski on behalf of Andrew Davis and Attorney Matthew Lerner on behalf of Todd Kolosso.

MOTION: Accept staff recommendation and verify 1,089 valid signatures and grant ballot access. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

7. Kristen Crowell Complaint against Matt Bitz, Democratic candidate for the 75th Assembly District. Complaint EL-10-12.

Kristen Crowell appeared in person, and Attorney Wayne A. Arnold appeared on behalf of Matt Bitz, who also appeared in person. Judge Myse recused himself from the matter because Attorney Arnold is a relative.

MOTION: Accept staff recommendations to formally adopt interpretation of Article IV, Section 6, of the Wisconsin Constitution requiring that a candidate is not eligible to serve in the Legislature unless having resided in Wisconsin for one year immediately preceding taking office; and since Candidate Bitz returned to reside in Wisconsin on May 16, 2010 and has not resided in Wisconsin for one year preceding taking office, if elected, Candidate Bitz does not satisfy the requirements of Section 8.30(1)(c), Wis. Stats., and is denied ballot access. Moved by Judge Brennan, seconded by Judge Cane. Motion carried unanimously.

8. Andrew Davis Complaint against William Tucker, Independent candidate for the 1st Congressional District. Complaint EL-10-14.

Attorney Jonathan Waclawski appeared on behalf of Andrew Davis, and William Tucker appeared on his own behalf.

Deborah Ann Speckmann appeared and stated that Mr. Tucker should not be allowed to avail himself of the ADA as a reason for not complying with statutory deadlines for the nomination review process.

MOTION: Accept staff recommendation to reject acceptance of supplemental signatures received on July 16 as untimely, to accept the challenge of 65 signatures, deny challenges based upon headings and one date, verifying 977 signatures, and deny ballot access. Moved by Judge Deininger, seconded by Judge Brennan. Motion carried unanimously.

9. Andrew Davis Complaint against John Heckenlively, Democratic candidate for the 1st Congressional District. Complaint EL-10-15.

Attorney Jonathan Waclawski appeared on behalf of Andrew Davis, and John Heckenlively appeared on his own behalf.

MOTION: Accept staff recommendation to dismiss the complaint, verify 1,048 valid signatures and grant ballot access. Moved by Judge Cane, seconded by Judge Deininger. Motion carried unanimously.

10. Andrew Davis Complaint against Andrew Wisniewski, Republican candidate for 25th Assembly District.

Attorney Jonathan Waclawski appeared on behalf of Andrew Davis.

MOTION: Approve the challenge, verify 196 valid signatures and deny ballot access. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

11. Ieshuh Griffin

Ms. Griffin, independent candidate in the 10th Assembly District, appeared on her own behalf regarding a compliance review complaint she filed challenging the staff's determination prohibiting her from using the words "NOT the 'whitemans bitch' " as a Statement of Principle on the ballot.

Staff Counsel Shane Falk presented the staff recommendation. Discussion.

MOTION: Affirm that the Board has the right to review language in the Statement of Principle, and allow Griffin to use the requested statement of principle. Moved by Judge Cane, seconded by Judge Barland.

Roll call vote:	Cane:	Aye	Deiningger:	Nay
	Brennan:	Nay	Barland:	Aye
	Myse:	Aye	Nichol:	Absent

Motion Failed. Four votes are required to take action pursuant to §5.05(1e), Wis. Stats. Chairperson Myse noted that staff's determination stands and Ms. Griffin will be listed on the ballot as an "Independent," without a Statement of Principle.

G. Public Comment

(This item was taken out of order to accommodate speakers who had to leave.)

1. **Annette Kuglich, Waukesha**, appeared on her own behalf to describe her experience as a poll worker. She urged the Board to devote more resources to poll worker training.
2. **Alderman James N. Witkowiak, Milwaukee**, appeared on his own behalf to describe his experience with voter fraud in Milwaukee in 2000 and 2008. He said he attempted to contact 400 newly registered voters in his district after the 2008 Primary Election, and had 80 postcards come back as undeliverable. He said he and a retired police officer canvassed, and only found five of the 80 people.

Chairperson Myse called a recess at 12:54 p.m. The Board reconvened at 1:38 p.m.

3. **Roxanne Dunlap, Sussex**, appeared on her own behalf to describe her experience as a poll worker in the 2008 Presidential Election at Grandville Fire Station in Milwaukee. She said she witnessed another poll worker remove ballots from the voting machine and mark ballots that were unmarked in two referenda questions. She also said that poll workers spoke freely about their political opinions and could be heard by voters at the polling place.

4. **Ardis Cerny of Pewaukee** appeared on her own behalf and read a written statement from Arlet Jorgensen of Menomonie, Wisconsin, regarding allegations of “border jumping” on Election Day in 2004 between Wisconsin and Minnesota. Ms. Cerny asked the Board to investigate.
 5. **Maryanne Hanson of Brookfield** appeared on her own behalf to speak on a variety of concerns about election integrity, including Special Registration Deputies and how the Board refers complaints to the appropriate authorities.
- J. University of Wisconsin Department of Political Science Presentation on Evaluation of November 2008 Election Inspectors’ Statements**

Professor Barry Burden presented the first-ever analysis of incidents at Wisconsin polling places, as reported on form GAB-104. The analysis found an average of one incident per 100 voters, which he believes to be a low rate for a high-turnout presidential election. He recommended revising incident codes to better capture the types of incidents occurring at the polling place.

