

Meeting of the Board

Monday, March 12, 2012

9:00 A.M.

Agenda

Open Session

Room 412 East, State Capitol

Madison, Wisconsin

Monday, March 12, 2012**9:00 A.M.****Page**

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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.

**L. Request for Extension of Time to Complete Review
and Determination of Recall Sufficiency**

191

M. Closed Session

19.85 (1) (g) The Board may confer with legal counsel concerning litigation strategy.

The Government Accountability Board has scheduled its next meeting for Tuesday, March 20 and Wednesday March 21, 2012 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:00 a.m. each day.

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

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



JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 12, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Recall Strategic Response Team
Katie Mueller, Project Manager

SUBJECT: Recall Summary

Board staff has been preparing for the filing of recall petitions targeting the Governor and Lt. Governor and State Senators since December 2011. The following memo is a detailed summary of the G.A.B.'s recall petition review procedures, including the number of staff involved and the duration of each task.

Recall Preparation

Staff: 6 – 8 people
Duration of process: 3 months

Board staff began preparing for the filing of the current round of recall petitions in December 2011. It was quickly determined that the volume of signatures required to trigger a recall would not be able to be reviewed in the office space the Government Accountability Board currently occupies. The set up of a new location and preparing for the review of the recall petitions took a considerable amount of staff time and organization. The list below includes some of the tasks completed by Board Staff in its preparation but does not quantify the amount of time and effort involved in coordination with other state agencies.

Preparations:

- Recall Center location secured and lease terms finalized
- Wall constructed at new location for security purposes
- Data and electricity adjustments installed at the location
- Acquired tables, chairs, and office supplies
- Rented scanners, computers, file cabinets, and break room supplies
- Computers configured to DET standards
- Usernames and passwords created for temporary staff
- Computer profiles (permissions and access) set up for temporary staff
- CRM Database constructed and tested
- Security details discussed with Capitol Police

- Coordination with Recall Committees and Capitol Police for petition delivery
- Security Coordination
 - On site officers
 - Security cameras
 - Building access
 - Building security desk at Recall Center
 - Coordination with tenants in Recall Center
 - Coordination with other tenants at E. Washington office
- Prepared petition tracking sheets
- Prepared and affixed pre-printed file folder labels to 6,400 file folders
- Coordinated with temporary staffing agencies to recruit, interview, and hire temporary staff
- Created training materials for temporary staff and trained staff

Petition Delivery

Staff: 6 – 8 people
Duration of process: 3 hours

On January 17, 2012, the recall petitions were delivered to the G.A.B. office. Board staff monitored the room where the boxes were unloaded, initialed the box tracking sheet to indicate that each box was received and assisted with the organization of the boxes. Two cargo vans were rented from DOA Fleet Services to transport the boxes to the secure Recall Center at 202 S. Thornton Ave. Once the boxes were delivered to the G.A.B., eight staff members moved the boxes from the room and loaded them onto the vans. To secure the chain of custody of the boxes and their contents a tracking sheet was created by G.A.B. staff to document that each box was received at the G.A.B. office, loaded on the vans, and then delivered to the Recall Center.

The boxes were then transported to the Recall Center with a Capitol Police escort. Staff assisted in unloading the boxes and initialing the Box Tracking sheet indicating that all boxes were delivered to the Recall Center.

Intake

Staff: 3 – 4 people
Duration of each packet: 2 – 5 minutes
Duration of process: 7 days with 2 shifts per day

During the Intake process staff opened the boxes containing the petitions and divided them into packets of 50 pages, for example 1-50, 51-100, 101-150, etc. Each packet of 50 was also logged in on the Intake log to document that the packet was received by the Board.

Steps:

1. Remove petitions from box
2. Divide petitions into packets of 50 pages
3. Initial Intake Log to indicate that each packet of 50 was received
4. Place packet out to be sorted or file packet

Sorting

Staff: 25 – 29 people
Duration of each packet: 5 – 10 minutes
Duration of process: 7 days with 2 shifts per day

Sorting each packet of recall petitions allowed staff to count the pages and verify that unique consecutive page numbers had been applied. The purpose of sorting is to identify missing or duplicated pages but to also provide the scanning team with the number of pages in each packet. This assists the scanning team in detecting any errors that occur while scanning, such as the scanner pulling two pages at once resulting in an unscanned page.

Steps:

1. Packet is signed out using Chain of Custody Log
2. Pages are manually counted
3. Tracking Slip is filled out with the Office Holder and the page numbers contained in the packet
4. Out of order pages are rearranged
5. Any duplicate or missing pages are documented on the Tracking Slip
6. Tracking Slip is initialed
7. Packet is signed back in using the Chain of Custody Log
8. Task Log is initialed to indicate that Sorting of the packet was complete

Scanning

Equipment: 4 – 6 scanners
Staff: 8 to 12 people
Duration of each packet: 5 – 15 minutes
Duration of process: 7 days with 2 shifts per day

Each petition page was scanned to create a digital record of the page. The digital records of the petitions were provided to the officeholder and the recall committees. The digital records were also posted on the G.A.B.'s website and provided on compact discs to those who requested a copy.

The G.A.B. rented four high speed scanners and increased the number to six a few days after the petition was filed. The scanning occurred in teams of two. Each scanner was operated through one computer; another computer was connected to the first computer. Once the file was scanned a PDF document was created. The operator of the second computer was then able to view the scanned document, review it, and rename it. If there were errors in the scan, the packet was rescanned.

The original procedures developed by Board staff required the person scanning the petitions to sign out multiple petition packets using the Chain of Custody log. Procedures were adjusted to prevent the person scanning from spending excess time signing out packets instead of operating the scanner. To expedite the process, Board staff signed out packets on the Chain of Custody log and assigned the packets to a scanner. Board staff would then sign the packets back in and initial the Task Log indicating that scanning was complete.

The high speed scanners increased the resolution of the petition pages and were able to scan a number of pages quickly. However the petition pages were often different sizes and resulted in

the scanner pulling two pages at once. When two pages were pulled at one time, the scanner only scanned the top page and the packet would have to be rescanned. Often the person scanning would feed the scanner one page at a time if this error continued to occur. Consequently, the amount of time spent on scanning increased when pages in a packet were of different sizes.

Steps:

- Person Scanning
 1. Receive packets of petitions
 2. Scan packet of petitions
 3. Compare number of pages scanned to number of pages indicated on the Tracking Slip
 4. Re-scan the packet if the number of pages in scan do not match the Tracking Slip (repeat until all pages are scanned)
 5. Initial Tracking Slip

- Person Reviewing PDF Document
 1. Open each scanned document
 2. Review the document for errors including: bent edges, blacked out pages, out of order page numbers, missing pages, cut off edges
 3. Return the packet to the scanner if an error was found
 4. Rename the packet indicating the office and page numbers of the packet if it scanned correctly

Verification Process

Staff: 11 people
Duration of process: 12 days (including Saturdays)

To minimize the number of errors in the scanned documents, Board staff spent 12 days reviewing each of the scanned petition pages. Each of the approximate 300,000 scanned pages were reviewed for missing pages, bent corners, cut off ends, blackened pages etc. The scans with errors were indicated on a spreadsheet and provided to the staff at the Recall Center for review and rescanning.

Steps:

1. Identify the packet of 50 pages that will be reviewed
2. Open the electronic version of the packet from the GAB shared drive
3. Review each scanned page
4. Indicate any possible scanning errors found on a page in the spreadsheet
5. Highlight a packet with possible scanning errors in the spreadsheet

Review of Petitions

Staff: 35 – 54 people
Duration of each packet: 15 – 30 minutes
Duration of process: 29 days (including Saturdays)

The petition pages were then subject to review to determine if each signature met the requirements of sufficiency. The Determination of Sufficiency guide was created as a training tool based on requirements of Wis. Stat. § 9.10(3) and Wis. Admin. Code GAB 2.

Staff was transitioned to training on the Determination of Sufficiency as the Sorting and Scanning processes were completed. Each staff member was provided with a copy of the Determination of Sufficiency guide and a practice worksheet of recall petitions as a learning exercise. Training was provided using the Determination of Sufficiency and the practice worksheet was used to provide staff with examples of sufficient and insufficient signatures. Then test packets of recall petitions were given to staff to review. The test packets allowed GAB staff to evaluate the abilities of temporary staff conducting the reviews.

All petition pages were subject to two rounds of review by different staff members and any questions regarding legibility, sufficiency of signature lines, and circulator certifications were brought to the attention of G.A.B. staff.

Steps:

1. Packet is signed out using the Chain of Custody log
2. A red pen is used to circle any missing or incorrect information on the petition page for each signature.
3. Any line that is recommended to be struck is marked with a check mark.
4. Reasons to recommend striking a line include:
 - a. Header – Missing Words
 - b. Header – Not Addressed to G.A.B.
 - c. Header – Does Not Identify District
 - d. Header – Does Not Identify Officeholder
 - e. Body - No Signature
 - f. Body – Signature of POA
 - g. Body – P.O. Box only
 - h. Body – Address Blank
 - i. Body – Address Illegible
 - j. Body – Address Incomplete (including missing municipality)
 - k. Body – Address Outside District
 - l. Body – Date Blank
 - m. Body – Dated Outside Registration (11/15/11 – 1/14/12)
 - n. Body – Dated After Circulator’s Certification
 - o. Body – Date Cutoff
 - p. Body - Ineligible Signer
 - q. Footer – Missing Words
 - r. Footer – Circulator Name Missing
 - s. Footer – Circulator Address Missing (including missing municipality)
 - t. Footer – Circulator Address Illegible
 - u. Footer – Signature Missing
 - v. Header – Wrong Officeholder
 - w. Body – Duplicate
 - x. Body – Address Incomplete
 - y. Body – Date Incomplete
 - z. Body – Fictitious Signer
 - aa. Footer - Circulator Date Incomplete
 - bb. Footer - Circulator Date Outside Registration (11/15/2011 – 1/17/12)
 - cc. Footer - Circulator Name Illegible

5. A line may be struck for more than one reason
6. Signers' names that may be fictitious are flagged for further review
7. The number of signatures recommended as valid is written at the top of the page
8. The number of valid signatures per page are reported on a Tally Sheet
9. Number of petition pages tallied on the Tally Sheet are added up and compared to the Tracking Slip to ensure all pages were tallied
10. Tally Sheet is initialed
11. Packet is signed back in on the Chain of Custody log
12. Task Log is initialed indicating that the 1st Review of the packet was completed
13. Same packet is signed out by another person on the Chain of Custody log
14. Steps 2 – 11 above are repeated
15. Task Log is initialed indicating that 2nd Review was completed.

Data Entry

Staff: 5 – 40 people
Duration of each packet: 15 – 30 minutes
Duration of process: 29 days (including Saturdays)

The results of the review by staff were recorded into a database to track the number of signatures recommended to be struck and those recommended to be counted. Board staff tracked these items in an Excel spreadsheet for the recall petitions offered for filing in the Summer of 2011. The volume of signatures received on the current recall petitions made the use of Excel impractical. A new database was created by contract Board staff using CRM software.

The CRM database was built with each petition page and line number pre-loaded. The staff entered each petition page and deleted pages that were not submitted as well as lines that were not completed or crossed out by the petitioner. Each line that was recommended to be struck was recorded along with the reason(s) for striking the line. The name of the circulator of each petition page was also entered into the CRM database.

Steps:

1. Packet is signed out using the Chain of Custody log
2. Pages of the packet are searched for in the CRM database
3. First page of the packet is opened in the CRM database
4. Blank lines or lines crossed out by the petitioner are deleted in the database
5. Lines recommended to be struck are opened and the reason(s) for striking is indicated
6. Lines flagged for further review are opened and recorded as "Flagged"
7. The page is refreshed and the number of valid, struck, and flagged signatures are totaled
8. Totals on page are compared to what is recorded by the review markings on the page to ensure they match correctly
9. The name of the circulator of the page is entered
10. The page is saved
11. The process is repeated until all pages of the packet are entered
12. Packet is signed back into storage using the Chain of Custody log
13. Task Log is initialed indicating that data entry was completed

Duplicate review

Staff: 5 – 40 people
Duration of 1,000 names: 1 day
Duration of process: To be determined

The duplicate review process checks all of the petitions for duplicate signers. The Board contracted with a data entry firm to enter all of the names of individuals who signed each of the recall petitions. The firm completed entry of names on the Governor and Senate petitions in 18 days. G.A.B. temporary and permanent staff have supplemented the firm's data entry of names on the Lt. Governor petitions which is projected to take 8-9 days. The names will be compared to each other to identify names that match first and last name and compiled into an Excel spreadsheet.

Comparing complete first and last names would not identify potential duplicates of individuals that may sign the petition with a full name on one petition and a nickname on another; for example: Dan and Daniel; Matt and Matthew; Mike and Michael. It would also not account for data entry errors such as entering Joycee for Joyce or Nikcolas for Nickolas. To include these names, staff first conducted a pre-review of the potential duplicate names. A spreadsheet was created containing all names with a matching last name and first initial of the first name. Staff then went through the spreadsheet and identified names that were nicknames or potential data entry errors which had resulted in a misspelling.

A spreadsheet list of potential duplicate names was then created listing names with a matching first and last name and the names indicated by staff as nicknames or potential data entry errors. The spreadsheet also included a link to the electronic version of the petition posted on the GAB website. This final list of potential duplicates is what staff used to review the potential duplicate names in the Senate petitions and what will be used to review potential duplicates in the Governor and Lieutenant Governor petitions.

Pre-Review Steps:

1. Review Excel spreadsheet with list of names where the signer's last name and first initial of the first name match the last name and first initial of the first name on another signature
2. Indicate names that do not match exactly but could potentially be a duplicate name

Duplicate Review Steps:

1. Open Excel spreadsheet with list of potentially duplicate names
2. Click the link to each petition page that contains a potential duplicate
3. Review the name and address of each potential duplicate
4. If the name and address of the potential duplicates do not match, indicate on the spreadsheet that the names are not duplicates
5. If the name and address are the same for two or more of the potential duplicate names, search the Statewide Voter Registration System (SVRS) for the potential duplicates
6. If there is either no person or one person with the identified name registered at the shared address, the names are deemed to be duplicates.
 - a. Using the date on the petition, determine the signature that occurred first. Indicate on the spread sheet that the earliest signature is valid; all later signatures are indicated as struck on the spreadsheet

7. If the potential duplicate name appears multiple times in SVRS at the same address with different dates of birth, indicate on the spreadsheet that the names are not considered duplicates.

Fictitious Name Review

Staff: To be determined
Duration of process: To be determined

Names that staff identified as potentially fictitious were flagged during the petition review process but were counted as valid if the rest of the signature met the requirements for sufficiency. The flagged signature required further review by G.A.B. staff. These signatures were entered into the CRM database as flagged so they are able to be easily located and reviewed.

A very small number of potentially fictitious names were found in the four Senate petitions. Potentially fictitious names identified on the Governor and Lieutenant Governor's petitions have yet to be reviewed.

Steps:

1. Identify page and line number of potentially fictitious name
2. Open the PDF document of the petition page from the GAB's posted petition pages
3. Record the name of the potentially fictitious name on a spreadsheet
4. Search the Statewide Voter Registration System and www.whitepages.com for the name
5. If the name is found in either location the signature is recommended to the Board to be accepted as a "real" name
6. If the name is not found in either location, the signature is recommended to the Board to be struck as a fictitious name
7. Update the CRM database with the outcome of the search
8. Update the spreadsheet with the outcome of the search

Summary

Following completion of the review process, the Recall Center location will be cleared of all computers, equipment, and supplies. The petitions will be removed from the filing cabinets and loaded into boxes for storage.

The overall petition review process involved a great amount of coordination and attention to detail to both start up the operation and to develop procedures and protocols for completely new tasks, including those necessary to comply with the order of the Waukesha County Circuit Court. Personnel and resources were managed and adjusted as the staff gained experience with the procedures and technology, and were allocated to complete various tasks in the appropriate sequence. G.A.B. staff worked extended hours to complete the process in a timely manner while also managing other priorities and workload of the agency. The administration of the project itself posed challenges and required constant evaluation and decision making, while also maintaining the quality and integrity of the results of the review process.

Recall Petition Review – Technology Summary and Duplicate Check Methodology

The Government Accountability Board has used and developed a number of IT resources to assist with the review of the recall petitions submitted in 2012 against four State Senators, the Governor, and Lieutenant Governor. In addition to the challenge of tracking and documenting the review of six petitions containing over 1.86 million signatures which were all submitted on the same day, the Board was directed by court order to conduct its own search for duplicate names on each petition, a task which previously had only been part of any challenges filed by the officeholder. Following is a summary of the technology tools used and developed by the G.A.B. during the petition review process.

Technology Tool Review

Several technology tools were used to support the quality, integrity, and productivity of the entire petition review process. The technology that was used in summary was:

- Fujitsu ScanAll Pro
- Microsoft Dynamics CRM
- Microsoft SQL Server Reporting Services
- Microsoft Office (Excel, MS Access)
- Microsoft Active Directory Security
- SharePoint Web Portal

The recall center was equipped with 56 personal computers, 37 of which were equipped with dual monitors. This equipment was linked to the state network with limited access to the Internet. Access to the Internet was limited to those sites necessary to perform the petition work, such as SharePoint for petition review and Microsoft CRM for petition data entry.

Documents were scanned in using Fiji scanners and Fujitsu scanning software. This software would auto-orient the pages so that they would all face the right direction when stored in a PDF file. This software used a naming convention that would sequence each scanned document so that G.A.B. could trace the scan to the paperwork to a specific workstation and date/time it was scanned.

Once the documents were validated, these PDF documents were uploaded to the SharePoint website. This technology is designed for web document management. It has built-in search

capabilities and security features to only allow access to public information and not the document management features. This technology is also used to interface with our validation process to access the scanned documents.

Data integrity was important with the review process. Each worker was assigned a specific user ID so that we can track productivity and petition assignments. The CRM system audits all work done for each petition so that we can track who did what and when. Since this petition validation involved multiple state offices, the system allowed G.A.B. to restrict access by user to specific offices. This prevented accidental updates or input of petition information by an incorrect user.

Because of the volume of signatures that needed to be handled, adding productivity steps was important to get through over 1.86 million lines of data. Previous recall petition work handled roughly 20 to 30 thousand signatures. With the Governor and Lt. Governor petitions, staff was dealing with over 1.86 million signatures. To get through this in a short amount of time, Microsoft CRM was used to initialize all pages with 10 valid signatures. Then temp staff would strike lines that needed to be stricken and delete lines that did not exist on the petition. This was more productive than the traditional method in which a database would be built by adding each signature line and its status to an Excel spreadsheet.

Importing challenges from parties was part of the data management interface of Microsoft CRM. Requiring challenge templates to be submitted electronically allowed for a straightforward and efficient means to import challenge information and track the status of the validation of each challenge.

Microsoft Access was used to support the duplicate checking process. This involved importing names entered in by Data Shop Inc. for each of the petitions, building views in the data to pull out potential duplicate names (as outlined further in the description below).

Early on in the process, the G.A.B. evaluated technology that would automatically attempt to read characters and printed names from the petition pages into a database. The technology would have added too much time to get every petition through the system, train each temp staff to use the new software, and build all the rules necessary to correct any errors and identify duplicate names. G.A.B. tabled this process and may explore using such technology in the future.

Building the petition management system in Microsoft CRM saved time with development and training. Using Excel to support review of the Governor and Lt. Governor petitions would have made it too difficult to maintain control quality, productivity, and security. Quickly tailoring and building the CRM system quickly allowed the G.A.B. to train over 50 temp staff workers to enter in petition information with built-in quality controls. For example, the system required that a

circulator's name was entered in for each petition page, so that all pages circulated by the same individual could be easily located. Another feature is that CRM integrated with the SharePoint site which is where all petition documents were stored. Programming was completed to tie each individual petition page to its corresponding data page in CRM. This allowed G.A.B. to quickly access the actual petition when reviewing challenges and duplicates.

Microsoft SQL Server Reporting services (SSRS) was used to build reports on the outcome of the petition validation process. Total signatures struck, challenged, challenged then struck, flagged as duplicate, flagged as duplicate then struck, etc. were all tracked in SSRS. SSRS technology can export results to Excel for data reporting, so that useful reports could be generated for use by G.A.B. staff and the Board.

Microsoft Active Directory security provided the security management necessary to control access to petitions for each temp worker. Each person had their own individual login that allowed them to access CRM. CRM then grouped these users into Teams. These teams would then be granted access to specific petitions. Without this type of control, it would have been a challenge to control the integrity of the petition entry process.

Duplicate Name Check Methodology and Logic

The following outline is the IT methodology and logic that was used to find duplicate names in the Senate recall petitions:

- Information from all Petition pages was entered into a database (CRM) which documents the circulator name, number of signatures on the page, and the page and line number of any signatures which were struck after G.A.B.'s initial review.
- All Names (First, Middle, Last) of each line on each petition page were also entered into a separate database (MS Access) by Data Shop Inc. If a name was guessed at or if the name on the line was illegible, a code was entered in for that record (0 – Illegible/1 – Guessed).
- All lines in CRM with line status of Valid or Stricken were pulled for each page and stored in MS Access. A query was run to pull out all "Valid" status lines from the list of names entered in for each Senate petition. The review of duplicate names used only this Valid Name List so that names which were already struck for other reasons were not also checked as potential duplicates. In this way the end result would be a total number of duplicate names which could be subtracted from the total of otherwise valid signatures.