Discussion. The Board accepted the report.

G. Public Comment (continued)

6. **Deborah Ann Speckmann of Madison** appeared on her own behalf and commended the Board for its training efforts. She urged the Board to include racial sensitivity training for poll workers so people of color do not feel unwelcome when they vote.
7. **Debbie Morin of West Allis** appeared on her own behalf and described her experiences observing in-person absentee voting in Milwaukee for the 2008 election. She commented on the importance of having partisan poll workers from each party because they provide a check and balance.
8. **Attorney Mike Wittenwyler of Madison** appeared on behalf of the Association of Wisconsin Lobbyists and himself to comment on a proposed guideline for lobbyists contributions, GAB-250, asking for clearer guidelines on when lobbyists can send fund-raiser invitations to legislators. He also said that in implementing the Impartial Justice Act, the Board was adopting too broad a definition of what would trigger a disbursement.

E. Staff Report on Ballot Access Issues

(Presented by Nat Robinson, Diane Lowe, and Shane Falk.)

Nat Robinson introduced this agenda item. Lead Elections Specialist Diane Lowe and Staff Counsel Shane Falk presented the staff report.

Discussion.

MOTION: Adopt a policy that comports with the statutory language of §8.20(2)(c), Wis. Stats.: That the Government Accountability Board determines that independent candidates for the offices of Governor and Lieutenant Governor may file nomination papers containing both candidates' names or the name of a candidate for either office. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

MOTION: Affirm ballot status for all the candidates recommended to the Board, as well as those approved earlier in the meeting. Moved by Judge Cane, seconded by Judge Brennan. Motion carried unanimously.

Chairperson Myse called a recess at 3:47 p.m. The Board reconvened at 3:59 p.m.

I. Proposed Campaign Finance Guidelines

(Presented by Jonathan Becker. Item taken out of agenda order)

1. **231 - Charitable Solicitations**
2. **249 - Campaign Fundraising**
3. **250 - Campaign Contributions by Lobbyists and Principals**
4. **255 - Candidates and the Lobby Law**
5. **256 - Campaign Finance Registration and Reporting**

Ethics and Accountability Division Administrator Jonathan Becker presented an oral and written report to the Board regarding five draft Guidelines staff is asking the Board to adopt. Guidelines 249 and 256 are new. Guidelines 231, 250, and 255 are reiterations of existing Guidelines intended to provide clarification.

Judge Gerald Nichol joined the meeting at 4:12 p.m.

Discussion.

MOTION: To adopt Guidelines 231, 249, 250, 255 and 256, and to ask staff to report back at a future meeting on the issue of what constitutes an improper solicitation. Moved by Judge Cane, seconded by Judge Deininger. Motion carried unanimously.

H. Administrative Rules

1. Revised ch. GAB §1.28, relating to the definition of the term “political purpose”

Staff Counsel Shane Falk presented an oral and written report to the Board regarding ch. GAB §1.28, which will be published and effective August 1, 2010. No Board action was required.

2. Creation of ch. GAB §1.91, relating to organizations making independent disbursements

Shane Falk presented an oral and written report to the Board.

MOTION: To authorize staff to request an extension of Emergency Rule ch. GAB §1.91 and approve the public hearing notice on both the Emergency and Permanent Rules. Moved by Judge Nichol, seconded by Judge Barland. Motion carried unanimously.

3. Request to Approve Scope Statement to Create GAB Chapter 26 Relating to Administration of Contract Sunshine

Shane Falk presented an oral and written report to the Board.

MOTION: Approve Statement of Scope and direct staff to return to the Board at a later meeting with proposed administrative rules regarding the administration of Contract Sunshine. Moved by Judge Cane, seconded by Judge Brennan. Motion carried unanimously.

4. Status Report on Pending Administrative Rules

Shane Falk provided the Board with an oral and written report on the status of pending administrative rules. No Board action was required. The Board accepted the report.

K. Staff Report on Contract Sunshine

(Presented by Sharrie Hauge and James Malone)

Contract Sunshine Administrator James Malone made an oral and written presentation to the Board about the status of Contract Sunshine. The website has been upgraded so there are no impediments to agencies reporting their contract activities. Agency heads have been contacted to remind them of the need to comply with the law. Training is being offered for agency staff who enter information into the system, and Board staff is developing a certification program to let the public know which agencies have complied with the law, and which agencies do not have reportable contracting activity. Kevin Kennedy recently testified at a hearing by the Joint Committee on Audit, which authorized an audit of the program to determine why agencies have not complied and to study options for its future.

Discussion. Board members and staff discussed the certification program and the upcoming audit. The Board accepted the report.

L. Staff Report on Implementation of the Impartial Justice Act

(Presented by Jonathan Becker and Michael Haas)

Staff Counsel Michael Haas presented an oral and written report to the Board regarding implementation of the Impartial Justice Act, which provides public funding for candidates for the Wisconsin Supreme Court. The Board accepted the report.

At 5:30 p.m., there was a motion by Judge Cane and a second by Judge Brennan to adjourn the meeting until 8:30 a.m. Thursday, July 22, 2010 at the G.A.B. office. Motion carried unanimously.

Thursday, July 22, 2010

At 8:37 a.m. Thursday, July 22, the Government Accountability Board reconvened in Open Session at the G.A.B. office. All members were present except Judge Barland, who was absent.

Michael Haas continued discussion with the Board regarding implementation of the Impartial Justice Act.

MOTION: Direct staff to administer provisions of the Impartial Justice Act as outlined in the staff memorandum. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

F. Board Review of Nomination Paper Challenges and Ballot Access Issues (continued)

Andrew Davis Complaint against Andrew Wisniewski, Republican candidate for 25th Assembly District.

Attorney Jonathan Waclawski appeared on behalf of Andrew Davis. Jason Sidener appeared by telephone on behalf of Andrew Wisniewski.

Shane Falk reported to the Board that he discovered a correcting affidavit this morning in the back of the Wisniewski file. The correcting affidavit, which rehabilitated 11 signatures, was timely filed, and would give Wisniewski more than the 200 signatures required. However, the affidavit was overlooked during the staff review of the challenge by Davis.

Attorney Waclawski requested time to review the correcting affidavit. Chairperson Myse advised the matter would be recalled at 1 p.m., following the closed session.

M. Director and General Counsel's Report

Elections Division Report – election administration

Written report from Nathaniel E. Robinson was included in the Board packet. Mr. Robinson gave an oral presentation, and discussed the status of Wisconsin's waiver application regarding the federal Military and Overseas Voter Empowerment (MOVE) Act requirements on primary election dates. He also updated the Board on staff efforts to quantify the level of voter fraud in the state.

Discussion. The Board and staff discussed public comments the previous day regarding allegations of election fraud, how best to handle the public comments section of meetings, and the status of the Retroactive HAVA Check project. Staff will report on the HAVA Checks at the next meeting.

Steven Angeli, administrative assistant to the Elections Division Administrator, presented an oral and written report on “Extending the Government Accountability Board’s Operating Hours for the 2010 Spring Election Season.” The Board accepted the report.

Ethics and Accountability Division Report – campaign finance ethics, and lobbying administration

Tommy E. Winkler Jr., assistant administrator in the Ethics Division, presented an oral and written report, which was included in the Board packet. The deadline for July 2010 Continuing campaign finance reports went smoothly, with some staff members working long hours to assist committees and convert the many reports filed as Excel spreadsheets. Jonathan Becker reported that the new version of the Lobbying disclosure website will allow lobbyists to register electronically, instead of on paper. The Board accepted the report.

Office of Director and General Counsel Report – general administration

Written report from Kevin J. Kennedy, Sharrie Hauge and Reid Magney was included in the Board packet. Kevin Kennedy reported on the status of the federal audit of Help America Vote Act funds, work on developing a Memorandum of Agreement with the Department of Administration for information technology services, and the coming biennial budget request. The Board accepted the report.

N. 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 Nichol, seconded by Judge Cane.

Roll call vote: Brennan:	Aye	Cane:	Aye
Deininger:	Aye	Myse:	Aye
Nichol:	Aye	Barland:	Absent

Motion carried unanimously.

Hearing no objection, Chairperson Myse called a recess at 11:25 a.m. The Board reconvened in closed session beginning at 11:33 a.m.

Summary of Significant Actions Taken in Closed Session:

- A. Requests for Advice: One matter considered.
- B. Investigations and Enforcement: 40 pending matters considered; one referral to District Attorney authorized.
- C. Litigation: Three pending matters considered.

O. Open Session

The Board reconvened in open session at 1:10 p.m.

F. Board Review of Nomination Paper Challenges and Ballot Access Issues (continued)

Andrew Davis Complaint against Andrew Wisniewski, Republican candidate for 25th Assembly District.

Mark Jefferson, executive director of the Republican Party of Wisconsin, appeared in person to object to Wisniewski's name being placed on the ballot. Jason Sidener appeared by telephone on behalf of Andrew Wisniewski.

Discussion.

MOTION: To find that Wisniewski has submitted 207 valid signatures and is entitled to ballot access. Moved by Judge Nichol, seconded by Judge Cane. Motion carried unanimously.

P. Adjournment

MOTION: To adjourn. Moved by Judge Cane, seconded by Judge Deininger. Motion carried unanimously.

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The next meeting of the Government Accountability Board is scheduled for Monday, August 30, in Madison, Wisconsin, beginning at 9:30 a.m. The location for the meeting has not been determined.

July 21 and 22, 2010 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

August 3, 2010

July 21 and 22, 2010 Government Accountability Board meeting minutes certified by:

Judge Gerald Nichol, Board Secretary

August 30, 2010