Duplicate Check Logic

- Using the Valid Name List, a query was run to group by last name and the first initial of the first name. This will count the number of times the last name and first initial exist in each data set of a particular petition. If the count is greater than 1, then the name of the signor is stored in the Valid Duplicate First Initial file.
- Each record from the Valid Name List is then matched to the Valid Duplicate First Initial file and the result is all signatures that match the last name and the first initial of the Valid Duplicate First Initial file. This information is then exported to Excel sorted by last name then first name.
- A column was added to Excel called “Edit Include.” This column is used to search through the list of potential duplicate names and mark any records that match others based on first and last name. The Valid Duplicate First List of each senate file was reviewed, ranging from 5,000+ to 7,000+ records each, and any record that might need to be included with other names was flagged. For example, Doe, Dave might match Doe, David, and they would be flagged as similar names. If there was a typo for example, Doe, Julie and Doe, Juliee, that would be flagged as well. The purpose of this edit list is to manually validate all records that need to be included in the group by logic for the duplicate check process.
- The Edited Duplicate List by First Initial is imported into MS Access.
- Each petition is then searched for duplicates based on Last Name and First Name. The Edited Duplicate List is then added to this list of duplicates to produce our list of “Potential Duplicates”. A list is then generated from this list of duplicate names that includes the Last Name, Middle Name, First Name, as well as the Page Number, Line Number, and URL of the petition page where the name appears. This is exported to Excel for review.
- This Excel document is then reviewed by staff using the established procedures and standards. A column is added to this Excel sheet that the evaluator will use to designate a signature as Valid, Duplicate, or ND (No Duplicate).
- Once this review is done, the duplicate challenges filed by the officeholder will be compared to the list of duplicates already reviewed. If a page and line is missing from the reviewed list and is included in the challenge list, G.A.B. will complete the duplicate review process for the challenged signature and add it to our list of duplicates to check (in the Excel file).
- This Excel file will then be imported into the CRM database to record all “Potential Duplicates,” so that any signatures determined to be duplicates are struck and the first signature of any duplicates is counted as valid.

Duplicate Checks

A spreadsheet has been created by G.A.B. IT staff with a list of potential duplicates. The spreadsheet also contains a link to a PDF version of the petition. The link will take the user to the 50 page document that contains the page and line of the potential duplicate. Staff will review the duplicates and update the spreadsheet with the results of the duplicate checks. After the duplicates are reviewed the spreadsheet and results will be uploaded into CRM.

Determining Duplicates

1. Is the name the same?

a. If no: The names are not duplicates. Update the duplicates spreadsheet to indicate that name is not a duplicate by typing “ND” in the row for each name.

b. If yes:

i. Does either name contain Junior or Senior indication on it which the other name does not?

1. If yes: the names are not duplicates. Update the duplicates spreadsheet to indicate the name is not a duplicate by typing “ND” in the row for each name.

2. If no:

a. Do the names contain a middle initial or name (proceed to “no” if only one record has a middle initial)?

i. If yes, are the middle initials same?

1. If no, the names are not duplicates. Update the duplicates spreadsheet to indicate that name is not a duplicate by typing “ND” in the row for each name.

2. If yes, proceed to address checking ii(1)

ii. If no:

1. Are the addresses the same?

a. If no: the names are not duplicates. Update the duplicates spreadsheet to indicate the name is not a duplicate by typing “ND” in the row for each name.

NOTE: if the addresses are different but off by one number or close and the reviewer believes the

signers are the same person, update the names as “ND” however record that the names maybe duplicates and the addresses of signers in the “Notes” column. Then highlight all duplicate records in the spreadsheet.

b. If yes:

i. Check SVRS to see if two people with the same name are registered at that address

ii. If yes: check the date of birth for each record.

If the dates of birth are different the names are not duplicates. Update the duplicates spreadsheet to indicate the name is not a duplicate by typing “ND” in the row for each name.

If the dates of birth are the same, ask GAB staff person to assist in determining if the record is a duplicate.

iii. If only one record is found or if no records are found: accept the signature with the earliest date by recording “Valid” in that signatures row in the spreadsheet. Strike all subsequent copies of the signature by recording “Strike” in that signature’s row in the spreadsheet.

Special notes:

If one of the signatures should be struck for other reason i.e. missing date or address, indicate the missing information in the “Notes” column, strike the signature with the missing information and make the other as valid. Then highlight the records.

If the duplicate signatures are signed on the same date, accept the signature that is on the lowest page number by recording “Valid” in that signature’s row in the spreadsheet. Strike the signature(s) on the higher page number(s) by recording “Strike” in the signature(s)’ row(s) in the spreadsheet.

State of Wisconsin \ Government Accountability Board

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



JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of March 12, 2012

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: Senate Recall Petitions – Evaluation Process and Tracking Tools

This memorandum summarizes the overall approach adopted by Board staff in the actual counting of valid petition signatures, the spreadsheet tools used to track and calculate valid signatures, and determining the outcome of challenges.

I. Evaluation Process

Staff evaluated the petitions in two stages. In stage one, the staff conducted a “paper review” where staff personally analyzed every signature at least twice. Once this review was complete, staff went on to stage two: evaluating the incumbents’ challenges. Given the short timeline and scarce resources available, staff found it necessary to implement innovations that would allow for an efficient review of the voluminous petition record while still allowing for a “determin[ation] by careful examination whether the petition on its face is sufficient.” Wis. Stat. §9.10(3)(a).

Most of the challenges filed by the Senate officeholders were based on identical legal arguments rather than different challenges of individual signatures. Following staff’s initial review, it became apparent that the sufficiency of each of the petitions depended upon whether these legal claims would be accepted by the Board and on whether sufficient evidence had been submitted to satisfy the challenger’s burden of proof. As a result, instead of undertaking a more detailed review of individual challenges, staff evaluated entire categories of challenges first.

In each case, staff recommendations for resolving categories of challenges result in a sufficient number of valid signatures such that the challenges remaining to individual signatures are rendered moot. There are simply not enough outstanding challenges of individual signatures to defeat the petitions. It should be noted that staff has not determined that the remaining

challenges should be accepted; however the process used by staff attempts to quantify those challenges left un-reviewed for the Board’s benefit, and to ensure that the sufficiency of the petitions -- even if all challenges were accepted -- is not left in doubt.

The margins of sufficient valid signatures on the Senate recall petitions are well above the thresholds required. Staff recommends that the Board certify the sufficiency of the petitions by making findings regarding the legal arguments underlying various categories of challenges. If the Board accepts staff’s recommendations regarding those legal issues and arguments, staff further recommends that the Board find that additional inquiry into challenges of individual signature lines is not necessary and that staff terminate its review of the Senate recall petitions.

II. Tools for Tracking Valid Signatures and Challenges

The results of this process are reflected on spreadsheets which accompany the memorandum that focuses on each petition. The spreadsheet summarizing the review of the Senator Fitzgerald petition is attached to demonstrate the methodology. The top lines of each spreadsheet contain a numerical summary of the staff’s review starting with the number of signatures required in each Senate district to trigger a recall as well as the number designated as “Diff” which is equal to the number of signatures in excess of sufficiency as determined by staff. These two numbers are found on the top right-hand corner.

The next line down, the “Summary Line”, indicates the staff-recommended number of valid signatures which is calculated as follows, reading from right to left and using the Senate District 13 spreadsheet as an example):

| | |
|---|------------|
| “Total Signatures”: | 20,735 |
| Less “Remaining Challenges” (individual challenges not reviewed): | 1,586 |
| Less “Duplicates” (G.A.B. reviewed): | 261 |
| Less “G.A.B. Stricken” (G.A.B. recommended): | <u>606</u> |
| “Valid Signatures”: | 18,282 |

On the left side of each spreadsheet and below the grey shading is a summary of the signatures that staff recommends to strike and the reasons why. Signatures may have been struck for more than one reason, which is why the sum of the “Stricken” column will be greater than the total listed as “G.A.B. Stricken” in the Summary line.

On the right side of each spreadsheet and below the grey shading is a summary of the challenges filed by the Senate officeholder. The “Total” column represents the total number of challenges submitted, according to the challenge spreadsheet the officer filed electronically. These were incorporated into the challenge affidavits. It should be noted, the numbers included in the challenge affidavits for each category sometimes vary from the number of such challenges as designated by the officeholder’s challenge spreadsheet. In those cases Board staff used the totals derived from the challenge spreadsheets so that each challenge could be tracked.

The “After GAB Struck” column lists the challenges remaining in each category after subtracting the individual signatures that staff had already struck in its initial review. The challenges

designated as “Not Included” are those which Board staff recommends be rejected and deducted from the pool of possible remaining challenges because the challenges lack a legal basis or do not satisfy the challenger’s burden of proof.

It is important to understand that the two columns in the Challenge Details section overstate the number of unique signature lines that are challenged. This is because they include signatures that were challenged for more than one reason and/or were challenged more than once for the same reason. Put another way, the figures quantify not the numbers of actual contested signatures, but the number of reasons that those individual signatures were contested. Therefore the numbers in the Challenge Detail columns necessarily overstate the actual signatures being challenged-accounted for. Similarly, the figures for “Duplicate” challenges designate all signatures challenged as possible duplicate names, even though only the second and any subsequent identical signatures are to be struck in those cases.

For the same reasons, the total of the “After GAB Struck” column will not equal the “Remaining Challenges” figure in the Summary Line, even after excluding the numbers designated as “Not Included.” The overstatement of challenges is rectified by virtue of the fact that the “Remaining Challenges” figure in the Summary Line calculates the number of challenges to unique signatures that were not individually analyzed.

Finally, Board staff has supplied to each officeholder a separate Excel spreadsheet to document which specific lines are recommended to be struck. The spreadsheets list each line that staff recommends to be struck as a result of its review, and the reason for the recommendation. Those spreadsheets are not reproduced in the Board materials because of their volume, but will be made part of the record at the Board hearing.

Recommended Motion:

The Board adopts the evaluation process and tracking tools outlined in this memorandum as the appropriate framework for determining the sufficiency of the Senate recall petitions. The Board will attempt to determine the sufficiency of the petitions by making findings regarding the legal arguments underlying various categories of challenges. If those findings results in a sufficient number of valid signatures regardless of the outcome of remaining challenges to individual signature lines, the Board will find that additional inquiry into challenges of individual signature lines is not necessary and direct that staff terminate its review of the Senate recall petitions.

| Senate District 13 - Sen. Scott Fitzgerald | | Valid Signatures | GAB Stricken | Duplicate Stricken | Needed | Diff |
|---|-----|------------------|--------------|--|--------|--------------------|
| Summary | | 18,282 | 606 | 261 | 1,586 | 16,742 |
| Stricken | | Total | | Challenge Details | Total | After GAB Struck |
| Body - Address Blank | 5 | | | Address - missing, incomplete, or illegible | 52 | 36 |
| Body - Address Illegible | 2 | | | Address - PO Box | 11 | 4 |
| Body - Address Incomplete | 13 | | | Circulator - dated outside circulation period | 3 | 1 |
| Body - Address Outside District | 412 | | | Circulator - missing apartment number | 131 | 126 |
| Body - Date Blank | 11 | | | Circulator Date - Miscellaneous | 8 | 5 |
| Body - Date Incomplete | 13 | | | Circulator Date - Missing or Partially Missing | 59 | 16 |
| Body - Dated After Circulator's Certification | 30 | | | Circulator edits possibly after certification | 1,280 | 1,140 Not Included |
| Body - Dated Outside Registration | 20 | | | Circulator Municipality of Residence - Missing | 237 | 205 |
| Body - No Signature | 1 | | | Circulator Signature - Missing | 21 | 7 |
| Body - P.O. Box only | 2 | | | Date - Missing or Partially Missing | 109 | 41 |
| Footer - Circulator Address Missing | 23 | | | Date - Outside circulation period (11/15/11 - 1/14/12) | 54 | 46 |
| Footer - Circulator Date Incomplete | 11 | | | Date - Signed after circulator | 64 | 33 |
| Footer - Circulator Date Outside Registration | 52 | | | Dated outside circulation period - 11-15-11 | 877 | 854 Not Included |
| Footer - Circulator Name Missing | 10 | | | Duplicate | 510 | 272 |
| Footer - Signature Missing | 3 | | | Fictitious name | 1 | 1 |
| | 608 | | | GAB Ineligible to vote list | 5 | 5 |
| | | | | Miscellaneous | 44 | 32 |
| | | | | Missing apartment number | 473 | 444 |
| | | | | Municipality - Missing or Partially Missing | 33 | 21 |
| | | | | Not a resident of Senate District 13 - New Maps | 5,944 | 5,786 Not Included |
| | | | | Not a resident of Senate District 13 - Old Maps | 777 | 318 |
| | | | | Signature missing | 24 | 14 |
| | | | | Similar or identical handwriting | 188 | 183 Not Included |
| | | | | USPS - address issue | 84 | 83 |
| | | | | | 10,989 | |

EXHIBIT
A - FITZGERALD
20

State of Wisconsin \ Government Accountability Board

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



JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 12, 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 Governing Law

I. INTRODUCTION

On January 17, 2012, four recall petitions were submitted to the Government Accountability Board against four State Senators, the Governor, and the Lieutenant Governor. The Senators subject to the recall petitions are Senator Scott Fitzgerald (Senate District 13), Senator Van Wanggaard (Senate District 21), Senator Terry Moulton (Senate District 23), and Senator Pam Galloway (Senate District 29).

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 12, 2012 meeting as well as at a separate meeting regarding the Governor and Lt. Governor petitions. 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 by 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 with a hearing as provided below.

The recall petitions against the Senators Fitzgerald, Wanggaard, Moulton, and Galloway will be before the Board on March 12, 2012.

The following review of the recall challenge procedure and treatment and sufficiency of election petitions is provided as a guide for the Board regarding hearing procedures and relevant law. With some adjustments related to oral presentations by the parties, these procedures are consistent with those adopted by the Board in processing the 2011 recall petitions. The recommended procedures and legal summary below are adapted from materials first prepared by Staff Counsel, Shane Falk in preparation for the 2011 Board hearings.

II. HEARING PROCEDURE:

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.

However, due to the similarity of challenges filed by the Senate officeholders, staff recommends that the Board first consider and address the legal arguments relevant to identical challenges of the Senators and attempt to resolve those issues. 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 Board staff's presentation regarding the review of issues raised by challenges of all Senators (Agenda Item E), 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 15 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 15 minutes.
3. The Board shall consider any motions regarding staff's recommendations related to challenges raised by all Senate officeholders.
4. 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.
5. 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.

6. G.A.B. staff shall present its written report and recommendations to the Board for consideration.
7. The Board may ask additional questions of either the challenger or the petitioner, or their representatives, at any point in the proceedings.

III. RECALL PETITION PROCEDURE: §9.10, Wis. Stats. and GAB ch. 2, Wis. Adm. Code

1. Registration and Circulation §9.10(1) and (2), Wis. Stats.:

The qualified electors of any legislative district may petition for the recall of any incumbent elective official by filing a petition demanding the recall of the officeholder.

A petition for recall of an officer shall be signed by electors equal to at least 25% of the vote cast for the office of governor at the last election within the same district as that of the officeholder being recalled.

No petition may be offered for filing for the recall of an officer unless the petitioner first files a registration statement under §11.05(1) or (2), Wis. Stats. Pursuant to §11.05(1), Wis. Stats., any person other than an individual and any combination of 2 or more persons shall register as a committee, if they make or accept contributions, incur obligations or make disbursements in a calendar year in the aggregate amount in excess of \$25.00. Pursuant to §11.05(2), Wis. Stats., every individual who accepts contributions, incurs obligations or makes disbursements in a calendar year in the aggregate amount in excess of \$25.00 shall file a registration statement.

The petitioner shall append to the registration a statement indicating his or her intent to circulate a recall petition against a legislative officer and the name of the officer for whom recall is sought.

No petitioner may circulate a petition for the recall of an officer prior to completing registration.

The last date that a petition for the recall of an officer may be offered for filing is 5 p.m. on the 60th day commencing after registration. After the recall petition has been offered for filing, no name may be added or removed. No signature may be counted unless the date of the signature is within the period between the date of the committee's or individual's registration and the date the petition is offered for filing.

2. Signatures on a Recall Petition Sheet: §9.10(2)(e) and (em), Wis. Stats.

A. An individual signature on a petition sheet may not be counted if:

1. The signature is not dated.
2. The signature is dated outside the circulation period.
3. The signature is dated after the date of certification contained on the petition sheet.

4. The residency of the signer of the petition sheet cannot be determined by the address given.
 5. The signature is that of an individual who is not a resident of the jurisdiction or district from which the elective official being recalled is elected.
 6. The signer has been adjudicated not to be a qualified elector on grounds of incompetency or limited incompetency as provided in §6.03(3), Wis. Stats.
- B. No signature on a petition sheet may be counted if:
1. The circulator fails to sign the certification of circulator.
 2. The circulator is not a qualified circulator.
3. Wisconsin Administrative Code: Treatment and Sufficiency of Election Petitions
- A. Pursuant to GAB §2.09(1), Wis. Adm. Code, the standards established in GAB §2.05, Wis. Adm. Code, for determining the treatment and sufficiency of nomination papers apply to recall petitions.
- B. Relevant Portions of GAB §2.05, Wis. Adm. Code:
1. Where circumstances and the time for review permit, the filing officer may consult maps, directories and other extrinsic evidence to ascertain the correctness and sufficiency of information on the nomination paper (recall petition.)
 2. Any information which appears on a nomination paper (recall petition) is entitled to a presumption of validity.
 3. Where any required item of information on a nomination paper (recall petition) is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with the law.
 4. An elector shall sign his or her own name unless unable to do so because of physical disability. If unable to sign because of a physical disability, the elector shall be present when another person signs on behalf of the disabled elector and shall specifically authorize the signing.
 5. A person may not sign for his or her spouse, or for any other person, even when they have been given a power of attorney by that person (unless the elector is disabled and follows the above procedure).
 6. The signature of a married woman shall be counted when she uses her husband's first name instead of her own.
 7. Only one signature per person for the same office is valid.

8. A complete address, including municipality of residence for voting purposes, and the street and number, if any, of the residence, (or postal address if it is located in the jurisdiction of the officer subject to the recall petition) shall be listed for each signature.
 9. No signature on a nomination paper (recall petition) shall be counted unless the elector who circulated the nomination paper completes and signs the certificate of circulator and does so after, not before, the paper is circulated.
 10. An individual signature on a nomination paper (recall petition) may not be counted when any of the following occur:
 - i. The date of the signature is missing.
 - ii. The signature is dated after the date of certification contained in the certificate of circulator.
 - iii. The address of the signer is missing or incomplete, unless residency can be determined by the information provided on the nomination paper (recall petition.)
 - iv. The signature is that of an individual who is not 18 years of age at the time the paper is signed.
 - v. The signature is that of an individual who has been adjudicated not to be a qualified elector on the grounds of incompetency or limited competency as provided in §6.03(3), Wis. Stats., or is that of an individual who was not, for any other reason, a qualified elector at the time of signing the nomination paper (recall petition.)
4. Petitioner May File Affidavits Correcting Insufficiencies: §9.10(2)(r), Wis. Stats.
- A. Correcting the failure of the circulator to sign the certification of circulator.
 - B. Correcting the failure of the circulator to include all necessary information.

The person giving the correcting affidavit shall have personal knowledge of the correct information and shall file the affidavit not later than three calendar days after the date the petition is offered for filing. GAB §2.05(4), Wis. Adm. Code.

IV. CHALLENGE PROCEDURES

1. The G.A.B. shall review verified challenges to recall petitions of legislators. §9.10(2)(f), Wis. Stats.
 - A. The burden of proof for any challenge rests with the individual bringing the challenge. See also GAB §2.07(3)(a), Wis. Adm. Code. (see also paragraph 2 below).

- B. The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence. GAB §2.07(4), Wis. Adm. Code.
- C. Any challenge to the validity of signatures on the petitions shall be presented by affidavit or other supporting evidence demonstrating a failure to comply with statutory requirements. See also GAB §2.07(2)(a), Wis. Adm. Code.
- D. If the challenger establishes that the information on the recall petition is insufficient, the burden is on the petitioner to establish its sufficiency. GAB §§2.07(3)(a), 2.11(1), Wis. Adm. Code.
- E. The invalidity or disqualification of one or more signatures on a nomination paper (recall petition) shall not affect the validity of any other signatures on that paper. GAB §2.07(3)(a), Wis. Adm. Code.
- F. If a challenger can establish that a person signed the recall petition more than once, the 2nd and subsequent signatures may not be counted. See also GAB §2.07(3)(b), Wis. Adm. Code.
- G. If a challenger demonstrates that someone other than the elector signed for the elector, the signature may not be counted unless the elector is unable to sign due to physical disability and authorized another individual to sign on his or her behalf. See also GAB §2.05(8) and (9), Wis. Adm. Code.
- H. If a challenger demonstrates that the date of a signature is altered and the alteration changes the validity of the signature, the signature may not be counted.
- I. If a challenger establishes that an individual is ineligible to sign the petition, the signature may not be counted. See also GAB §2.05(15)(d) and (e), Wis. Adm. Code.
- J. No signature may be stricken on the basis that the elector was not aware of the purpose of the petition, unless the purpose was misrepresented by the circulator.
- K. No signature may be stricken if the circulator fails to date the certification of circulator.
- L. If a signature on a petition sheet is crossed out by the petitioner before the sheet is offered for filing, the elimination of the signature does not affect the validity of other signatures on the petition sheet. See also GAB §2.05(16), Wis. Adm. Code.
- M. Challenges are not limited to these categories.

2. Challenger's Burden of Proof

The officeholder bears the burden of proof on challenges and that burden is clear and convincing evidence of an insufficiency. §9.10(2)(g), Wis. Stats. See also GAB §§2.07(3)(a) and (4) and 2.11(1), Wis. Adm. Code. "Any challenge to the validity of signatures on the petition shall be presented by affidavit or other supporting evidence demonstrating a failure to comply with the statutory requirements." §9.10(2)(h), Wis. Stats.

In Wisconsin, this middle burden of proof requires a greater degree of certitude than that required in ordinary civil cases, but a lesser degree than that required to convict in a criminal case. *Kruse v. Horlamus Industires, Inc.*, 130 Wis.2d 357, 363, 387 N.W.2d 64 (Wis. 1986) (citing: *Wangen v. Ford Motor Co.*, 97 Wis.2d 260, 299, 294 N.W.2d 437 (1980)). The Supreme Court has generally required the middle burden of proof "[i]n the class of cases involving fraud, of which undue influence is a specie, gross negligence, and civil actions involving criminal acts." *Id.* (citing: *Kuehn v. Kuehn*, 11 Wis.2d 15, 26, 104 N.W.2d 138 (1960)). In general, "clear preponderance" has only been considered substantially equivalent to "clear, satisfactory and convincing evidence" where the civil case involved a crime, fraud or gross negligence. *Id.* (citing e.g.: *Trzbiekowski v. Jereski*, 159 Wis. 190, 149 N.W. 743 (1914) (civil case involving a crime), and *Hafemann v. Seymer*, 191 Wis. 174, 210 N.W. 373 (1926) (gross negligence), both cited in *Kuehn*, supra, 11 Wis.2d at 27, 104 N.W.2d 138.)

3. Challenge, Certification, and Election Timelines: §9.10(3)(b), Wis. Stats.

- A. Within 10 days after a petition is offered for filing, the officer against whom the petition is filed may file a written challenge, specifying any alleged insufficiency (this deadline for the current recall petitions was extended to 20 days after the officeholder received an electronic copy of the petition from the G.A.B., by order of the Dane County Circuit Court).
- B. If a challenge is filed, the petition may file a written rebuttal to the challenge within 5 days after the challenge is filed.
- C. If a rebuttal is filed, the officer against whom the petition is filed may file a reply to any new matter raised in the rebuttal within 2 days after the rebuttal is filed.
- D. Within 14 days after the expiration of the time allowed for filing a reply to a rebuttal, the G.A.B. shall file a certificate or amended certificate (this deadline was extended to 61 days after the officeholder received the electronic copy of the petition from the G.A.B, by order of the Dane County Circuit Court).
- E. Within 31 days after a petition is offered for filing, the G.A.B. shall determine by careful examination whether the petition on its face is sufficient and so state in a certificate attached to the petition (this deadline was extended to 61 days after the officeholder received the electronic copy of the petition from the G.A.B, by order of the Dane County Circuit Court).
- F. If the G.A.B. finds that the petition is sufficient, the G.A.B. shall file the petition and call a recall election to be held on the Tuesday of the 6th week commencing after the date of filing the petition.
- G. The petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate. Within 5 days after the offering of the amended petition for filing, the G.A.B. shall again carefully examine the face of the petition to determine sufficiency.

- H. Upon a showing of good cause, the circuit court for the county in which the petition is offered for filing may grant an extension of any of these time periods. As noted above, the Dane County Circuit Court has granted extensions to the officeholders and the Board. The current deadline for certification of all petitions is March 19, 2012.

ANNOTATION

The Wisconsin Constitution, Article XIII, Section 12, establishes in detail the rights of qualified electors of the state, of any congressional, judicial or legislative district or of any county to petition for the recall of any incumbent elective officer after the first year of the term for which the incumbent was elected. Article XIII, Section 12(7) specifically provides: "This section shall be self-executing and mandatory. Laws may be enacted to facilitate its operation but no law shall be enacted to hamper, restrict or impair the right of recall."

As a general rule, the policy of the G.A.B. with respect to the nomination process has been to help or facilitate candidate ballot access, not to find a justification for impeding that access, and the recall challenge procedure also has historically been applied in that spirit. As much as possible, the selection and elimination of candidates should be left to the electorate. In addition, with respect to the election petition process, including recall petitions, the policy of the former State Elections Board and now the G.A.B. has been and is to help facilitate the will of the electorate with respect to the petition at hand, not to find a justification for impeding the will of the electorate as expressed in a particular petition.

The statutory standard for compliance is "substantial compliance" as set forth in §5.01(1), Wis. Stats., as follows:

5.01 Scope. (1) CONSTRUCTION OF CHS. 5 TO 12. Except as otherwise provided, chs.5 to 12 shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to comply with some of their provisions.

Note that GAB §2.05(4), Wis. Adm. Code, provides that "Any information on a nomination paper is entitled to a presumption of validity." Pursuant to GAB §2.09(1) and (5), Wis. Adm. Code, this presumption of validity is extended to the treatment and sufficiency of election petitions, including recall petitions. Consequently, any challenge to any information on the recall petition must rebut that presumption, (under §903.01, Wis. Stats.), by clear and convincing evidence that "the nonexistence of the presumed fact is more probable than its existence." (See also GAB §§2.07(4) and 2.11(1), Wis. Adm. Code).

ATTACHMENTS

Copy of §§8.40 and 9.10 of the Wisconsin Statutes governing recall petitions.

Copy of the Board's rules, GAB 2.05 and 2.07, Wis. Adm. Code, governing treatment and sufficiency of recall petitions and challenges thereto.

Copy of staff's March 11, 2011 Memorandum (approved by the Board on March 22, 2011) summarizing where §9.10, Wis. Stats., specific requirements for a complete date takes precedence

over GAB §2.05(13), Wis. Adm. Code, which normally permits ditto marks and the like for dates on nomination papers. This Memorandum was distributed while recall committees were circulating recall petitions.

(c) The transfer shall be reported to the appropriate filing officer in a special report submitted by the former candidate's campaign treasurer. If the former candidate is deceased and was serving as his or her own campaign treasurer, the former candidate's petitioner or personal representative shall file the report. The report shall include a complete statement of all contributions, disbursements and incurred obligations pursuant to s. 11.06 (1) covering the period from the day after the last date covered on the former candidate's most recent report to the date of disposition.

(d) The newly appointed candidate shall file his or her report at the next appropriate interval under s. 11.20 (2) or (4) after his or her appointment. The appointed candidate shall include any transferred funds in his or her first report.

(e) Any person who violates this subsection may be punished as provided under s. 11.60 or 11.61.

History: 1973 c. 334; 1975 c. 93; 1977 c. 107, 340; 1979 c. 110 s. 60 (11); 1979 c. 311; 1983 a. 484; 1985 a. 131 s. 3; 1985 a. 303 s. 88; 1985 a. 304; 1987 a. 391; 1993 a. 184; 1995 a. 225; 1999 a. 182; 2001 a. 109; 2005 a. 177; 2009 a. 89; 2011 a. 32.

Circuit judge is a nonpartisan state office. A vacancy due to the death of a circuit court judge candidate may not be filled under sub. (2). Committee to Retain Byers v. Elections Board, 95 Wis. 2d 632, 291 N.W.2d 616 (Ct. App. 1980).

8.37 Filing of referenda petitions or questions. Unless otherwise required by law, all proposed constitutional amendments and any other measure or question that is to be submitted to a vote of the people, or any petitions requesting that a measure or question be submitted to a vote of the people, if applicable, shall be filed with the official or agency responsible for preparing the ballots for the election no later than 70 days prior to the election at which the amendment, measure or question will appear on the ballot. No later than the end of the next business day after a proposed measure is filed with a school district clerk under this section, the clerk shall file a copy of the measure or question with the clerk of each county having territory within the school district.

History: 1999 a. 182; 2005 a. 451; 2011 a. 75.

8.40 Petition requirements. (1) In addition to any other requirements provided by law, each separate sheet of each petition for an election, including a referendum, shall have on the face at the top in boldface print the word "PETITION". Each signer of such a petition shall affix his or her signature to the petition, accompanied by his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing.

(2) The certification of a qualified circulator stating his or her residence with street and number, if any, shall appear at the bottom of each separate sheet of each petition specified in sub. (1), stating that he or she personally circulated the petition and personally obtained each of the signatures; that the circulator knows that they are electors of the jurisdiction or district in which the petition is circulated; that the circulator knows that they signed the paper with full knowledge of its content; that the circulator knows their respective residences given; that the circulator knows that each signer signed on the date stated opposite his or her name; that the circulator is a qualified elector of this state, or if not a qualified elector of this state, that the circulator is a U.S. citizen age 18 or older who, if he or she were a resident of this state, would not be disqualified from voting under s. 6.03, Wis. stats.; and that the circulator is aware that falsifying the certification is punishable under s. 12.13 (3) (a). The circulator shall indicate the date that he or she makes the certification next to his or her signature.

(3) The board shall, by rule, prescribe standards consistent with this chapter and s. 9.10 (2) to be used by all election officials and governing bodies in determining the validity of petitions for elections and signatures thereon.

History: 1989 a. 192; 1997 a. 35; 1999 a. 182; 2001 a. 109; 2005 a. 451.

Cross-reference: See also ss. GAB 2.09 and 2.11, Wis. adm. code.

The residence requirement for nomination paper circulators in sub. (2), as applied to Wisconsin residents who circulate papers outside the political subdivision in which they reside and to nonresidents violates the 1st amendment right of free speech. Frami v. Ponto, 255 F. Supp. 2d 962 (2003).

8.50 Special elections. Unless otherwise provided, this section applies to filling vacancies in the U.S. senate and house of representatives, executive state offices except the offices of governor, lieutenant governor, and district attorney, judicial and legislative state offices, county, city, village, and town offices, and the offices of municipal judge and member of the board of school directors in school districts organized under ch. 119. State legislative offices may be filled in anticipation of the occurrence of a vacancy whenever authorized in sub. (4) (e). No special election may be held after February 1 preceding the spring election unless it is held on the same day as the spring election, nor after August 1 preceding the general election unless it is held on the same day as the general election, until the day after that election. If the special election is held on the day of the general election, the primary for the special election, if any, shall be held on the day of the partisan primary. If the special election is held on the day of the spring election, the primary for the special election, if any, shall be held on the day of the spring primary.

(1) SPECIAL ELECTION ORDER AND NOTICES. (a) When there is to be a special election, the special election for county office shall be ordered by the county board of supervisors except as provided in s. 17.21 (5); the special election for city office shall be ordered by the common council; the special election for village office shall be ordered by the board of trustees; the special election for town office shall be ordered by the town board of supervisors; the special election for school board member in a school district organized under ch. 119 shall be ordered by the school board; the special election for municipal judge shall be ordered by the governing body of the municipality, except in 1st class cities, or if the judge is elected under s. 755.01 (4) jointly by the governing bodies of all municipalities served by the judge; and all other special elections shall be ordered by the governor. When the governor or attorney general issues the order, it shall be filed and recorded in the office of the board. When the county board of supervisors issues the order, it shall be filed and recorded in the office of the county clerk. When the county executive issues the order, it shall be filed in the office of the county board of election commissioners. When the common council issues the order, it shall be filed in the office of the city clerk. When the board of trustees issues the order, it shall be filed in the office of the village clerk. When the town board of supervisors issues the order, it shall be filed in the office of the town clerk. When the school board of a school district organized under ch. 119 issues the order, it shall be filed and recorded in the office of the city board of election commissioners. If a municipal judge is elected under s. 755.01 (4), the order shall be filed in the office of the county clerk or board of election commissioners of the county having the largest portion of the population of the jurisdiction served by the judge.

(b) Notice of any special election shall be given upon the filing of the order under par. (a) by publication in a newspaper under ch. 985. If the special election concerns a national or state office, the board shall give notice as soon as possible to the county clerks. Upon receipt of notice from the board, or when the special election is for a county office or a municipal judgeship under s. 755.01 (4), the county clerk shall give notice as soon as possible to the municipal clerks of all municipalities in which electors are eligible to vote in the election and publish one type A notice for all offices to be voted upon within the county as provided in s. 10.06 (2) (n). If the special election is for a city, village, or town office, the municipal clerk shall publish one type A notice as provided under s. 10.06 (3) (f).

(c) The order and notice shall specify the office to be filled, the expiration date of the remaining term of office, the date of the election, the earliest date for circulating and deadline for filing nomination papers, the area involved in the election, the name of the incumbent before the vacancy occurred and a description of how the vacancy occurred, or for an election held under sub. (4) (e), the name of the incumbent and a description of how and when the

circuit court. The appeal shall commence by serving a written notice of appeal on the other candidates and persons who filed a written notice of appearance before each board of canvassers whose decision is appealed, or in the case of a statewide recount, before the chairperson of the board or the chairperson's designee. The appellant shall also serve notice on the board if the chairperson of the board or the chairperson's designee is responsible for determining the election. The appellant shall serve the notice by certified mail or in person. The appellant shall file the notice with the clerk of circuit court together with an undertaking and surety in the amount approved by the court, conditioned upon the payment of all costs taxed against the appellant.

(b) If an appeal is filed from a recount determination in an election which is held in more than one judicial circuit, the chief judge of the judicial administrative district in which the election is held shall consolidate all appeals relating to that election and appoint a circuit judge, who shall be a reserve judge if available, to hear the appeal. If the election is held in more than one judicial administrative district, the chief justice of the supreme court shall make the appointment.

(7) COURT PROCEDURES. (a) The court with whom an appeal is filed shall forthwith issue an order directing each affected county or municipal clerk or board to transmit immediately all ballots, papers and records affecting the appeal to the clerk of court or to impound and secure such ballots, papers and records, or both. The order shall be served upon each affected county or municipal clerk or board and all other candidates and persons who filed a written notice of appearance before any board of canvassers involved in the recount.

(b) The appeal shall be heard by a judge without a jury. Promptly following the filing of an appeal, the court shall hold a scheduling conference for the purpose of adopting procedures that will permit the court to determine the matter as expeditiously as possible. Within the time ordered by the court, the appellant shall file a complaint enumerating with specificity every alleged irregularity, defect, mistake or fraud committed during the recount. The appellant shall file a copy of the complaint with each person who is entitled to receive a copy of the order under par. (a). Within the time ordered by the court, the other parties to the appeal shall file an answer. Within the time ordered by the court, the parties to the appeal shall provide the court with any other information ordered by the court. At the time and place ordered by the court, the matter shall be summarily heard and determined and costs shall be taxed as in other civil actions. Those provisions of chs. 801 to 806 which are inconsistent with a prompt and expeditious hearing do not apply to appeals under this section.

(8) SCOPE OF REVIEW. (a) Unless the court finds a ground for setting aside or modifying the determination of the board of canvassers or the chairperson of the board or chairperson's designee, it shall affirm the determination.

(b) The court shall separately treat disputed issues of procedure, interpretations of law, and findings of fact.

(c) The court may not receive evidence not offered to the board of canvassers or the chairperson or chairperson's designee except for evidence that was unavailable to a party exercising due diligence at the time of the recount or newly discovered evidence that could not with due diligence have been obtained during the recount, and except that the court may receive evidence not offered at an earlier time because a party was not represented by counsel in all or part of a recount proceeding. A party who fails to object or fails to offer evidence of a defect or irregularity during the recount waives the right to object or offer evidence before the court except in the case of evidence that was unavailable to a party exercising due diligence at the time of the recount or newly discovered evidence that could not with due diligence have been obtained during the recount or evidence received by the court due to unavailability of counsel during the recount.

(d) The court shall set aside or modify the determination of the board of canvassers or the chairperson of the board or chairper-

son's designee if it finds that the board of canvassers or the chairperson or chairperson's designee has erroneously interpreted a provision of law and a correct interpretation compels a particular action. If the determination depends on any fact found by the board of canvassers or the chairperson or chairperson's designee, the court may not substitute its judgment for that of the board of canvassers or the chairperson or designee as to the weight of the evidence on any disputed finding of fact. The court shall set aside the determination if it finds that the determination depends on any finding of fact that is not supported by substantial evidence.

(9) APPEAL TO COURT OF APPEALS. (a) Within 30 days after entry of the order of the circuit court, a party aggrieved by the order may appeal to the court of appeals.

(b) If an appeal is filed in respect to an election which is held in more than one court of appeals district, the chief justice of the supreme court shall consolidate all appeals relating to that election and designate one district to hear the appeal, except that if an appeal is filed in respect to an election for statewide office or a statewide referendum, the appeal shall be heard by the 4th district court of appeals.

(c) The court of appeals shall give precedence to the appeal over other matters not accorded similar precedence by law.

(10) STANDARD FORMS AND METHODS. The government accountability board shall prescribe standard forms and procedures for the making of recounts under this section. The procedures prescribed by the government accountability board shall require the boards of canvassers in recounts involving more than one board of canvassers to consult with the government accountability board staff prior to beginning any recount in order to ensure that uniform procedures are used, to the extent practicable, in such recounts.

(11) EXCLUSIVE REMEDY. This section constitutes the exclusive judicial remedy for testing the right to hold an elective office as the result of an alleged irregularity, defect or mistake committed during the voting or canvassing process.

History: 1971 c. 251; 1971 c. 304 s. 29 (2); 1971 c. 336; 1973 c. 313; 1973 c. 334 ss. 23 to 26, 57; 1975 c. 41, 422; 1977 c. 394 s. 53; 1977 c. 427; 1979 c. 200; 1979 c. 260 ss. 66 to 68, 93; 1979 c. 311, 355; 1983 a. 183; 1983 a. 484 s. 172 (3); 1983 a. 538; 1985 a. 304; 1987 a. 391; 1989 a. 192; 1993 a. 213; 1997 a. 27; 1999 a. 49, 182; 2001 a. 16; 2003 a. 265, 321; 2005 a. 149, 451; 2007 a. 1, 96; 2011 a. 75, 115.

Cross-reference: See also s. GAB 6.04, Wis. adm. code.

A challenge of compliance with procedures for absent voting is within the board of canvassers' jurisdiction. Absent connivance, fraud, or undue influence, substantial compliance with statutory voting procedures is sufficient. Appeal From Recount in Election Contest, 105 Wis. 2d 468, 313 N.W.2d 869 (Ct. App. 1981).

Sub. (8) does not require the party against whom the board rules to object to the board's determination to preserve the issue for judicial review. Clifford v. Colby School District, 143 Wis. 2d 581, 421 N.W.2d 852 (Ct. App. 1988).

Post-election eligibility challenges are properly brought under this section. Logerquist v. Nasewauppee Canvassers, 150 Wis. 2d 907, 442 N.W.2d 551 (Ct. App. 1989).

The recount statute does not violate due process or equal protection and does not deny the electorate the right to have the winning candidate hold office. The relationship of recount and quo warranto actions is discussed. Shroble v. Prusener, 185 Wis. 2d 103, 517 N.W.2d 169 (1994).

When the board of canvassers' actions in a recount reflected proper application of the statutes, the reviewing court's finding that the board had another option available to it was immaterial. DeBroux v. City of Appleton Board of Canvassers, 206 Wis. 2d 321, 557 N.W.2d 423 (Ct. App. 1996), 96-1287.

This section is the exclusive remedy for any claimed election fraud or irregularity. Generally, to successfully challenge an election, the challenger must show the probability of an altered outcome in the absence of the challenged irregularity. Carlson v. Oconto County Board of Canvassers, 2001 WI App 20, 240 Wis. 2d 438, 623 N.W.2d 195, 00-1788.

A party's failure to timely file an appeal under sub. (6) does not preclude the party from later intervening in another's appeal. To appeal under sub. (6) requires a party to be aggrieved. A party advocating a position that prevailed is not aggrieved. Roth v. LaFarge School District Board of Canvassers, 2001 WI App 221, 247 Wis. 2d 708, 634 N.W.2d 882, 01-0160.

The sub. (6) (a) requirement that a vote-recount appeal to the circuit court be served on the other candidates is fundamental. That a candidate who was not served knew about the appeal and sought and was permitted to intervene in an appeal of a recount was immaterial to the validity of that appeal. The command that "other candidates" be served with the appeal is mandatory rather than directory. Logic v. City of South Milwaukee Board of Canvassers, 2004 WI App 219, 277 Wis. 2d 421, 689 N.W.2d 692, 04-1642.

9.10 Recall. (1) RIGHT TO RECALL; PETITION SIGNATURES. (a) The qualified electors of the state, of any county, city, village, or town, of any congressional, legislative, judicial, town sanitary, or

school district, or of any prosecutorial unit may petition for the recall of any incumbent elective official by filing a petition with the same official or agency with whom nomination papers or declarations of candidacy for the office are filed demanding the recall of the officeholder.

(b) Except as provided in par. (c), a petition for recall of an officer shall be signed by electors equal to at least 25% of the vote cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled.

(c) If no statistics are available to calculate the required number of signatures on a petition for recall of an officer, the number of signatures shall be determined as follows:

1. The area of the district in square miles shall be divided by the area of the municipality in square miles in which it lies.

2. The vote for governor at the last general election in the municipality within which the district lies shall be multiplied by 25% of the quotient determined under subd. 1. to determine the required number of signatures.

3. If a district is in more than one municipality, the method of determination under subds. 1. and 2. shall be used for each part of the district which constitutes only a fractional part of any area for which election statistics are kept.

(d) The official or agency with whom declarations of candidacy are filed for each office shall determine and certify to any interested person the number of signatures required on a recall petition for that office.

(2) PETITION REQUIREMENTS. (a) Every recall petition shall have on the face at the top in bold print the words “RECALL PETITION”. Other requirements as to preparation and form of the petition shall be governed by s. 8.40.

(b) A recall petition for a city, village, town, town sanitary district, or school district office shall contain a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought.

(c) A petition requesting the recall of each elected officer shall be prepared and filed separately.

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

(e) An individual signature on a petition sheet may not be counted if:

1. The signature is not dated.
2. The signature is dated outside the circulation period.
3. The signature is dated after the date of the certification contained on the petition sheet.
4. The residency of the signer of the petition sheet cannot be determined by the address given.
5. The signature is that of an individual who is not a resident of the jurisdiction or district from which the elective official being recalled is elected.
6. The signer has been adjudicated not to be a qualified elector on grounds of incompetency or limited incompetency as provided in s. 6.03 (3).
7. The signer is not a qualified elector by reason of age.

8. The circulator knew or should have known that the signer, for any other reason, was not a qualified elector.

(em) No signature on a petition sheet may be counted if:

1. The circulator fails to sign the certification of circulator.
2. The circulator is not a qualified circulator.

(f) The filing officer or agency shall review a verified challenge to a recall petition if it is made prior to certification.

(g) The burden of proof for any challenge rests with the individual bringing the challenge.

(h) Any challenge to the validity of signatures on the petition shall be presented by affidavit or other supporting evidence demonstrating a failure to comply with statutory requirements.

(i) If a challenger can establish that a person signed the recall petition more than once, the 2nd and subsequent signatures may not be counted.

(j) If a challenger demonstrates that someone other than the elector signed for the elector, the signature may not be counted, unless the elector is unable to sign due to physical disability and authorized another individual to sign in his or her behalf.

(k) If a challenger demonstrates that the date of a signature is altered and the alteration changes the validity of the signature, the signature may not be counted.

(L) If a challenger establishes that an individual is ineligible to sign the petition, the signature may not be counted.

(m) No signature may be stricken on the basis that the elector was not aware of the purpose of the petition, unless the purpose was misrepresented by the circulator.

(n) No signature may be stricken if the circulator fails to date the certification of circulator.

(p) If a signature on a petition sheet is crossed out by the petitioner before the sheet is offered for filing, the elimination of the signature does not affect the validity of other signatures on the petition sheet.

(q) Challenges are not limited to the categories set forth in pars. (i) to (L).

(r) A petitioner may file affidavits or other proof correcting insufficiencies, including but not limited to:

4. Failure of the circulator to sign the certification of circulator.
5. Failure of the circulator to include all necessary information.

(s) No petition for recall of an officer may be offered for filing prior to the expiration of one year after commencement of the term of office for which the officer is elected.

(3) STATE, COUNTY, CONGRESSIONAL, LEGISLATIVE AND JUDICIAL OFFICES. (a) This subsection applies to the recall of all elective officials other than city, village, town, town sanitary district, and school district officials. City, village, town, town sanitary district, and school district officials are recalled under sub. (4).

(b) Within 10 days after the petition is offered for filing, the officer against whom the petition is filed may file a written challenge with the official, specifying any alleged insufficiency. If a challenge is filed, the petitioner may file a written rebuttal to the challenge with the official within 5 days after the challenge is filed. If a rebuttal is filed, the officer against whom the petition is filed may file a reply to any new matter raised in the rebuttal within 2 days after the rebuttal is filed. Within 14 days after the expiration of the time allowed for filing a reply to a rebuttal, the official shall file the certificate or an amended certificate. Within 31 days after the petition is offered for filing, the official with whom the petition is offered for filing shall determine by careful examination whether the petition on its face is sufficient and so state in a certificate attached to the petition. If the official finds that the amended petition is sufficient, the official shall file the petition and call a recall election to be held on the Tuesday of the 6th week commencing after the date of filing of the petition. If Tuesday is a legal holiday, the recall election shall be held on the

first day after Tuesday which is not a legal holiday. If the official finds that the petition is insufficient, the certificate shall state the particulars creating the insufficiency. The petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate. Within 5 days after the offering of the amended petition for filing, the official with whom the petition is filed shall again carefully examine the face of the petition to determine sufficiency and shall attach a certificate stating the findings. Upon showing of good cause, the circuit court for the county in which the petition is offered for filing may grant an extension of any of the time periods provided in this paragraph.

(bm) Within 7 days after an official makes a final determination of sufficiency or insufficiency of a recall petition under par. (b), the petitioner or the officer against whom the recall petition is filed may file a petition for a writ of mandamus or prohibition with the circuit court for the county where the recall petition is offered for filing. Upon filing of such a petition, the only matter before the court shall be whether the recall petition is sufficient. The court may stay the effect of the official's order while the petition is under advisement and may order the official to revise the election schedule contained in the order if a revised schedule is necessitated by judicial review. Whenever the recall petitioner files a petition under this paragraph, the officer against whom the recall petition is filed shall be a party to the proceeding. The court shall give the matter precedence over other matters not accorded similar precedence by law.

(c) The official against whom the recall petition is filed shall be a candidate at the recall election without nomination unless the official resigns within 10 days after the original filing of the petition. Candidates for the office may be nominated under the usual procedure of nomination for a special election by filing nomination papers not later than 5 p.m. on the 4th Tuesday preceding the election and have their names placed on the ballot at the recall election.

(d) If more than 2 persons compete for a nonpartisan office, a recall primary shall be held. The names of the 2 persons receiving the highest number of votes in the recall primary shall be certified to appear on the ballot in the recall election, but if any person receives a majority of the total number of votes cast in the recall primary, a recall election shall not be held. If the incumbent receives a majority of the votes cast, the incumbent shall be retained in office for the remainder of the term. If another candidate receives a majority of the votes cast, that candidate shall be elected to serve for the residue of the unexpired term of the incumbent. Write-in votes are permitted only at a recall primary or at a recall election in which no primary is held.

(e) For any partisan office, a recall primary shall be held for each political party which is entitled to a separate ballot under s. 5.62 (1) (b) or (2) and from which more than one candidate competes for the party's nomination in the recall election. The primary ballot shall be prepared in accordance with s. 5.62, insofar as applicable. The person receiving the highest number of votes in the recall primary for each political party shall be that party's candidate in the recall election. Independent candidates shall be shown on the ballot for the recall election only.

(f) If a recall primary is required, the date specified under par. (b) shall be the date of the recall primary and the recall election shall be held on the Tuesday of the 4th week commencing after the recall primary or, if that Tuesday is a legal holiday, on the first day after that Tuesday which is not a legal holiday.

(4) CITY, VILLAGE, TOWN, TOWN SANITARY DISTRICT, AND SCHOOL DISTRICT OFFICES. (a) Within 10 days after a petition for the recall of a city, village, town, town sanitary district, or school district official, is offered for filing, the officer against whom the petition is filed may file a written challenge with the municipal clerk or board of election commissioners or school district clerk with whom it is filed, specifying any alleged insufficiency. If a challenge is filed, the petitioner may file a written rebuttal to the challenge with the clerk or board of election commissioners within 5 days after the challenge is filed. If a rebuttal is filed, the

officer against whom the petition is filed may file a reply to any new matter raised in the rebuttal within 2 days after the rebuttal is filed. Within 14 days after the expiration of the time allowed for filing a reply to a rebuttal, the clerk or board of election commissioners shall file the certificate or an amended certificate. Within 31 days after the petition is offered for filing, the clerk or board of election commissioners shall determine by careful examination of the face of the petition whether the petition is sufficient and shall so state in a certificate attached to the petition. If the petition is found to be insufficient, the certificate shall state the particulars creating the insufficiency. The petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate. Within 2 days after the offering of the amended petition for filing, the clerk or board of election commissioners shall again carefully examine the face of the petition to determine sufficiency and shall attach to the petition a certificate stating the findings. Immediately upon finding an original or amended petition sufficient, except in cities over 500,000 population, the municipal clerk or school district clerk shall transmit the petition to the governing body or to the school board. Immediately upon finding an original or amended petition sufficient, in cities over 500,000 population, the board of election commissioners shall file the petition in its office.

(d) Promptly upon receipt of a certificate under par. (a), the governing body, school board, or board of election commissioners shall call a recall election. The recall election shall be held on the Tuesday of the 6th week commencing after the date on which the certificate is filed, except that if Tuesday is a legal holiday the recall election shall be held on the first day after Tuesday which is not a legal holiday.

(e) The official against whom the recall petition is filed shall be a candidate at the recall election without nomination unless the official resigns within 10 days after the date of the certificate. Candidates for the office may be nominated under the usual procedure of nomination for a special election by filing nomination papers or declarations of candidacy not later than 5 p.m. on the 4th Tuesday preceding the election and have their names placed on the ballot at the recall election.

(f) If more than 2 persons compete for an office, a recall primary shall be held. The names of the 2 persons receiving the highest number of votes in the recall primary shall be certified to appear on the ballot in the recall election, but if any person receives a majority of the total number of votes cast in the recall primary, a recall election shall not be held. If the incumbent receives a majority of the votes cast, the incumbent shall be retained in office for the remainder of the term. If another candidate receives a majority of the votes cast, that candidate shall be elected to serve for the residue of the unexpired term of the incumbent. Write-in votes are permitted only at a recall primary or at a recall election in which no primary is held.

(g) If a recall primary is required, the date specified under par. (d) shall be the date of the recall primary and the recall election shall be held on the Tuesday of the 4th week commencing after the recall primary or, if that Tuesday is a legal holiday, on the first day after that Tuesday which is not a legal holiday.

(h) All candidates for any village, town, and town sanitary district office, other than the official against whom the recall petition is filed, shall file nomination papers, regardless of the method of nomination of candidates for town or village office under s. 8.05.

(5) VOTING METHOD; ELECTION RESULTS. (a) The recall primary or election of more than one official may be held on the same day. If more than one official of the same office designation elected at large for the same term from the same district or territory is the subject of a recall petition, there shall be a separate election contest for the position held by each official. Candidates shall designate which position they are seeking on their nomination papers. Instructions shall appear on the ballot to electors to vote for each position separately.

(b) The official against whom a recall petition has been filed shall continue to perform the duties of his or her office until a cer-

tificate of election is issued to his or her successor. The person receiving a plurality of votes at the recall election or a majority of votes at a primary when authorized under sub. (3) (d) or (4) (f) shall be declared elected for the remainder of the term. If the incumbent receives the required number of votes he or she shall continue in office. Except as provided in sub. (4) (f), if another person receives the required number of votes that person shall succeed the incumbent if he or she qualifies within 10 days after receiving a certificate of election.

(6) LIMITATION ON RECALL ELECTIONS. After one recall petition and recall election, no further recall petition may be filed against the same official during the term for which he or she was elected.

(7) PURPOSE. The purpose of this section is to facilitate the operation of [article XIII, section 12, of the constitution](#) and to extend the same rights to electors of cities, villages, towns, town sanitary districts, and school districts.

History: 1977 c. 187 s. 134; 1977 c. 403, 447; 1979 c. 260; 1983 a. 219, 491, 538; 1985 a. 304; 1987 a. 391; 1989 a. 31, 192; 1991 a. 269, 315; 1999 a. 182; 2001 a. 109; 2005 a. 451; 2007 a. 56.

Cross-reference: See also ss. [GAB 2.09](#), [2.11](#), and [6.04](#), Wis. adm. code.

Striking an entire page of signatures for one invalid signature violated the electorate's right to recall. *Stahovic v. Rajchel*, 122 Wis. 2d 370, 363 N.W.2d 243 (Ct. App. 1984).

This section applies to members of Congress. 68 Atty. Gen. 140.

9.20 Direct legislation. (1) A number of electors equal to at least 15% of the votes cast for governor at the last general election in their city or village may sign and file a petition with the city or village clerk requesting that an attached proposed ordinance or resolution, without alteration, either be adopted by the common council or village board or be referred to a vote of the electors. The individual filing the petition on behalf of the electors shall designate in writing an individual to be notified of any insufficiency or improper form under sub. (3).

(2) The preparation and form of the direct legislation petition shall be governed by s. [8.40](#).

(2m) After the petition has been offered for filing, no name may be erased or removed. No signature may be considered valid or counted unless the date is less than 60 days before the date offered for filing.

(3) Within 15 days after the petition is filed, the clerk shall determine by careful examination whether the petition is sufficient and whether the proposed ordinance or resolution is in proper form. The clerk shall state his or her findings in a signed and dated certificate attached to the petition. If the petition is found to be insufficient or the proposed ordinance or resolution is not in proper form, the certificate shall give the particulars, stating the insufficiency or improper form. The petition may be amended to correct any insufficiency or the proposed ordinance or resolution may be put in proper form within 10 days following the affixing of the original certificate and notification of the individual designated under sub. (1). When the original or amended petition is found to be sufficient and the original or amended ordinance or resolution is in proper form, the clerk shall so state on the attached certificate and forward it to the common council or village board immediately.

(4) The common council or village board shall, without alteration, either pass the ordinance or resolution within 30 days following the date of the clerk's final certificate, or submit it to the electors at the next spring or general election, if the election is

more than 6 weeks after the date of the council's or board's action on the petition or the expiration of the 30-day period, whichever first occurs. If there are 6 weeks or less before the election, the ordinance or resolution shall be voted on at the next election thereafter. The council or board by a three-fourths vote of the members-elect may order a special election for the purpose of voting on the ordinance or resolution at any time prior to the next election, but not more than one special election for direct legislation may be ordered in any 6-month period.

(5) The clerk shall cause notice of the ordinance or resolution that is being submitted to a vote to be given as provided in s. [10.06](#) (3) (f).

(6) The ordinance or resolution need not be printed in its entirety on the ballot, but a concise statement of its nature shall be printed together with a question permitting the elector to indicate approval or disapproval of its adoption.

(7) If a majority vote in favor of adoption, the proposed ordinance or resolution shall take effect upon publication under sub. (5). Publication shall be made within 10 days after the election.

(8) City ordinances or resolutions adopted under this section shall not be subject to the veto power of the mayor and city or village ordinances or resolutions adopted under this section shall not be repealed or amended within 2 years of adoption except by a vote of the electors. The common council or village board may submit a proposition to repeal or amend the ordinance or resolution at any election.

History: 1977 c. 102; 1983 a. 484; 1989 a. 192, 273.

This section implements legislative powers reserved by the people. Subject to certain conditions, a common council has no authority to make an initial judgment of the constitutionality or validity of proposed direct legislation. *State ex rel. Althouse v. Madison*, 79 Wis. 2d 97, 255 N.W.2d 449 (1977).

A proposal that is administrative, rather than legislative in character, is not the proper subject of initiative proceedings. *State ex rel. Becker v. City of Milwaukee Common Council*, 101 Wis. 2d 680, 305 N.W.2d 178 (Ct. App. 1981).

A city clerk has a mandatory duty to forward to the common council a sufficient petition and ordinance in proper form. *State ex rel. North v. Goetz*, 116 Wis. 2d 239, 342 N.W.2d 747 (Ct. App. 1983).

The power of initiative does not extend to legislative decisions that have already been made by the legislative body. *Schaefer v. Potosi Village Board*, 177 Wis. 2d 287, 501 N.W.2d 901 (Ct. App. 1993).

If statutes establish procedures for the accomplishment of legislation in a certain area, an initiative may not effect legislation that would modify the statutory directives that would bind a municipality if it were legislating in the same area. Section 62.23 establishes such procedures for zoning; zoning may not be legislated or modified by initiative. An ordinance constituting a pervasive regulation of, or prohibition on, the use of land is zoning. *Heitman v. City of Mauston*, 226 Wis. 2d 542, 595 N.W.2d 450 (Ct. App. 1999), 98-3133.

There are 4 exceptions to the sub. (4) requirement that requested direct legislation be either passed or submitted to the electors: 1) when the proposed direct legislation involves executive or administrative matters, rather than legislative ones; 2) when it compels the repeal of an existing ordinance, or compels the passage of an ordinance in clear conflict with existing ordinances; 3) when it seeks to exercise legislative powers not conferred on a municipality; and 4) when it would modify statutorily prescribed directives that would bind a municipality if it were attempting to legislate in the same area. *Mount Horeb Community Alert v. Village Board of Mt. Horeb*, 2002 WI App 80, 252 Wis. 2d 713, 643 N.W.2d 186, 01-2217.

Mandamus is the appropriate action when a city council refuses either option of sub. (1) *Mount Horeb Community Alert v. Village Board of Mt. Horeb*, 2002 WI App 80, 252 Wis. 2d 713, 643 N.W.2d 186, 01-2217.

A proposed ordinance, initiated by a group of citizens, to require a village to hold a binding referendum prior to the start of construction on any new village building project requiring a capital expenditure of \$1 million or more was an appropriate subject of direct legislation. *Mount Horeb Community Alert v. Village Board of Mt. Horeb*, 2003 WI 100, 263 Wis. 2d 544, 665 N.W.2d 229, 01-2217.

Section 893.80 (1) (b), which requires the filing of a notice of claim before an action may be commenced against a municipality, did not apply to an action for mandamus seeking to compel a city council to comply with this section. *Oak Creek Citizen's Action Committee v. City of Oak Creek*, 2007 WI App 196, 304 Wis. 2d 702; 738 N.W.2d 168, 06-2697.

Vox Populi: Wisconsin's Direct Legislation Statute. Bach. Wis. Law. May 2008.

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Chapter GAB 2

ELECTION RELATED PETITIONS

GAB 2.05 Treatment and sufficiency of nomination papers.
GAB 2.07 Challenges to nomination papers.

GAB 2.09 Treatment and sufficiency of election petitions.
GAB 2.11 Challenges to election petitions.

Note: Chapter EIBd 2 was renumbered chapter GAB 2 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 2. and 7., Stats., Register April 2008 No. 628.

GAB 2.05 Treatment and sufficiency of nomination papers. (1) Each candidate for public office has the responsibility to assure that his or her nomination papers are prepared, circulated, signed, and filed in compliance with statutory and other legal requirements.

(2) In order to be timely filed, all nomination papers shall be in the physical possession of the filing officer by the statutory deadline. Each of the nomination papers shall be numbered, before they are filed, and the numbers shall be assigned sequentially, beginning with the number "1". Notwithstanding any other provision of this chapter, the absence of a page number will not invalidate the signatures on that page.

(3) The filing officer shall review all nomination papers filed with it, up to the maximum number permitted, to determine the facial sufficiency of the papers filed. Where circumstances and the time for review permit, the filing officer may consult maps, directories and other extrinsic evidence to ascertain the correctness and sufficiency of information on a nomination paper.

(4) Any information which appears on a nomination paper is entitled to a presumption of validity. Notwithstanding any other provision of this chapter, errors in information contained in a nomination paper, committed by either a signer or a circulator, may be corrected by an affidavit of the circulator, an affidavit of the candidate, or an affidavit of a person who signed the nomination paper. The person giving the correcting affidavit shall have personal knowledge of the correct information and the correcting affidavit shall be filed with the filing officer not later than three calendar days after the applicable statutory due date for the nomination papers.

(5) Where any required item of information on a nomination paper is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with the law.

(6) Nomination papers shall contain at least the minimum required number of signatures from the circuit, county, district or jurisdiction which the candidate seeks to represent.

(7) The filing officer shall accept nomination papers which contain biographical data or campaign advertising. The disclaimer specified in s. 11.30 (2), Stats., is not required on any nomination paper.

(8) An elector shall sign his or her own name unless unable to do so because of physical disability. An elector unable to sign because of physical disability shall be present when another person signs on behalf of the disabled elector and shall specifically authorize the signing.

(9) A person may not sign for his or her spouse, or for any other person, even when they have been given a power of attorney by that person, unless sub. (8) applies.

(10) The signature of a married woman shall be counted when she uses her husband's first name instead of her own.

(11) Only one signature per person for the same office is valid. Where an elector is entitled to vote for more than one candidate for the same office, a person may sign the nomination papers of as many candidates for the same office as the person is entitled to vote for at the election.

(12) A complete address, including municipality of residence for voting purposes, and the street and number, if any, of the residence, (or a postal address if it is located in the jurisdiction that the candidate seeks to represent), shall be listed for each signature on a nomination paper.

(13) A signature shall be counted when identical residential information or dates for different electors are indicated by ditto marks.

(14) No signature on a nomination paper shall be counted unless the elector who circulated the nomination paper completes and signs the certificate of circulator and does so after, not before, the paper is circulated. No signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper.

(15) An individual signature on a nomination paper may not be counted when any of the following occur:

(a) The date of the signature is missing, unless the date can be determined by reference to the dates of other signatures on the paper.

(b) The signature is dated after the date of certification contained in the certificate of circulator.

(c) The address of the signer is missing or incomplete, unless residency can be determined by the information provided on the nomination paper.

(d) The signature is that of an individual who is not 18 years of age at the time the paper is signed. An individual who will not be 18 years of age until the subject election is not eligible to sign a nomination paper for that election.

(e) The signature is that of an individual who has been adjudicated not to be a qualified elector on the grounds of incompetency or limited competency as provided in s. 6.03 (3), Stats., or is that of an individual who was not, for any other reason, a qualified elector at the time of signing the nomination paper.

(16) After a nomination paper has been filed, no signature may be added or removed. After a nomination paper has been signed, but before it has been filed, a signature may be removed by the circulator. The death of a signer after a nomination paper has been signed does not invalidate the signature.

(17) This section is promulgated pursuant to the direction of s. 8.07, Stats., and is to be used by election officials in determining the validity of all nomination papers and the signatures on those papers.

History: Emerg. cr. 8-9-74; cr. Register, November, 1974, No. 227, eff. 12-1-74; emerg. r. and recr. eff. 12-16-81; emerg. r. and recr. eff. 6-1-84; cr. Register, November, 1984, No. 347, eff. 12-1-84; r. and recr. Register, January, 1994, No. 457, eff. 2-1-94; CR 00-153: am. (2), (4), and (14), r. (15), renum. (16), (17), and (18) to be (15), (16) and (17), and am. (15) (b) as renum., Register September 2001 No. 549, eff. 10-1-01.

GAB 2.07 Challenges to nomination papers. (1) The board shall review any verified complaint concerning the sufficiency of nomination papers of a candidate for state office that is filed with the board under ss. 5.05 and 5.06, Stats.; and the local filing officer shall review any verified complaint concerning the sufficiency of nomination papers of a candidate for local office that is filed with the local filing officer under s. 8.07, Stats. The filing officer shall apply the standards in s. GAB 2.05 to determine the sufficiency of nomination papers, including consulting extrinsic sources of evidence under s. GAB 2.05 (3).

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(2) (a) Any challenge to the sufficiency of a nomination paper shall be made by verified complaint, filed with the appropriate filing officer. The complainant shall file both an original and a copy of the challenge at the time of filing the complaint. Notwithstanding any other provision of this chapter, the failure of the complainant to provide the filing officer with a copy of the challenge complaint will not invalidate the challenge complaint. The filing officer shall make arrangements to have a copy of the challenge delivered to the challenged candidate within 24 hours of the filing of the challenge complaint. The filing officer may impose a fee for the cost of photocopying the challenge and for the cost of delivery of the challenge to the respondent. The form of the complaint and its filing shall comply with the requirements of ch. GAB 20. Any challenge to the sufficiency of a nomination paper shall be filed within 3 calendar days after the filing deadline for the challenged nomination papers. The challenge shall be established by affidavit, or other supporting evidence, demonstrating a failure to comply with statutory or other legal requirements.

(b) The response to a challenge to nomination papers shall be filed, by the candidate challenged, within 3 calendar days of the filing of the challenge and shall be verified. After the deadline for filing a response to a challenge, but not later than the date for certifying candidates to the ballot, the board or the local filing officer shall decide the challenge with or without a hearing.

(3) (a) The burden is on the challenger to establish any insufficiency. If the challenger establishes that the information on the nomination paper is insufficient, the burden is on the challenged candidate to establish its sufficiency. The invalidity or disqualification of one or more signatures on a nomination paper shall not affect the validity of any other signatures on that paper.

(b) If a challenger establishes that an elector signed the nomination papers of a candidate more than once or signed the nomination papers of more than one candidate for the same office, the 2nd and subsequent signatures may not be counted. The burden of proving that the second and subsequent signatures are that of the same person and are invalid is on the challenger.

(c) If a challenger establishes that the date of a signature, or the address of the signer, is not valid, the signature may not be counted.

(d) Challengers are not limited to the categories set forth in pars. (a) and (b).

(4) The filing officer shall examine any evidence offered by the parties when reviewing a complaint challenging the sufficiency of the nomination papers of a candidate for state or local office. The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence.

(5) Where it is alleged that the signer or circulator of a nomination paper does not reside in the district in which the candidate being nominated seeks office, the challenger may attempt to establish the geographical location of an address indicated on a nomination paper, by providing district maps, or by providing a statement from a postmaster or other public official.

History: Emerg. cr. 8-9-74; cr. Register, November, 1974, No. 227, eff. 12-1-74; emerg. r. and recr. eff. 12-16-81; emerg. r. and recr. eff. 6-1-84; cr. Register, Novem-

ber, 1984, No. 347, eff. 12-1-84; emerg. am. (1), (4) to (6), eff. 6-1-86; am. (1), (4) to (6), Register, November, 1986, No. 371, eff. 12-1-86; r. and recr. Register, January, 1994, No. 457, eff. 2-1-94; CR 00-153; am. (2) (a) and (b), Register September 2001 No. 549, eff. 10-1-01; reprinted to restore dropped copy in (2) (b), Register December 2001 No. 552; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628.**

GAB 2.09 Treatment and sufficiency of election petitions. (1) Except as expressly provided herein, the standards established in s. GAB 2.05 for determining the treatment and sufficiency of nomination papers are incorporated by reference into, and are made a part of, this section.

(2) In order to be timely filed, all petitions required to comply with s. 8.40, Stats., and required by statute or other law to be filed by a time certain, shall be in the physical possession of the filing officer not later than the time set by that statute or other law.

(3) All petitions shall contain at least the number of signatures, from the election district in which the petition was circulated, equal to the minimum required by the statute or other law establishing the right to petition.

(4) Only one signature per person for the same petition, is valid.

(5) This section applies to all petitions which are required to comply with s. 8.40, Stats., including recall petitions, and to any other petition whose filing would require a governing body to call a referendum election.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.

GAB 2.11 Challenges to election petitions. (1) Except as expressly provided herein, the standards established in s. GAB 2.07 for determining challenges to the sufficiency of nomination papers apply equally to determining challenges to the sufficiency of petitions required to comply with s. 8.40, Stats., including recall petitions, and to any other petition whose filing requires a governing body to call a referendum election.

(2) (a) Any challenge to the sufficiency of a petition required to comply with s. 8.40, Stats., shall be made by verified complaint filed with the appropriate filing officer. The form of the complaint, the filing of the complaint and the legal sufficiency of the complaint shall comply with the requirements of ch. GAB 20; the procedure for resolving the complaint, including filing deadlines, shall be governed by this section and not by ch. GAB 20.

(b) The complaint challenging a petition shall be in the physical possession of the filing officer within the time set by the statute or other law governing the petition being challenged or, if no time limit is specifically provided by statute or other law, within 10 days after the day that the petition is filed.

(3) The response to a challenge to a petition shall be filed within the time set by the statute or other law governing that petition or, if no time limit is specifically provided by statute or other law, within 5 days of the filing of the challenge to that petition. After the deadline for filing a response to a challenge, the filing officer shall decide the challenge with or without a hearing.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.

State of Wisconsin \ Government Accountability Board

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



JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: March 11, 2011

TO: All Interested Persons and Committees Involved With Recall Efforts

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

SUBJECT: **Meaning of “Offer to File” Recall Petition
Complete Dates Required for Each Individual Recall Petition Signature**

Government Accountability Board staff have received numerous inquiries regarding the meaning of “offer to file” a recall petition and clarification of signature date requirements on recall petition sheets. In addition, the Board has started receiving individual original recall petition sheets from circulators, likely not part of an organized recall effort. This Memorandum shall provide further clarification in response to these inquiries and concerns.

I. Meaning of “Offer to File” Recall Petition:

After a recall petition has been “offered for filing,” no name may be added or removed. §9.10(2)(d), Wis. Stats. In the Board’s recall manual entitled “Recall of Congressional, County and State Officials” (June 2009), the following definition is provided for “offered for filing”:

Submitting the petition to the filing officer for review for certificate of sufficiency or insufficiency (note: the filing officer should not accept partial petitions and make partial determinations of sufficiency until such time as the petitioner is submitting the petition for a complete review for sufficiency and the filing officer is prepared to make the sufficiency determination.)

The importance of offering a petition for filing cannot be understated. If a recall petitioner states an intent to the filing officer that he or she is offering the petition for filing, the circulation period for the petition ends and the sufficiency review and challenge procedures found in §9.10(3)(b), Wis. Stats., are triggered. Once the petition for recall is offered for filing, the filing officer is prohibited from accepting additional signature sheets, which is different than the procedure for nomination papers where supplemental signatures are accepted up until the statutory deadline for the filing of nomination papers. Whatever is submitted to the filing officer at the time the recall petition is offered for filing is all that will be reviewed for sufficiency. Incomplete petitions offered for filing could result in a certification of insufficiency and require the petitioner to begin the process anew.

Please be sure to inform your circulators of this legal matter and make sure that only an authorized representative of a recall committee presents himself or herself to the Board to offer the recall petition for filing. Please also communicate to your circulators the need to return petition sheets to the relevant recall committee and petitioner to assemble them for filing. As the Board receives individual original recall petition sheets, staff will attempt to return the originals to the senders, provided we have a legible address to do so.

II. Complete Dates Required for Each Individual Recall Petition Signature

Sec. 9.10(2)(e)1., Wis. Stats., clearly states that an individual signature on a petition sheet may not be counted if the signature is not dated. This statutory language likely arose from a Wisconsin Supreme Court decision entitled *Baxter v. Beckley*, 212 N.W. 792, 192 Wis. 397 (Wis. 1927). In the *Baxter v. Beckley* case, the Wisconsin Supreme Court rejected petition signatures that contained no year after the date of signing. In effect, the month and day was present, but not the year of signing. The G.A.B. staff opines that this statutory language and case law requires full dates to appear for every signature on recall petition sheets. This is an exception from the application of GAB Sec. 2.05(13), Wis. Adm. Code, which permits a filing officer to count signatures when identical dates for different electors are indicated by ditto marks or equivalents. As you may know, pursuant to GAB Sec. 2.09(1) and (5), Wis. Adm. Code, the regulations for the treatment and sufficiency of nomination papers found in GAB Sec. 2.05, Wis. Adm. Code, are incorporated by reference and apply to recall petitions. However, the language of GAB Sec. 2.05(13), Wis. Adm. Code, cannot override the specific language found in a statute, particularly Sec. 9.10(2)(e)1., Wis. Stats. This means that while a ditto mark or equivalent is acceptable for identical residential information on recall petition sheets, the same is not true for dates. The actual complete date (month, day and year) are required for each and every signature on recall petition sheets.

However, the G.A.B. staff opines that there is nothing in Sec. 9.10, Wis. Stats., which overrides the ability for a circulator or signer of a recall petition sheet to rehabilitate missing dates (ditto marked or equivalent included) by way of a correcting affidavit in compliance with GAB Sec. 2.05(4), Wis. Adm. Code. In addition, since a correcting affidavit by someone with personal knowledge of the correct information can be completed within 3 days of the day that the recall petition is offered for filing, the G.A.B. staff also opines that a circulator with personal knowledge may likewise correct missing or incomplete date or other information prior to offering the recall petition for filing. The G.A.B. staff has always advised that circulators may pre-populate all information but signatures on nomination papers and other petitions, including recall petitions, as well as enter all information but the signature for signers, so long as the circulator has personal knowledge of the correctness of the information entered.

State of Wisconsin \ Government Accountability Board

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



JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of March 12, 2012

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

SUBJECT: Senate Recall Petitions – Evaluation of Challenges

I. Introduction

This memorandum summarizes the legal arguments submitted by the four State Senators and the committees petitioning for their recall as part of the challenge process, and outlines Board staff's analysis and recommendations regarding those challenges. Section II of this memorandum addresses the three most significant legal challenges which are presented by all of the Senators, in terms of the number of signatures involved. Resolving these identical legal challenges is dispositive in determining the sufficiency of each of the Senate recall petitions because the remaining challenges to individual signatures, even if upheld, would not reduce the number of valid signatures below the minimum number required in each case. Board staff recommends that the Board reject each of these common legal challenges filed by the Senate incumbents as outlined below.

The Senators also filed additional challenges in categories which affect fewer numbers of signatures. Board staff did not review each individual signature which was challenged in these categories because there would be no impact on the sufficiency of the petitions. However, the Board may direct staff to conduct an individual review of these challenges if it so desires, and staff will be prepared to discuss the statutory basis of those challenges or the nature of the evidence necessary to sustain them.

On January 17, 2012, recall petitions were filed against State Senators Scott Fitzgerald, Terry Moulton, Van Wanggaard and Pam Galloway (collectively referred to herein as the "Senators" or "Senate officeholders"). The recall petitioners also filed a number of correcting affidavits with the petitions containing information which could be used to rehabilitate the validity of signatures which were struck during the staff's initial review or during the evaluation of challenges. On February 9, 2012, the four Senators filed challenges to the recall petitions filed against them. The petitioners filed rebuttal documents to the challenges on February 13, 2012, and the Senators filed a Joint Reply on February 15, 2012. All of these documents related to the challenge

process were filed timely, pursuant to Wis. Stat. §9.10 and the order of Dane County Circuit Court Judge Richard Niess.

To promote transparency and provide public access to the documents filed during this recall process, the Government Accountability Board has posted the petitions, challenges, rebuttals, and replies, including supporting affidavits, as links to the Board's website at <http://webapps.wi.gov/sites/recall/default.aspx>. To facilitate review by Board members, the materials included in the packet for this meeting exclude some of those documents but include those which outline the parties' legal arguments. While the Board may consult the other documents through the Board's website, staff believes including those voluminous documents with the Board materials was not necessary or crucial for the Board to determine the sufficiency of the recall petitions. The documents which are included in the Board packet are the following:

1. Memorandum of Law in Support of Senator Scott Fitzgerald's Written Challenge
2. Memorandum of Law in Support of Senator Van Wanggaard's Written Challenge
3. Memorandum of Law in Support of Senator Terry Moulton's Written Challenge
4. Memorandum of Law in Support of Senator Pam Galloway's Written Challenge
5. Recall Committees' Brief in Opposition to Written Challenges
6. Senators Fitzgerald, Wanggaard, Moulton and Galloway's Joint Reply (excluding exhibits related to individual signature challenges)

II. Major Legal Challenges Filed by All Senators

A. Signatures of Electors Outside of the Districts Created by Act 43

As the Board is aware, the effective dates included in redistricting legislation enacted last year have complicated the analysis of the proper Senate districts in which the recall elections must be held. The G.A.B. advised recall petitioners that petitions must be circulated and any recall elections would be certified in the districts which existed prior to the enactment of 2011 Act 43, based upon the plain language of that Act. At its meeting of November 9, 2011, the Board also affirmed staff's application of Act 43 and adopted a Guideline pertaining to its effective dates, which is attached. The first significant legal challenge filed by all of the Senate officeholders disputes that individuals residing in the legislative districts as they existed prior to the enactment of Act 43 are qualified to sign the respective recall petitions.

The Senators argue that a substantial number of the signatures on the recall petitions are of individuals who reside outside of the appropriate Senate District and are therefore invalid. This allegation is contained in the Written Challenges of Senator Scott Fitzgerald (as to 5,944 signatures); Senator Van Wanggaard (as to 12,935 signatures); Senator Terry Moulton (as to 6,261 signatures); and Senator Pam Galloway (as to 1,684 signatures); as well as in the supporting Affidavits of Daniel Romportl filed with each of the challenges.

In their Joint Reply, the Senate officeholders note that there is a constitutional and statutory requirement that a recall petition be signed by the qualified electors of any legislative district represented by the incumbent elective officer. *Wis. Const. Art. XIII, § 12 (intro) and Wis. Stat. §9.190(1)(a)*. While acknowledging the Board's conclusion that any recall elections need to be conducted in the "old" Senate districts, the Senators contend that this is not the end of the

analysis and that the circulation of recall petitions must take place within the districts currently represented by the officeholders, in other words, the “new” Senate districts.

This challenge is based upon the Senators’ argument that the process of circulating recall petitions is separate from the conduct of any recall elections, with the latter only occurring after a determination of sufficiency of the former. They note that the Board determined that the districts created by Act 43 were effective for purposes of constituent representation as of August 24, 2011. The Senators conclude, therefore, that even though the recall elections might be conducted in the old legislative districts, the recall petitions themselves must be signed by electors within the new districts, and any discussion of the proper districts for recall elections is moot until the Board determines that recall petitions are sufficient.

In their rebuttal to the Senators’ challenges, the recall committees argue that the text of Act 43 does not permit a conclusion that the new legislative districts are in effect for the recall elections or the circulation of recall petitions. They rely on the language regarding effective dates in 2011 Act 43 and argue that the G.A.B.’s interpretation of the statute, on which the committees and petition signers relied, has already settled this question against the Senators.

Board staff agrees that the proper interpretation and application of the Act 43 effective dates are outlined in the October 19, 2011 and November 9, 2011 memoranda from Director and General Counsel Kevin Kennedy which are included as exhibits to the Senators’ Joint Reply, as well as in the Guideline previously adopted by the Board. In addition, Board staff believes that Act 43 made no distinction between the proper legislative districts for circulating recall petitions and for conducting any recall elections which may result. As noted in Director Kennedy’s memoranda, 2011 Act 43 § 10(2) states that the legislation creating new legislative districts “first applies, with respect to special or recall elections, to offices filled or contested concurrently with the 2012 general election.” None of the current Senate recall petitions relate to offices that are to be filled or contested concurrently with the 2012 general election.

The Board’s previous analysis regarding this issue did not focus on distinguishing the circulation of petitions from the conduct of recall elections. Board staff disagrees, however, with the Senate officeholders’ assertions that qualified electors of a district are determined by the Board’s conclusion that August 24, 2011 was the effective date of Act 43 for purposes of constituent representation. The Legislature did not make that distinction in the language of Act 43 and the Board is not free to create it. The constitutional and statutory language authorizing the qualified electors of “any legislative district” to petition for recall of an incumbent must be read in light of the language the Legislature chose to use in Act 43 to establish its effective dates.

Furthermore, neither Article XIII, §12 of the Wisconsin Constitution nor the provisions of Wis. Stat. § 9.10 contain any support for the notion that the qualified electors for purposes of circulating a recall petition may be different from the qualified electors who are eligible to vote at the ensuing recall election. To the contrary, the constitutional and statutory language outline a full process from registration of the recall petitioner to circulation of recall petitions to voting at an election, which involves the participation of the “qualified electors” of the jurisdiction.

Act 43 was enacted shortly after the completion of nine recall elections involving State Senators of both parties, and therefore it seems unlikely that the Legislature was unaware of the impact of its separate effective dates governing representation and elections. Act 43 states that the new

districts *first apply*, with respect to special or recall elections, to offices filled or contested concurrently with the 2012 general election. As outlined in Director Kennedy’s October 19, 2012 memorandum, that specific language seems to indicate, logically and as a matter of statutory interpretation, that the new districts *do not apply* to special or recall elections for offices filled or contested prior to November 6, 2012. The “old” districts, therefore, were not extinguished by the enactment of Act 43 for such special or recall elections, and continue to be existing districts for those purposes. By delaying the Act’s effective date for recall and special elections, the Legislature defined the pool of electors who are qualified to exercise the right of recall pursuant to Article XII, §12 of the Wisconsin Constitution and Wis. Stat. § 9.10(1)(a).

In addition to comporting with the plain language of Act 43, the Board’s interpretation is supported by holdings in two recent court cases, both of them ultimately reaching the U.S. Supreme Court. In *Mississippi State Conference of N.A.A.C.P. v. Barbour*, 2011 WL 1870222 (S.D. MS 2011), a federal district court declined to order the Mississippi Legislature to enact redistricting legislation prior to 2012, the end of the ten-year period from the previous reapportionment. *MS State Conf. of NAACP, et al. v. Barbour, et al.*, 2011 WL 1870222 (S.D. MS 2011), Slip Copy at 7. In doing so, the Court noted that all parties acknowledged that the current legislative districts were malapportioned based on the 2010 census data, but that states operate under the long-established legal fiction that redistricting plans are constitutionally apportioned throughout the entire succeeding decade, until a new plan is adopted. *Barbour* at 6, 8. The U.S. Supreme Court summarily affirmed the district court decision. *MS State Conf. of NAACP, et al. v. Barbour, Gov. of MS, et al.*, 2011 WL 511830, 80 USLW 3059 (S.Ct. 2011).

In the district court’s *Barbour* decision and the more recent U.S. Supreme Court decision in *Perry v. Perez*, 565 U.S. ____ (2012), courts have given deference to legislative decision making regarding redistricting. *Perry v. Perez*, 565 U.S. ____ at 2, 4 (2012); *Barbour*, 2011 WL 1870222 (S.D. MS 2011), Slip Copy at 7 (“reapportionment is primarily a matter for legislative consideration and determination.) In Act 43, the Legislature provided that the previous legislative districts would continue to be used to conduct special and recall elections for a limited period of time. Absent further legislative action or a court ruling, the Board must respect that legislative determination.

The effective date provisions of Act 43 create a situation in which incumbent legislators may be answerable to two overlapping sets of constituents, namely 1) residents of the newly-created districts for which their legislative representation began August 24, 2011 and who would be entitled to vote for that officeholder in 2014, and 2) residents of the pre-Act 43 districts who voted for the office in 2010 and who retain “jurisdiction” over the officeholder for purposes of recall for the duration of the period until the November 6, 2012 General Election. That consequence is compelled by the plain language of Act 43, however, and the Board does not have the authority to alter that result.

The Board’s guidance to the Legislature in response to questions raised about the Act’s effective date for purposes of representation has enabled current Legislators to provide services to constituents of the new districts, while also permitting them to respond to inquiries from constituents in the old districts. The Joint Committee on Legislative Organization (JCLO) has affirmed this interpretation through a motion adopted regarding the expenditure of public funds, which is attached as Exhibit A. In short, the policy currently authorizes Members of the Legislature to expend funds to provide constituent services to individuals residing in either the pre-Act 43 districts or in the new legislative districts.

As a result of the JCLO policy determination, the following statement which appears on the Legislature’s “Who Are My Legislators?” website above the names and photographs of legislators representing a specific constituent under both the old and new legislative districts:

The Wisconsin Government Accountability Board has indicated that the legislative districts established in 2002 remain in effect for election purposes and that the legislative districts established in 2011 Wisconsin Act 43 are also in effect for purposes of providing services to constituents.

The Joint Committee on Legislative Organization has adopted a policy authorizing the provision of constituent services to individuals residing in either set of legislative districts.

Each of the legislators listed below is authorized to provide constituent services for the address provided....

In addition, as Director Kennedy noted in his memorandum of October 19, 2011, a special election was held in the 95th Assembly District last fall. That election was ordered by the Governor on September 2, 2011, following the enactment of Act 43. Pursuant to 2011 Executive Order 41 and the same language in dispute here, the special election was conducted under the district lines in effect before passage of Act 43. No distinction was made in the Executive Order between the residents who were qualified electors of the district for purposes of signing nomination papers and for purposes of voting in the special election. No candidate or representative of either political party objected to the circulation of nomination papers or conduct of the special election under the pre-Act 43 district boundaries.

Furthermore, in several ongoing lawsuits challenging the redistricting legislation, it is the legal position of the Board and the State of Wisconsin, being represented by the Attorney General, that recall and special elections conducted prior to the 2012 General Election must be conducted using the legislative districts which existed prior to the enactment of Act 43.

Because of the plain language of Act 43’s effective date provisions, the challenges of the Senate officeholders alleging that petition signatures are invalid if the signer resided in the pre-Act 43 legislative district but not in the new districts created by that Act do not demonstrate a failure to comply with statutory requirements. For the reasons described above, Board staff recommends that the Board also reject those legal challenges to the recall petitions.

Recommendation – Reject all challenges of the Senate officeholders which are based on the signer residing outside of the new 29th Senate District.

B. Signatures Collected Prior to or on the Date of Registration

The Senators argue that there is reason to believe certain signatures were collected prior to registration, in violation of Wis. Stat. §9.10(2)(d), which states that “No petitioner may circulate a petition for the recall of an officer prior to completing registration.” Citing §GAB 6.02, the officeholders contend that committee registration is not complete “until a GAB representative reviews the registration statement and accepts it.” Senators’ Memoranda of Law in Support of Written Challenges, Section V.; Senators’ Joint Reply, Section II.

Although the Senators do not identify any of the signatures allegedly collected prematurely, they argue that this is due to the Recall Committees' failure to indicate the time certain signatures were made. According to the Senators' Joint Reply, the Recall Committees made no assertions that they waited until registration was complete before circulating petitions, and they submit evidence in the form of newspaper reports of "midnight signing parties and 'pajama parties,'" suggesting that many signatures were collected in the early morning of November 15, 2011.

In their respective Written Challenges, each Senator alleges that signatures were collected prior to the petitioner completing registration, contrary to Wis. Stat. §9.10(2)(d), and that those signatures must be disregarded. Senator Scott Fitzgerald's Written Challenge at 7; Senator Van Wanggaard's Written Challenge at 6; Senator Terry Moulton's Written Challenge at 6; Senator Pam Galloway's Written Challenge at 6. The Senators note that the paper copies of the recall committee registrations were time-stamped by the G.A.B. at mid-morning on November 15, 2011 (in the case of the committee opposing Senators Fitzgerald) or on November 16, 2011 (in the case of the committees opposing Senators Wanggaard and Galloway) or on November 17, 2011 (in the case of the committee opposing Senator Moulton). Based on this evidence Senator Fitzgerald challenges at 877 signatures; Senator Wanggaard challenges 2,404 signatures; Senator Moulton challenges 4,155 signatures; and Senator Galloway challenges 1,576 signatures.

The recall petitioners argue that the Senators do not present sufficient evidence to support their requests to strike any signatures dated on or after November 15, 2011. They contend that Wis. Stat. §9.10 delineates a time period of circulation that includes the day of registration. In support of this interpretation, they cite the GAB's correspondence to the recall committees, which indicated that November 15, 2011 was the first day of the circulation period, and January 14, 2012 was the last day that signatures could be collected. The Committee also argues that under the Administrative Code and Wisconsin case law, the invalidity of one signature shall not affect the validity of any other signatures on the petition. §§ GAB 2.07(3)(a), 2.11(1), Wis. Adm. Code; *Stahovic v. Rajchel*, 122, Wis. 2d 370, 363 N.W. 2d 243 (Ct. App. 1984).

According to the Committees, the Senators did not dispute any individual signatures, but rather all of those collected on November 15, 2011, as well as on November 16 and 17, 2011 in the case of three of the recall committees. The Committees further argue that the Senators provide no evidence to support their belief that any of the signatures were collected prior to registration being completed, and, therefore, their challenges must be denied.

In the opinion of Board staff, this category of challenges should be denied for several reasons. Most fundamentally, the Senate officeholders have not identified any specific signatures that they challenge or offered any evidence that a specific individual signed a recall petition prior to registration being completed. If they had done so with clear and convincing evidence, the burden may have shifted to the petitioners to rebut the evidence. The newspaper articles submitted in support of the challenges primarily describe events at which individuals gathered to collect signatures and organize recall efforts against Governor Walker. None of the reports identify any individual who signed a recall petition against any of the Senators at any specific time, much less prior to the committee completing registration.

In addition, the Senators' challenges focus on the time-stamp shown on the paper copies of the committee registration forms, which are attached Exhibits B through E. However, three of the four Senate recall committees (opposing Senators Wanggaard, Moulton, and Galloway registered

electronically using the Board’s Campaign Finance Information System (CFIS) shortly after midnight on November 15, 2011. As indicated on the spreadsheet attached as Exhibit F, the Wanggaard recall petitioner registered electronically at 12:04 a.m.; the Galloway recall petitioner did so at 12:19 a.m., and the Moulton petitioner followed at 12:26 a.m. on November 15, 2011. The recall committee opposing Senator Fitzgerald registered in person at the G.A.B. office at 9:32 a.m. as reflected by the time-stamp shown on Exhibit B. This information was provided to counsel for the Senators at his request on February 8, 2012.

As to the committees which filed electronically on CFIS, § GAB 1.41(1), Wis. Adm. Code, provides that

Where a requirement is imposed for the filing of a registration statement no later than a certain date, the requirement may be satisfied either by actual receipt of the statement by the prescribed time for filing at the office of the filing officer, or by filing a report with the U.S. post service by first class mail with sufficient prepaid postage, addressed to the appropriate filing officer, no later than the date provided by law for receipt of such report.

While the petitioners were barred from collecting signatures prior to registration, submitting the required form electronically through CFIS is considered completion of registration, provided that is complete. There is no legal requirement for the registration to be acknowledged by the G.A.B. in order for the registration process to be completed, unless the form is insufficient as to essential form, information or attestation, in which case the registration shall be rejected by the filing officer. § GAB 6.02(1), Wis. Adm. Code. If the registration statement is insufficient or incomplete but substantially complies with the law, it is to be accepted by the officer who shall promptly notify the registrant that the form must be completed within 15 days. § GAB 6.02(2), Wis. Adm. Code. None of the petitioners’ registration statements were insufficient as to essential form, information or attestation and therefore registration was completed upon their filing through CFIS.

For these reasons, the Senators’ challenges to signatures allegedly collected prior to the respective committee’s registration should be denied in full. The information on the petition is presumed to be valid, and the officeholders bear the burden of presenting clear and convincing evidence to defeat that presumption. Wis. Stats. §§ 9.10(2)(g) and (h); §§GAB 2.05(4) and 2.11(1), Wis. Adm. Code. No evidence has been presented to demonstrate that the petitioners or specific petition signers failed to comply with statutory or other legal requirements regarding the committee registration statements. Finally, in the event that evidence were presented to establish that a specific individual signed a recall petition prior to the petitioner completing registration, such a fact does not automatically invalidate other signatures on the petition. §§ GAB 2.07(3)(a), 2.11(1), Wis. Adm. Code; *Stahovic v. Rajchel*, 122, Wis. 2d 370, 363 N.W. 2d 243 (Ct. App. 1984).

Recommended Motion: Deny all challenges of the Senate officeholders which are based on the individuals allegedly signing the petitions prior to the recall committees completing registration with the Board.

C. Signatures Analyzed by Third Party

Each of the Senate officeholders' Written Challenges request that the Board accept and evaluate challenges submitted by "Verify the Recall," a joint effort of two nonprofit corporations, Wisconsin GrandSons of Liberty and We the People of the Republic. The Senators' Written Challenges attempt to incorporate the results of a Citizen Verification Process conducted under the umbrella of Verify the Recall "to the extent those results reveal additional valid grounds for challenging the sufficiency of the Recall Petition." The Challenges indicate that the Senators believe the results of the Citizen Verification Process would be made publicly available on the date the Challenges were filed. The Senators argue that existing campaign finance laws prohibit the two nonprofit organizations from directly providing results of the Citizen Verification Process or otherwise coordinating efforts with the Senators. They also allege that Board staff has referred individuals who believe their names were improperly signed to any of the recall petitions to the Verify the Recall organization, and therefore Board staff has prevented information about potential challenges from being shared directly with the Senators.

The recall petitioners do not respond to the Senators' request or arguments regarding challenges that might be filed through the Verify the Recall effort.

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 Senate 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 officeholders and the petitioners. In fact, Wis. Stat. § 9.10(3)(b) states only that "Within 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 Senators to file written challenges was February 9, 2012.

While Board staff has indicated the Board is free to review any information submitted by the public as a check on its own work, or to assess whether its procedures could be improved, staff continues to believe that the Board is not authorized to accept challenges of recall petition signatures from any party other than the officeholder. In addition, the issue is moot because the Verify the Recall organizations did not file any written challenges with the Board by the deadline of February 9, 2012.

It should be noted that Verify the Recall is not prohibited from sharing information or coordinating efforts with the Senators under Wisconsin campaign finance laws; they are only prohibited from providing their services to the Senator's campaign committees without charge because of their corporate status. Wis. Stat. § 11.38 prohibits foreign and domestic corporations from making a political contribution to a candidate or political committee. Board staff advised representatives of Verify the Recall that the organization could share the results of its efforts with the Senators if those results were purchased. Apparently there was no effort or agreement to share that information in a way that would comply with the campaign finance laws.

For these reasons, Board staff recommends that the Board deny any challenges filed by the Senators which are based on the assertion that information produced by Verify the Recall is incorporated into the Written Challenges.

Recommended Motion: Deny all challenges filed by the Senators which are based on the assertion that information produced by Verify the Recall is incorporated into the Written Challenges.

D. Signatures with the Same or Similar Handwriting

Each of the Senators also challenge a number of signatures because multiple signatures “appear in the same handwriting,” citing Wis. Stat. §9.10(2)(e)(j), which states that “If a challenger demonstrates that someone other than the elector signed for the elector, the signature may not be counted, unless the elector is unable to sign due to physical disability and authorized another individual to sign in his or her behalf.”

The Senators’ Written Challenges offer no evidence beyond the sworn statements of the Senators and Daniel Romportl that “multiple signatures appear in the same handwriting.” Information on a recall petition is entitled to a presumption of validity pursuant to §§ GAB 2.05(4) and 2.09(1), Wis. Adm. Code. Absent any sworn affidavits containing first-hand knowledge, the Senators have failed to rebut the presumption of validity and satisfy the clear and convincing burden of proof pursuant to Wis. Stat. §9.10(2)(g) and §§ GAB 2.07(3)(a) and (4) and 2.11(1), Wis. Adm. Code. Therefore, Board staff recommends that the Board deny any challenges filed by the Senators which are based solely on the assertion that multiple signatures appear in the same handwriting.

Recommended Motion: Deny all challenges filed by the Senators which are based solely on the assertion that multiple signatures appear in the same handwriting.

III. Conclusion

The above analysis and recommendations dispose of most of the major categories of challenges filed by each of the Senators. They present other categories of challenges for which Board staff has not conducted an in-depth evaluation of the legal bases or the quality of the evidence presented. Resolving the challenges described above as recommended is dispositive in determining the sufficiency of each of the Senate recall petitions.

STATE OF WISCONSIN
BEFORE THE GOVERNMENT ACCOUNTABILITY BOARD

IN RE PETITION TO
RECALL SENATOR SCOTT FITZGERALD
OF THE 13th SENATE DISTRICT

WGAB ID# 0600024

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GOVERNMENT ACCOUNTABILITY BOARD

**MEMORANDUM OF LAW IN SUPPORT OF SENATOR SCOTT FITZGERALD'S
WRITTEN CHALLENGE TO THE RECALL PETITION OFFERED
FOR FILING ON JANUARY 17, 2012**

INTRODUCTION

The recall petition offered for filing on January 17, 2012 seeking the recall of State Senator Scott Fitzgerald (the "Recall Petition") must be rejected in its entirety as insufficient. The Recall Petition is fatally defective because it was not signed by a sufficient number of eligible qualified electors, as required by Article XIII, § 12 of the Wisconsin Constitution and Wis. Stat. § 9.10(1)(a), (b). Indeed, among the 20,650 signatures there are 10,989 irregularities that require a finding that a signature is invalid.

BACKGROUND

On November 15, 2011, Ms. Lori Compas filed with the Government Accountability Board ("GAB" or the "Board") a registration statement for a recall committee named "Committee to Recall Scott Fitzgerald" (the "Recall Committee") and attached to that registration a Statement of Intent to Circulate Recall Petition, by which Ms. Compas stated her intention to circulate a petition to recall Scott Fitzgerald, State Senator District 13.¹ GAB staff accepted the registration statement at 9:32 a.m. on November 15, 2011.

¹ A copy of the Recall Committee's registration statement is attached to the Affidavit of Daniel Romportl, filed herewith, at Exh. D.

On January 26, 2012, State Senator Scott Fitzgerald was notified by GAB staff that the Recall Committee had offered the Recall Petition for filing on January 17, 2012. GAB attached to its January 26, 2012 letter a copy of a "Recall Petition Receipt" which indicated that the Recall Petition consisted of approximately 3,961 pages and approximately 20,600 signatures.

ARGUMENT

I. The Requirements Set Forth In Wis. Stat. § 9.10 Must Be Met In Order To Compel A Recall Election.

The Recall Committee must demonstrate that it has met the statutory requirements outlined in Wis. Stat. § 9.10 in order to compel an election to recall Senator Fitzgerald. Fundamental to the Board's review of the Recall Petition is that only "[t]he qualified electors . . . of any . . . legislative . . . district . . . may petition for the recall of [the] incumbent elective official" and the command that any such recall petition "shall be signed by electors equal to at least 25% of the vote cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled." Wis. Stat. § 9.10(1)(a), (b). These statutory provisions simply implement the corollary Constitutional provisions relating to recall, which also provide that "[t]he qualified electors . . . of any . . . legislative district . . . may petition for the recall of any incumbent elective officer . . . by filing a petition . . . demanding the recall of the incumbent" and that the petition must meet the 25% of the vote cast threshold. Wis. Const. Art. XIII, § 12(intro), (1).

It is undisputed that Senator Fitzgerald represents that territory in Wisconsin identified as the 13th Senate District, as set forth in Wis. Stat. § 4.009(13). The entirety of Wis. Stat. Chapter 4, Subchapter II was repealed and Wis. Stat. § 4.009(13) recreated by 2011 Wisconsin Act 43 ("Act 43"). The Board concluded in October 2011 that Act 43 became effective for representation purposes as of August 24, 2011. Consequently, as confirmed by the Board's own

determination, as of August 24, 2011, Senator Fitzgerald ceased representing the territory formerly identified as the 13th Senate District in the districting plan based on the 2000 decennial census. (the “2000 Plan”).

In order to determine that the Recall Petition is sufficient, as that term is used in Wis. Stat. § 9.10(3)(b), the Board must find that it contains the requisite number of signatures from qualified electors who reside in the Senate District represented by Senator Fitzgerald. Specifically, the Board must i) disregard all signatures from electors that were not represented by Senator Fitzgerald during the circulation period and ii) calculate the number of votes cast during the 2010 gubernatorial election within the territory that is now the 13th Senate District. Additionally, GAB must determine whether the recall petitioner resides in the District. Moreover, the Board must consider whether the violation of other procedural and technical requirements set forth in Wis. Stat. § 9.10 compels the Board to disregard other signatures affixed to the Recall Petition.

II. The Government Accountability Board Cannot Rewrite The Statutory Scheme Set Forth In Section 9.10.

The Government Accountability Board is bound by the clear mandates of § 9.10 and is without authority to amend the statutory provisions, either through formal Board action or informal staff interpretations. Administrative agencies are charged with the implementation of statutes duly enacted by the legislature. *See Plain v. Harder*, 268 Wis. 507, 512, 68 N.W.2d 47 (1955). However, there are clear limitations on the scope of an agency’s power to implement and interpret legislation. *See State ex rel. Castaneda v. Welch*, 2007 WI 103, ¶ 26, 303 Wis. 2d 570, 735 N.W.2d 131. The power of a state agency is strictly limited to power conferred upon it by the legislature through an enabling statute. *Id.* An agency’s enabling statute is strictly construed, and “any reasonable doubt pertaining to an agency’s implied powers” must be

resolved against the agency. *Id.* (citing *Wisconsin Citizens Concerned for Cranes & Doves v. DNR*, 2004 WI 40, ¶14, 270 Wis. 2d 318, 677 N.W.2d 612).

Furthermore, an agency's method of practice or interpretation that ignores the plain language of a statute will not stand. In *State ex rel. Stearns v. Zimmerman*, the plaintiff failed to file his nomination papers for the senate primary election within the timeframe mandated by statute: *State ex rel. Stearns v. Zimmerman*, 257 Wis. 443, 445, 43 N.W.2d 681 (1950). In denying the plaintiff's prayer for relief, the Wisconsin Supreme Court held that "the time limit set by the legislature for the filing of nomination papers must be strictly enforced." *Id.* This is so because the legislature has expressly provided a firm deadline for the filing of nomination papers, and any interpretation in conflict with that firm deadline cannot stand. *Id.* at 446. According to the court, to hold otherwise would be tantamount to allowing an agency to amend the statute, not construe it. *Id.* Ultimately, "[t]he interests of the electors are served by a strict compliance" with the language of a statute where that language evinces a clear legislative intent. *State ex rel. McIntyre v. Bd. of Election Commissioners of the City of Milwaukee*, 273 Wis. 395, 402, 78 N.W.2d 752 (1956) (holding that the principles articulated in *Stearns* apply to deadlines for seeking a recount where the legislature has explicitly provided filing deadlines).

The State and the public has the strongest interest in ensuring that a recall election is held *only if* the Recall Petition is signed by a sufficient number of qualified electors. As the Wisconsin Supreme Court has noted, recall petitions "will receive close judicial scrutiny for procedural regularity" in large part because "we are dealing here with a special election matter, in which the rights of one theretofore duly elected to public office as well as the rights of the general public are concerned." *Beckstrom v. Kornsi*, 63 Wis. 2d 375, 387, 217 N.W.2d 283 (1974), quoting *State ex. rel Baxter v. Beckley*, 192 Wis. 367, 371, 212 N.W. 792 (1927); see

also *In re Jensen*, 121 Wis. 2d 467, 469, 360 N.W.2d 535 (Ct. App. 1984) (noting that recall petitions implicate “the significant interest of the officeholder in retaining his position”).

With these background principles in mind, the following sections outline the deficiencies with the Recall Petition.

III. A Substantial Number Of Signatures On The Recall Petition Represent Electors From Outside The 13th Senate District And Must Be Disregarded.

Of the 20,650 individual signature lines of the Recall Petition that were at least partially completed, at least 5,944 signatures are from individuals who reside outside the 13th Senate District. Affidavit of Daniel Romportl (hereafter, “Romportl Aff.”), ¶ 4(g). The Board may not count any of these 5,944 signatures. Wis. Stat. § 9.10(2)(e)5. Counting these signatures would have the effect of allowing individuals who are not qualified electors of the 13th Senate District to compel the recall of a senator who does not represent them. Neither the constitutional nor the statutory recall provision permits this. The practical result would be no different than allowing residents of Illinois to compel the recall of Wisconsin’s governor.

The proper elimination of all signatures from individuals that reside outside the 13th Senate District brings the total number of signatures on the Recall Petition well below the mandatory 25% threshold.²

IV. The Recall Petitioner Does Not Live In The District; Accordingly The Entire Petition Must Be Rejected.

As noted above, the relevant district is the 13th Senate District. As evidenced by the information provided on the Recall Committee’s registration statement, Ms. Lori Compas, the recall petitioner, as that term is used in Wis. Stat. § 9.10, resides in Fort Atkinson, Wisconsin.

² In the event the Board elects to analyze the validity of individual Recall Petition signatures by referencing the territory of the former 13th Senate District as set forth in the 2000 Plan, 777 individual signers reside outside the former 13th Senate District and those signatures must be disregarded. Romportl Aff. ¶ 4(h).

(Romportl Aff. Ex. D.) Fort Atkinson, Wisconsin is not within the 13th Senate District; it is within the 11th Senate District.

Accordingly, Ms. Compass may not serve as the recall petitioner. GAB has consistently maintained that only electors within the respective legislative district may serve as the “recall petitioner.” See Wisconsin Government Accountability Board, Recall of Congressional, County and State Officials, p. 3 (June 2009) (noting under the heading “Who Can Initiate a Recall?” that the recall petitioner must be a “qualified elector of the election district”).

Based on GAB’s consistent application of the registration requirement set forth in Wis. Stat. § 9.10(2)(d), Ms. Compass’ residence outside the 13th Senate District, standing alone, is fatal to the Recall Petition.

V. **A Substantial Number Of Signatures On The Recall Petition Were Dated Outside The Circulation Period And Must Be Disregarded.**

Section 9.10(2)(d) provides that “[n]o petitioner may circulate a petition for the recall of an officer prior to completing registration.” The registration procedure is set forth in Wis. Stat. §§ 9.10(2)(d) & 11.05 and Wis. Admin. Code ch. GAB 6, and involves the recall petitioner filing with GAB a registration statement known as a GAB-1 Form and affixing to it a statement indicating his or her intent to circulate a recall petition. Wis. Admin. Code § GAB 6.02 makes it clear that such a registration is not “completed” until a GAB representative reviews the registration statement and accepts it. Specifically, § GAB 6.02 expresses that GAB, as the filing officer, must inspect the registration statement and either reject it as insufficient, conditionally accept it and notify the registrant of minor errors or insufficiencies that must be corrected within fifteen days or accept it unconditionally.

The time stamp on the Recall Committee’s registration statement indicates that it was accepted for filing by GAB on November 15, 2011 at 9:32 a.m. Accordingly, no signature on

the Recall Petition is valid that was signed prior to 9:32 a.m. on the morning of November 15, 2011. The Recall Petition includes 877 signatures that are dated November 15, 2011; however, none of those signatures indicate whether they were affixed to the Recall Petition before or after the Recall Committee completed registration. Romportl Aff. ¶ 4(d). Accordingly, those signatures must be disregarded. Wis. Stat. § 9.10(2)(e)2. This result is compelled by the fact that it was widely reported that midnight signing parties and “pajama parties” were coordinated all over the state in the early morning hours of November 15, 2011. See Second Affidavit of Daniel Romportl.

In addition, 54 individual signatures are dated before November 15, 2011 or after January 14, 2011 and must be must be disregarded. Wis. Stat. § 9.10(2)(e)2.; Romportl Aff. ¶ 4(c).

VI. Numerous Signatures On The Recall Petition Are Invalid Pursuant To Wis. Stat. § 9.10(2).

Section 9.10(2)(e) – (L) sets forth various technical standards that individual signatures must meet in order to be valid. Senator Fitzgerald’s Written Challenge sets forth the nature and bases of a multitude of errors that render invalid certain signatures on the Recall Petition in greater detail. The following is a summary by category:

- 24 signatures are invalid because the respective elector did not actually sign the Recall Petition;
- 569 signatures are invalid because each respective signer either omitted or provided an incomplete or illegible address;
- 109 signatures are invalid because the date of the signature is either missing or incomplete;
- 64 signatures are invalid because they were dated after the certification of circulator;

- 5 signatures are invalid because they represent felons and other individuals that appear on GAB's list of ineligible voters;
- 205 signatures are invalid because they represent duplicate signatures;
- 1739 individual signatures are invalid due to improper certification of a petition page by the circulator, or the circulator changing information on the signature line after certifying the petition page. Many circulators failed to state his or her residence, as required by Wis. Stat. § 8.40(2). Certain circulators failed to sign and/or date the circulator certification;
- 188 signatures cannot be verified and are invalid because multiple signatures appear in the same handwriting, indicating that someone other than the elector signed on the elector's behalf;
- 44 signatures are invalid for other miscellaneous reasons, as described more fully in Senator Fitzgerald's Written Challenge and Mr. Romportl's Affidavit.
- 1 signature is invalid because it represents an obviously fictitious name; and
- 84 signatures are invalid because they listed addresses that were identified as undeliverable by the United States Postal Service.

VII. The Board Must Evaluate The Results Of The "Verify The Recall" Effort.

As the Board is fully aware, two 501(c)(4) organizations, Wisconsin GrandSons of Liberty and We the People of the Republic (collectively, "Verify the Recall"), cooperated to organize and conduct a joint effort to verify the signatures on the Recall Petition (the "Citizen Verification Process"). Verify the Recall reported to GAB that its effort included the assistance of as many as 13,000 volunteers and offered to provide GAB the results of its verification efforts. On February 7, 2012, the Board acknowledged that its procedures make no provision for the

involvement of interested third parties, either as full participants in the Recall Petition review process or as participants in an *amicus* capacity. Rather, the Board acknowledged that the results of any third-party review and analysis must be presented in the context of the officeholder's challenge.

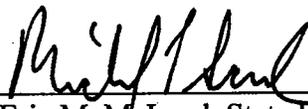
Verify the Recall has publicly stated that it believes it is barred by campaign finance laws from sharing the results of the Citizen Verification Process directly with Senator Fitzgerald; however, it will be posting those results online and making them publicly available. Senator Fitzgerald has incorporated into his Written Challenge the results of the Citizen Verification Process, to the extent those results reveal additional valid grounds for challenging the sufficiency of the Recall Petition, thus satisfying the Board's concern that such a third-party analysis must be presented to the Board in the context of the officeholder's challenge.

CONCLUSION

The Recall Petition contains numerous signatures that must be disregarded pursuant to Wis. Stat. § 9.10(2). The remaining signatures on the Recall Petition are well below the 25% of the votes cast threshold that is constitutionally required. Accordingly, the Board should determine that the Recall Petition is insufficient and so certify.

Dated this 9th day of February, 2012.

MICHAEL BEST & FRIEDRICH LLP
Attorneys for Senator Scott Fitzgerald

By: 
Eric M. McLeod, State Bar No. 1021530
Joseph Louis Olson, State Bar No. 1046162
Michael P. Screnock, State Bar No. 1055271

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

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STATE OF WISCONSIN
BEFORE THE GOVERNMENT ACCOUNTABILITY BOARD

IN RE PETITION TO
RECALL SENATOR WANGGAARD
OF THE 21ST SENATE DISTRICT

WGAB ID# 0600021

**MEMORANDUM OF LAW IN SUPPORT OF SENATOR VAN WANGGAARD'S
WRITTEN CHALLENGE TO THE RECALL PETITION OFFERED
FOR FILING ON JANUARY 17, 2012**

INTRODUCTION

The recall petition offered for filing on January 17, 2012 seeking the recall of State Senator Van Wanggaard (the "Recall Petition") must be rejected in its entirety as insufficient. The Recall Petition is fatally defective because it was not signed by a sufficient number of eligible qualified electors, as required by Article XIII, § 12 of the Wisconsin Constitution and Wis. Stat. § 9.10(1)(a), (b). Indeed, among the 23,598 signatures there are 20,426 irregularities that require a finding that a signature is invalid.

BACKGROUND

In November 2011, Mr. Randolph Brandt filed with the Government Accountability Board ("GAB" or the "Board") a registration statement for a recall committee named "Committee to Recall Wanggaard" (the "Recall Committee") and attached to that registration a Statement of Intent to Circulate Recall Petition, by which Mr. Brandt stated his intention to circulate a petition to recall Van Wanggaard - State Senate District 21.¹ GAB staff accepted the registration statement at 9:38 a.m. on November 16, 2011.

¹ A copy of the Recall Committee's registration statement is attached to the Affidavit of Daniel Romportl, filed herewith, at Exh. B.

On January 26, 2012, Senator Wanggaard was notified by GAB staff that the Recall Committee had offered the Recall Petition for filing on January 17, 2012. GAB attached to its January 26, 2012 letter a copy of a “Recall Petition Receipt” which indicated that the Recall Petition consisted of approximately 4,000 pages and approximately 24,000 signatures.

ARGUMENT

I. The Requirements Set Forth In Wis. Stat. § 9.10 Must Be Met In Order To Compel A Recall Election.

The Recall Committee must demonstrate that it has met the statutory requirements outlined in Wis. Stat. § 9.10 in order to compel an election to recall Senator Wanggaard. Fundamental to the Board’s review of the Recall Petition is that only “[t]he qualified electors . . . of any . . . legislative . . . district . . . may petition for the recall of [the] incumbent elective official” and the command that any such recall petition “shall be signed by electors equal to at least 25% of the vote cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled.” Wis. Stat. § 9.10(1)(a), (b). These statutory provisions simply implement the corollary Constitutional provisions relating to recall, which also provide that “[t]he qualified electors . . . of any . . . legislative district . . . may petition for the recall of any incumbent elective officer . . . by filing a petition . . . demanding the recall of the incumbent” and that the petition must meet the 25% of the vote cast threshold. Wis. Const. Art. XIII, § 12(intro), (1).

It is undisputed that Senator Wanggaard represents that territory in Wisconsin identified as the 21st Senate District, as set forth in Wis. Stat. § 4.009(21). The entirety of Wis. Stat. Chapter 4, Subchapter II was repealed and Wis. Stat. § 4.009(21) recreated by 2011 Wisconsin Act 43 (“Act 43”). The Board concluded in October 2011 that Act 43 became effective for representation purposes as of August 24, 2011. Consequently, as confirmed by the Board’s own

determination, as of August 24, 2011, Senator Wanggaard ceased representing the territory formerly identified as the 21st Senate District in the districting plan based on the 2000 decennial census. (the “2000 Plan”).

In order to determine that the Recall Petition is sufficient, as that term is used in Wis. Stat. § 9.10(3)(b), the Board must find that it contains the requisite number of signatures from qualified electors who reside in the Senate District represented by Senator Wanggaard. Specifically, the Board must i) disregard all signatures from electors that are not represented by Senator Wanggaard and ii) calculate the number of votes cast during the 2010 gubernatorial election within the territory that is now the 21st Senate District. Moreover, the Board must consider whether the violation of other procedural and technical requirements set forth in Wis. Stat. § 9.10 compels the Board to disregard other signatures affixed to the Recall Petition.

II. The Government Accountability Board Cannot Rewrite The Statutory Scheme Set Forth In Section 9.10.

The Government Accountability Board is bound by the clear mandates of § 9.10 and is without authority to amend the statutory provisions, either through formal Board action or informal staff interpretations. Administrative agencies are charged with the implementation of statutes duly enacted by the legislature. *See Plain v. Harder*, 268 Wis. 507, 512, 68 N.W.2d 47 (1955). However, there are clear limitations on the scope of an agency’s power to implement and interpret legislation. *See State ex rel. Castaneda v. Welch*, 2007 WI 103, ¶ 26, 303 Wis. 2d 570, 735 N.W.2d 131. The power of a state agency is strictly limited to power conferred upon it by the legislature through an enabling statute. *Id.* An agency’s enabling statute is strictly construed, and “any reasonable doubt pertaining to an agency’s implied powers” must be resolved against the agency. *Id.* (citing *Wisconsin Citizens Concerned for Cranes & Doves v. DNR*, 2004 WI 40, ¶14, 270 Wis. 2d 318, 677 N.W.2d 612).

Furthermore, an agency's method of practice or interpretation that ignores the plain language of a statute will not stand. In *State ex rel. Stearns v. Zimmerman*, the plaintiff failed to file his nomination papers for the senate primary election within the timeframe mandated by statute. *State ex rel. Stearns v. Zimmerman*, 257 Wis. 443, 445, 43 N.W.2d 681 (1950). In denying the plaintiff's prayer for relief, the Wisconsin Supreme Court held that "the time limit set by the legislature for the filing of nomination papers must be strictly enforced." *Id.* This is so because the legislature has expressly provided a firm deadline for the filing of nomination papers, and any interpretation in conflict with that firm deadline cannot stand. *Id.* at 446. According to the court, to hold otherwise would be tantamount to allowing an agency to amend the statute, not construe it. *Id.* Ultimately, "[t]he interests of the electors are served by a strict compliance" with the language of a statute where that language evinces a clear legislative intent. *State ex rel. McIntyre v. Bd. of Election Commissioners of the City of Milwaukee*, 273 Wis. 395, 402, 78 N.W.2d 752 (1956) (holding that the principles articulated in *Stearns* apply to deadlines for seeking a recount where the legislature has explicitly provided filing deadlines).

The State and the public has the strongest interest in ensuring that a recall election is held *only if* the Recall Petition is signed by a sufficient number of qualified electors. As the Wisconsin Supreme Court has noted, recall petitions "will receive close judicial scrutiny for procedural regularity" in large part because "we are dealing here with a special election matter, in which the rights of one theretofore duly elected to public office as well as the rights of the general public are concerned." *Beckstrom v. Kornsi*, 63 Wis. 2d 375, 387, 217 N.W.2d 283 (1974), quoting *State ex. rel Baxter v. Beckley*, 192 Wis. 367, 371, 212 N.W. 792 (1927); see also *In re Jensen*, 121 Wis. 2d 467, 469, 360 N.W.2d 535 (Ct. App. 1984) (noting that recall petitions implicate "the significant interest of the officeholder in retaining his position").

With these background principles in mind, the following sections outline the deficiencies with the Recall Petition.

III. A Substantial Number Of Signatures On The Recall Petition Represent Electors From Outside The 21st Senate District And Must Be Disregarded.

Of the 23,598 individual signature lines of the Recall Petition that were at least partially completed, at least 12,935 signatures are from individuals who reside outside the 21st Senate District. Affidavit of Daniel Romportl (hereafter, "Romportl Aff."), ¶ 4(e). The Board may not count any of these 12,935 signatures. Wis. Stat. § 9.10(2)(e)5. Counting these signatures would have the effect of allowing individuals who are not qualified electors of the 21st Senate District to compel the recall of a senator who does not represent them. Neither the constitutional nor the statutory recall provision permits this. The practical result would be no different than allowing residents of Illinois to compel the recall of Wisconsin's governor.

The proper elimination of all signatures from individuals that reside outside the 21st Senate District brings the total number of signatures on the Recall Petition well below the mandatory 25% threshold.²

IV. A Substantial Number Of Signatures On The Recall Petition Were Dated Outside The Circulation Period And Must Be Disregarded.

Section 9.10(2)(d) provides that "[n]o petitioner may circulate a petition for the recall of an officer prior to completing registration." The registration procedure is set forth in Wis. Stat. §§ 9.10(2)(d) & 11.05 and Wis. Admin. Code ch. GAB 6, and involves the recall petitioner filing with GAB a registration statement known as a GAB-1 Form and affixing to it a statement indicating his or her intent to circulate a recall petition. Wis. Admin. Code § GAB 6.02 makes it

² In the event the Board elects to analyze the validity of individual Recall Petition signatures by referencing the territory of the former 21st Senate District as set forth in the 2000 Plan, 134 individual signers reside outside the former 21st Senate District and those signatures must be disregarded. Romportl Aff. ¶ 4(f).

clear that such a registration is not “completed” until a GAB representative reviews the registration statement and accepts it. Specifically, § GAB 6.02 expresses that GAB, as the filing officer, must inspect the registration statement and either reject it as insufficient, conditionally accept it and notify the registrant of minor errors or insufficiencies that must be corrected within fifteen days or accept it unconditionally.

It was widely reported that midnight signing parties and “pajama parties” were coordinated all over the state in the early morning hours of November 15, 2011, which confirms that petition signatures were gathered prior to the time various recall committees completed registration. See Second Affidavit of Daniel Romportl. The time stamp on the Recall Committee’s registration statement indicates that it was accepted for filing by GAB on November 16, 2011 at 9:38 a.m. Accordingly, no signature on the Recall Petition is valid that was signed prior to 9:38 a.m. on the morning of November 15, 2011. The Recall Petition includes 2,404 signatures that are dated either November 15, 2011 or November 16, 2011. None of the signatures dated November 16 indicate whether they were affixed to the Recall Petition before or after the Recall Committee completed registration. Romportl Aff. ¶ 4(c). Accordingly, all signatures dated November 15 or November 16, 2011 must be disregarded. Wis. Stat. § 9.10(2)(e)2.

V. **Numerous Signatures On The Recall Petition Are Invalid Pursuant To Wis. Stat. § 9.10(2).**

Section 9.10(2)(e) – (L) sets forth various technical standards that individual signatures must meet in order to be valid. Senator Wanggaard’s Written Challenge sets forth the nature and bases of a multitude of errors that render invalid certain signatures on the Recall Petition in greater detail. The following is a summary by category:

- 913 signatures are invalid because the signers did not properly date their signatures;
- 1,217 signatures are invalid because the residency of the signers cannot be determined by the address or municipality given, or due to the lack of an address or municipality listed;
- 13 signatures are invalid because the signers are not qualified electors, as their names appear on the Ineligible Voter List provided by the Government Accountability Board;
- 137 signatures are invalid because the signers signed the Recall Petition two or more times;
- 1,733 signatures are invalid because the signatures were affected by improper certification by the circulator, or the somebody changed the signers' information subsequent to the circulator's certification. Many circulators failed to state his or her residence, as required by Wis. Stat. § 8.40(2). Certain circulators failed to sign and/or date the circulator certification;
- 24 signatures are invalid because the signers did not sign the Recall Petition;
- 632 signatures are invalid because their validity cannot be verified because multiple signatures appear in the same handwriting;
- 79 signatures are invalid because their validity cannot be verified due to a question of whether the signatory was of legal age when signing the Recall Petition; and
- 40 other signatures are invalid for other miscellaneous reasons, as described more fully in Senator Wanggaard's Written Challenge and Mr. Romportl's Affidavit.

VII. The Board Must Evaluate The Results Of The “Verify The Recall” Effort.

As the Board is fully aware, two 501(c)(4) organizations, Wisconsin GrandSons of Liberty and We the People of the Republic (collectively, “Verify the Recall”), cooperated to organize and conduct a joint effort to verify the signatures on the Recall Petition (the “Citizen Verification Process”). Verify the Recall reported to GAB that its effort included the assistance of as many as 13,000 volunteers and offered to provide GAB the results of its verification efforts. On February 7, 2012, the Board acknowledged that its procedures make no provision for the involvement of interested third parties, either as full participants in the Recall Petition review process or as participants in an *amicus* capacity. Rather, the Board acknowledged that the results of any third-party review and analysis must be presented in the context of the officeholder’s challenge.

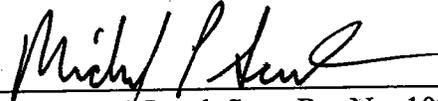
Verify the Recall has publicly stated that it believes it is barred by campaign finance laws from sharing the results of the Citizen Verification Process directly with Senator Wanggaard; however, it will be posting those results online and making them publicly available. Senator Wanggaard has incorporated into his Written Challenge the results of the Citizen Verification Process, to the extent those results reveal additional valid grounds for challenging the sufficiency of the Recall Petition, thus satisfying the Board's concern that such a third-party analysis must be presented to the Board in the context of the officeholder's challenge.

CONCLUSION

The Recall Petition contains numerous signatures that must be disregarded pursuant to Wis. Stat. § 9.10(2). The remaining signatures on the Recall Petition are well below the 25% of the votes cast threshold that is constitutionally required. Accordingly, the Board should determine that the Recall Petition is insufficient and so certify.

Dated this 9th day of February, 2012.

MICHAEL BEST & FRIEDRICH LLP
Attorneys for Senator Van Wanggaard

By: 
Eric M. McLeod, State Bar No. 1021530
Joseph Louis Olson, State Bar No. 1046162
Michael P. Srenock, State Bar No. 1055271

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

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STATE OF WISCONSIN
BEFORE THE GOVERNMENT ACCOUNTABILITY BOARD

IN RE PETITION TO
RECALL SENATOR MOULTON
OF THE 23rd SENATE DISTRICT

WGAB ID# 0600019

**MEMORANDUM OF LAW IN SUPPORT OF SENATOR TERRY MOULTON'S
WRITTEN CHALLENGE TO THE RECALL PETITION OFFERED
FOR FILING ON JANUARY 17, 2012**

INTRODUCTION

The recall petition offered for filing on January 17, 2012 seeking the recall of State Senator Terry Moulton (the "Recall Petition") must be rejected in its entirety as insufficient. The Recall Petition is fatally defective because it was not signed by a sufficient number of eligible qualified electors, as required by Article XIII, § 12 of the Wisconsin Constitution and Wis. Stat. § 9.10(1)(a), (b). Indeed, among the 20,836 signatures there are 12,373 irregularities that require a finding that a signature is invalid.

BACKGROUND

In November 2011, Mr. John Kidd filed with the Government Accountability Board ("GAB" or the "Board") a registration statement for a recall committee named "Committee to Recall Moulton" (the "Recall Committee") and attached to that registration a Statement of Intent to Circulate Recall Petition, by which Mr. Kidd stated his intention to circulate a petition to recall Terry Moulton, State Senator District 23.¹ GAB staff accepted the registration statement at some time after 10:00 a.m. on November 17, 2011.

¹ A copy of the Recall Committee's registration statement is attached to the Affidavit of Daniel Romportl, filed herewith, at Exh. B.

On January 26, 2012, State Senator Moulton was notified by GAB staff that the Recall Committee had offered the Recall Petition for filing on January 17, 2012. GAB attached to its January 26, 2012 letter a copy of a "Recall Petition Receipt" which indicated that the Recall Petition consisted of approximately 5,000 pages and approximately 21,000 signatures.

ARGUMENT

I. The Requirements Set Forth In Wis. Stat. § 9.10 Must Be Met In Order To Compel A Recall Election.

The Recall Committee must demonstrate that it has met the statutory requirements outlined in Wis. Stat. § 9.10 in order to compel an election to recall Senator Moulton. Fundamental to the Board's review of the Recall Petition is that only "[t]he qualified electors . . . of any . . . legislative . . . district . . . may petition for the recall of [the] incumbent elective official" and the command that any such recall petition "shall be signed by electors equal to at least 25% of the vote cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled." Wis. Stat. § 9.10(1)(a), (b). These statutory provisions simply implement the corollary Constitutional provisions relating to recall, which also provide that "[t]he qualified electors . . . of any . . . legislative district . . . may petition for the recall of any incumbent elective officer . . . by filing a petition . . . demanding the recall of the incumbent" and that the petition must meet the 25% of the vote cast threshold. Wis. Const. Art. XIII, § 12(intro), (1).

It is undisputed that Senator Moulton represents that territory in Wisconsin identified as the 23rd Senate District, as set forth in Wis. Stat. § 4.009(23). The entirety of Wis. Stat. Chapter 4, Subchapter II was repealed and Wis. Stat. § 4.009(23) recreated by 2011 Wisconsin Act 43 ("Act 43"). The Board concluded in October 2011 that Act 43 became effective for representation purposes as of August 24, 2011. Consequently, as confirmed by the Board's own

determination, as of August 24, 2011, Senator Moulton ceased representing the territory formerly identified as the 23rd Senate District in the districting plan based on the 2000 decennial census (the “2000 Plan”).

In order to determine that the Recall Petition is sufficient, as that term is used in Wis. Stat. § 9.10(3)(b), the Board must find that it contains the requisite number of signatures from qualified electors who reside in the Senate District represented by Senator Moulton. Specifically, the Board must i) disregard all signatures from electors that are not represented by Senator Moulton and ii) calculate the number of votes cast during the 2010 gubernatorial election within the territory that is now the 23rd Senate District. Moreover, the Board must consider whether the violation of other procedural and technical requirements set forth in Wis. Stat. § 9.10 compels the Board to disregard other signatures affixed to the Recall Petition.

II. The Government Accountability Board Cannot Rewrite The Statutory Scheme Set Forth In Section 9.10.

The Government Accountability Board is bound by the clear mandates of § 9.10 and is without authority to amend the statutory provisions, either through formal Board action or informal staff interpretations. Administrative agencies are charged with the implementation of statutes duly enacted by the legislature. *See Plain v. Harder*, 268 Wis. 507, 512, 68 N.W.2d 47 (1955). However, there are clear limitations on the scope of an agency’s power to implement and interpret legislation. *See State ex rel. Castaneda v. Welch*, 2007 WI 103, ¶ 26, 303 Wis. 2d 570, 735 N.W.2d 131. The power of a state agency is strictly limited to power conferred upon it by the legislature through an enabling statute. *Id.* An agency’s enabling statute is strictly construed, and “any reasonable doubt pertaining to an agency’s implied powers” must be resolved against the agency. *Id.* (citing *Wisconsin Citizens Concerned for Cranes & Doves v. DNR*, 2004 WI 40, ¶14, 270 Wis. 2d 318, 677 N.W.2d 612).

Furthermore, an agency's method of practice or interpretation that ignores the plain language of a statute will not stand. In *State ex rel. Stearns v. Zimmerman*, the plaintiff failed to file his nomination papers for the senate primary election within the timeframe mandated by statute. *State ex rel. Stearns v. Zimmerman*, 257 Wis. 443, 445, 43 N.W.2d 681 (1950). In denying the plaintiff's prayer for relief, the Wisconsin Supreme Court held that "the time limit set by the legislature for the filing of nomination papers must be strictly enforced." *Id.* This is so because the legislature has expressly provided a firm deadline for the filing of nomination papers, and any interpretation in conflict with that firm deadline cannot stand. *Id.* at 446. According to the court, to hold otherwise would be tantamount to allowing an agency to amend the statute, not construe it. *Id.* Ultimately, "[t]he interests of the electors are served by a strict compliance" with the language of a statute where that language evinces a clear legislative intent. *State ex rel. McIntyre v. Bd. of Election Commissioners of the City of Milwaukee*, 273 Wis. 395, 402, 78 N.W.2d 752 (1956) (holding that the principles articulated in *Stearns* apply to deadlines for seeking a recount where the legislature has explicitly provided filing deadlines).

The State and the public has the strongest interest in ensuring that a recall election is held *only if* the Recall Petition is signed by a sufficient number of qualified electors. As the Wisconsin Supreme Court has noted, recall petitions "will receive close judicial scrutiny for procedural regularity" in large part because "we are dealing here with a special election matter, in which the rights of one theretofore duly elected to public office as well as the rights of the general public are concerned." *Beckstrom v. Kornsi*, 63 Wis. 2d 375, 387, 217 N.W.2d 283 (1974), quoting *State ex. rel Baxter v. Beckley*, 192 Wis. 367, 371, 212 N.W. 792 (1927); see also *In re Jensen*, 121 Wis. 2d 467, 469, 360 N.W.2d 535 (Ct. App. 1984) (noting that recall petitions implicate "the significant interest of the officeholder in retaining his position").

With these background principles in mind, the following sections outline the deficiencies with the Recall Petition.

III. A Substantial Number Of Signatures On The Recall Petition Represent Electors From Outside The 23rd Senate District And Must Be Disregarded.

Of the 20,836 individual signature lines of the Recall Petition that were at least partially completed, at least 6,261 signatures are from individuals who reside outside the 23rd Senate District. Affidavit of Daniel Romportl (hereafter, "Romportl Aff."), ¶ 4(g). The Board may not count any of these 6,261 signatures. Wis. Stat. § 9.10(2)(e)5. Counting these signatures would have the effect of allowing individuals who are not qualified electors of the 23rd Senate District to compel the recall of a senator who does not represent them. Neither the constitutional nor the statutory recall provision permits this. The practical result would be no different than allowing residents of Illinois to compel the recall of Wisconsin's governor.

The proper elimination of all signatures from individuals that reside outside the 23rd Senate District brings the total number of signatures on the Recall Petition well below the mandatory 25% threshold.²

IV. A Substantial Number Of Signatures On The Recall Petition Were Dated Outside The Circulation Period And Must Be Disregarded.

Section 9.10(2)(d) provides that "[n]o petitioner may circulate a petition for the recall of an officer prior to completing registration." The registration procedure is set forth in Wis. Stat. §§ 9.10(2)(d) & 11.05 and Wis. Admin. Code ch. GAB 6, and involves the recall petitioner filing with GAB a registration statement known as a GAB-1 Form and affixing to it a statement indicating his or her intent to circulate a recall petition. Wis. Admin. Code § GAB 6.02 makes it

² In the event the Board elects to analyze the validity of individual Recall Petition signatures by referencing the territory of the former 23rd Senate District as set forth in the 2000 Plan, 589 individual signers reside outside the former 23rd Senate District and those signatures must be disregarded. Romportl Aff. ¶ 4(h).

clear that such a registration is not “completed” until a GAB representative reviews the registration statement and accepts it. Specifically, § GAB 6.02 expresses that GAB, as the filing officer, must inspect the registration statement and either reject it as insufficient, conditionally accept it and notify the registrant of minor errors or insufficiencies that must be corrected within fifteen days or accept it unconditionally.

It was widely reported that midnight signing parties and “pajama parties” were coordinated all over the state in the early morning hours of November 15, 2011, which confirms that petition signatures were gathered prior to the time various recall committees completed registration. See Second Affidavit of Daniel Romportl. The time stamp on the Recall Committee’s registration statement indicates that it was accepted for filing by GAB on November 17, 2011 after 10:00 a.m. Accordingly, no signature on the Recall Petition is valid that was signed prior to 10:00 a.m. on the morning of November 17, 2011. The Recall Petition includes 4,155 signatures that are dated either November 15, 16 or 17, 2011. None of the signatures dated November 17, 2011 indicate whether they were affixed to the Recall Petition before or after the Recall Committee completed registration. Romportl Aff. ¶ 4(d). Accordingly, all signatures dated November 15, November 16 or November 17, 2011 must be disregarded. Wis. Stat. § 9.10(2)(e)2.

In addition, 22 individual signatures are dated before November 15, 2011 or after January 14, 2011 and must be must be disregarded. Wis. Stat. § 9.10(2)(e)2.; Romportl Aff. ¶ 4(c).

V. Numerous Signatures On The Recall Petition Are Invalid Pursuant To Wis. Stat. § 9.10(2).

Section 9.10(2)(e) – (L) sets forth various technical standards that individual signatures must meet in order to be valid. Senator Moulton’s Written Challenge sets forth the nature and

bases of a multitude of errors that render invalid certain signatures on the Recall Petition in greater detail. The following is a summary by category:

- at least 95 signatories did not date their signatures.
- at least 22 signatories signed the Recall Petition outside the circulation period.
- at least 4,155 signatories signed the Recall Petition prior to the time the Recall Committee completed its registration.
- Based on my review, at least 117 signatories signed the Recall Petition subsequent to the respective circulator's certification.
- the residency of at least 160 signatories cannot be determined by the address and/or municipality given, or the failure to provide an address and/or municipality.
- at least 6,261 signatories reside outside of the 23rd Senate District.
- at least 589 signatories reside outside of the territory that formerly comprised the 23rd Senate District pursuant to the Federal Court Redistricting Decision dated May 22, 2002.
- at least 6 signatories are not qualified electors, as their names appear on the Ineligible Voter List provided by the Government Accountability Board.
- at least 265 signatories signed the Recall Petition two or more times.
- at least 206 signatures were affected by improper certification of the petition page by the circulator. Many circulators failed to state his or her residence, as required by Wis. Stat. § 8.40(2). Certain circulators failed to sign and/or date the circulator certification.
- at least 94 signatories did not sign the Recall Petition.

- the validity of at least 125 signatures cannot be verified because multiple signatures appear in the same handwriting.
- Based on my review, at least 12 other signatures are invalid due to various insufficiencies, as described more fully in Senator Moulton's Written Challenge and Mr. Romportl's Affidavit.

VI. The Board Must Evaluate The Results Of The "Verify The Recall" Effort.

As the Board is fully aware, two 501(c)(4) organizations, Wisconsin GrandSons of Liberty and We the People of the Republic (collectively, "Verify the Recall"), cooperated to organize and conduct a joint effort to verify the signatures on the Recall Petition (the "Citizen Verification Process"). Verify the Recall reported to GAB that its effort included the assistance of as many as 13,000 volunteers and offered to provide GAB the results of its verification efforts. On February 7, 2012, the Board acknowledged that its procedures make no provision for the involvement of interested third parties, either as full participants in the Recall Petition review process or as participants in an *amicus* capacity. Rather, the Board acknowledged that the results of any third-party review and analysis must be presented in the context of the officeholder's challenge.

Verify the Recall has publicly stated that it believes it is barred by campaign finance laws from sharing the results of the Citizen Verification Process directly with Senator Moulton; however, it will be posting those results online and making them publicly available. Senator Moulton has incorporated into his Written Challenge the results of the Citizen Verification Process, to the extent those results reveal additional valid grounds for challenging the sufficiency of the Recall Petition, thus satisfying the Board's concern that such a third-party analysis must be presented to the Board in the context of the officeholder's challenge.

CONCLUSION

The Recall Petition contains numerous signatures that must be disregarded pursuant to Wis. Stat. § 9.10(2). The remaining signatures on the Recall Petition are well below the 25% of the votes cast threshold that is constitutionally required. Accordingly, the Board should determine that the Recall Petition is insufficient and so certify.

Dated this 9th day of February, 2012.

MICHAEL BEST & FRIEDRICH LLP
Attorneys for Senator Terry Moulton

By: 
Eric M. McLeod, State Bar No. 1021530
Joseph Louis Olson, State Bar No. 1046162
Michael P. Screnock, State Bar No. 1055271

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

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STATE OF WISCONSIN
BEFORE THE GOVERNMENT ACCOUNTABILITY BOARD

~~GOVERNMENT~~
ACCOUNTABILITY BOARD
IN RE PETITION TO
RECALL SENATOR PAM GALLOWAY
OF THE 29th SENATE DISTRICT

WGAB ID# 0600020

**MEMORANDUM OF LAW IN SUPPORT OF SENATOR PAM GALLOWAY'S
WRITTEN CHALLENGE TO THE RECALL PETITION OFFERED
FOR FILING ON JANUARY 17, 2012**

INTRODUCTION

The recall petition offered for filing on January 17, 2012 seeking the recall of State Senator Pam Galloway (the "Recall Petition") must be rejected in its entirety as insufficient. The Recall Petition is fatally defective because it was not signed by a sufficient number of eligible qualified electors, as required by Article XIII, § 12 of the Wisconsin Constitution and Wis. Stat. § 9.10(1)(a), (b). Indeed, among the 21,074 signatures there are 5,501 irregularities that require a finding that a signature is invalid.

BACKGROUND

In November 2011, Ms. Rita Pachal and Ms. Nancy Stencil filed with the Government Accountability Board ("GAB" or the "Board") a registration statement for a recall committee named "Recall Senator Pam Galloway" (the "Recall Committee") and attached to that registration a Statement of Intent to Circulate Recall Petition, by which Ms. Stencil stated her intention to circulate a petition to recall Senator Pam Galloway of the 29th Senate District 13.¹ GAB staff accepted the registration statement at 9:47 am on November 16, 2011.

¹ A copy of the Recall Committee's registration statement is attached to the Affidavit of Daniel Romportl, filed herewith, at Exh. C.

On January 26, 2012, State Senator Pam Galloway was notified by GAB staff that the Recall Committee had offered the Recall Petition for filing on January 17, 2012. GAB attached to its January 26, 2012 letter a copy of a "Recall Petition Receipt" which indicated that the Recall Petition consisted of approximately 4,700 pages and approximately 21,000 signatures.

ARGUMENT

I. **The Requirements Set Forth In Wis. Stat. § 9.10 Must Be Met In Order To Compel A Recall Election.**

The Recall Committee must demonstrate that it has met the statutory requirements outlined in Wis. Stat. § 9.10 in order to compel an election to recall Senator Galloway. Fundamental to the Board's review of the Recall Petition is that only "[t]he qualified electors . . . of any . . . legislative . . . district . . . may petition for the recall of [the] incumbent elective official" and the command that any such recall petition "shall be signed by electors equal to at least 25% of the vote cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled." Wis. Stat. § 9.10(1)(a), (b). These statutory provisions simply implement the corollary Constitutional provisions relating to recall, which also provide that "[t]he qualified electors . . . of any . . . legislative district . . . may petition for the recall of any incumbent elective officer . . . by filing a petition . . . demanding the recall of the incumbent" and that the petition must meet the 25% of the vote cast threshold. Wis. Const. Art. XIII, § 12(intro), (1).

It is undisputed that Senator Galloway represents that territory in Wisconsin identified as the 29th Senate District, as set forth in Wis. Stat. § 4.009(29). The entirety of Wis. Stat. Chapter 4, Subchapter II was repealed and Wis. Stat. § 4.009(29) recreated by 2011 Wisconsin Act 43 ("Act 43"). The Board concluded in October 2011 that Act 43 became effective for representation purposes as of August 24, 2011. Consequently, as confirmed by the Board's own

determination, as of August 24, 2011, Senator Galloway ceased representing the territory formerly identified as the 29th Senate District in the districting plan based on the 2000 decennial census (the “2000 Plan”).

In order to determine that the Recall Petition is sufficient, as that term is used in Wis. Stat. § 9.10(3)(b), the Board must find that it contains the requisite number of signatures from qualified electors who reside in the Senate District represented by Senator Galloway. Specifically, the Board must i) disregard all signatures from electors that are not represented by Senator Galloway and ii) calculate the number of votes cast during the 2010 gubernatorial election within the territory that is now the 29th Senate District. Moreover, the Board must consider whether the violation of other procedural and technical requirements set forth in Wis. Stat. § 9.10 compels the Board to disregard other signatures affixed to the Recall Petition.

II. The Government Accountability Board Cannot Rewrite The Statutory Scheme Set Forth In Section 9.10.

The Government Accountability Board is bound by the clear mandates of § 9.10 and is without authority to amend the statutory provisions, either through formal Board action or informal staff interpretations. Administrative agencies are charged with the implementation of statutes duly enacted by the legislature. *See Plain v. Harder*, 268 Wis. 507, 512, 68 N.W.2d 47 (1955). However, there are clear limitations on the scope of an agency’s power to implement and interpret legislation. *See State ex rel. Castaneda v. Welch*, 2007 WI 103, ¶ 26, 303 Wis. 2d 570, 735 N.W.2d 131. The power of a state agency is strictly limited to power conferred upon it by the legislature through an enabling statute. *Id.* An agency’s enabling statute is strictly construed, and “any reasonable doubt pertaining to an agency’s implied powers” must be resolved against the agency. *Id.* (citing *Wisconsin Citizens Concerned for Cranes & Doves v. DNR*, 2004 WI 40, ¶14, 270 Wis. 2d 318, 677 N.W.2d 612).

Furthermore, an agency's method of practice or interpretation that ignores the plain language of a statute will not stand. In *State ex rel. Stearns v. Zimmerman*, the plaintiff failed to file his nomination papers for the senate primary election within the timeframe mandated by statute. *State ex rel. Stearns v. Zimmerman*, 257 Wis. 443, 445, 43 N.W.2d 681 (1950). In denying the plaintiff's prayer for relief, the Wisconsin Supreme Court held that "the time limit set by the legislature for the filing of nomination papers must be strictly enforced." *Id.* This is so because the legislature has expressly provided a firm deadline for the filing of nomination papers, and any interpretation in conflict with that firm deadline cannot stand. *Id.* at 446. According to the court, to hold otherwise would be tantamount to allowing an agency to amend the statute, not construe it. *Id.* Ultimately, "[t]he interests of the electors are served by a strict compliance" with the language of a statute where that language evinces a clear legislative intent. *State ex rel. McIntyre v. Bd. of Election Commissioners of the City of Milwaukee*, 273 Wis. 395, 402, 78 N.W.2d 752 (1956) (holding that the principles articulated in *Stearns* apply to deadlines for seeking a recount where the legislature has explicitly provided filing deadlines).

The State and the public has the strongest interest in ensuring that a recall election is held *only if* the Recall Petition is signed by a sufficient number of qualified electors. As the Wisconsin Supreme Court has noted, recall petitions "will receive close judicial scrutiny for procedural regularity" in large part because "we are dealing here with a special election matter, in which the rights of one theretofore duly elected to public office as well as the rights of the general public are concerned." *Beckstrom v. Kornsi*, 63 Wis. 2d 375, 387, 217 N.W.2d 283 (1974), quoting *State ex. rel Baxter v. Beckley*, 192 Wis. 367, 371, 212 N.W. 792 (1927); see also *In re Jensen*, 121 Wis. 2d 467, 469, 360 N.W.2d 535 (Ct. App. 1984) (noting that recall petitions implicate "the significant interest of the officeholder in retaining his position").

With these background principles in mind, the following sections outline the deficiencies with the Recall Petition.

III. A Substantial Number Of Signatures On The Recall Petition Represent Electors From Outside The 29th Senate District And Must Be Disregarded.

Of the 21,074 individual signature lines of the Recall Petition that were at least partially completed, at least 1,684 signatures are from individuals who reside outside the 29th Senate District. Affidavit of Daniel Romportl (hereafter, "Romportl Aff."), ¶ 4(g). The Board may not count any of these 1,684 signatures. Wis. Stat. § 9.10(2)(e)5. Counting these signatures would have the effect of allowing individuals who are not qualified electors of the 29th Senate District to compel the recall of a senator who does not represent them. Neither the constitutional nor the statutory recall provision permits this. The practical result would be no different than allowing residents of Illinois to compel the recall of Wisconsin's governor.

The proper elimination of all signatures from individuals that reside outside the 29th Senate District brings the total number of signatures on the Recall Petition well below the mandatory 25% threshold.²

IV. A Substantial Number Of Signatures On The Recall Petition Were Dated Outside The Circulation Period And Must Be Disregarded.

Section 9.10(2)(d) provides that "[n]o petitioner may circulate a petition for the recall of an officer prior to completing registration." The registration procedure is set forth in Wis. Stat. §§ 9.10(2)(d) & 11.05 and Wis. Admin. Code ch. GAB 6, and involves the recall petitioner filing with GAB a registration statement known as a GAB-1 Form and affixing to it a statement indicating his or her intent to circulate a recall petition. Wis. Admin. Code § GAB 6.02 makes it

² In the event the Board elects to analyze the validity of individual Recall Petition signatures by referencing the territory of the former 29th Senate District as set forth in the 2000 Plan, 675 individual signers reside outside the former 29th Senate District and those signatures must be disregarded. Romportl Aff. ¶ 4(h).

clear that such a registration is not “completed” until a GAB representative reviews the registration statement and accepts it. Specifically, § GAB 6.02 expresses that GAB, as the filing officer, must inspect the registration statement and either reject it as insufficient, conditionally accept it and notify the registrant of minor errors or insufficiencies that must be corrected within fifteen days or accept it unconditionally.

It was widely reported that midnight signing parties and “pajama parties” were coordinated all over the state in the early morning hours of November 15, 2011, which confirms that petition signatures were gathered prior to the time various recall committees completed registration. See Second Affidavit of Daniel Romportl. The time stamp on the Recall Committee’s registration statement indicates that it was accepted for filing by GAB on November 16, 2011 at 9:47 a.m. Accordingly, no signature on the Recall Petition is valid that was signed prior to 9:47 a.m. on the morning of November 16, 2011. The Recall Petition includes 1576 signatures that are dated either November 15, 2011 or November 16, 2011. None of the signatures dated November 16 indicate whether they were affixed to the Recall Petition before or after the Recall Committee completed registration. Romportl Aff. ¶ 4(d). Accordingly, all signatures dated November 15 or November 16, 2011 must be disregarded. Wis. Stat. § 9.10(2)(e)2.

In addition, 41 individual signatures are dated before November 15, 2011 or after January 14, 2011 and must be must be disregarded. Wis. Stat. § 9.10(2)(e)2.; Romportl Aff. ¶ 4(d).

V. **Numerous Signatures On The Recall Petition Are Invalid Pursuant To Wis. Stat. § 9.10(2).**

Section 9.10(2)(e) – (L) sets forth various technical standards that individual signatures must meet in order to be valid. Senator Galloway’s Written Challenge sets forth the nature and

bases of a multitude of errors that render invalid certain signatures on the Recall Petition in greater detail. The following is a summary by category:

- at least 105 signatories did not date their signatures.
- Based on my review, at least 41 signatories signed the Recall Petition outside the circulation period.
- at least 125 signatories signed the Recall Petition subsequent to the respective circulator's certification.
- the residency of at least 102 signatories cannot be determined by the address given.
- at least 1684 signatories reside outside of the 29th Senate District.
- at least 675 signatories reside outside of the territory that formerly comprised the 29th Senate District pursuant to the Federal Court Redistricting Decision dated May 22, 2002.
- at least nine signatories are not qualified electors, as their names appear on the Ineligible Voter List provided by the Government Accountability Board.
- at least 403 signatories signed the Recall Petition at least two or more times.
- numerous Recall Petition pages, collectively containing 249 individual signatures, were not properly certified by the circulator. Many circulators failed to state his or her residence, as required by Wis. Stat. § 8.40(2). Certain circulators failed to sign and/or date the circulator certification.
- at least 19 signatories' signatures were missing from the Recall Petition.
- the validity of at least nine signatures cannot be verified because multiple signatures appear in the same handwriting.

- 4 signatories are challenged based on miscellaneous grounds,
- as described more fully in Senator Galloway's Written Challenge and Mr. Romportl's Affidavit.

VI. The Board Must Evaluate The Results Of The "Verify The Recall" Effort.

As the Board is fully aware, two 501(c)(4) organizations, Wisconsin GrandSons of Liberty and We the People of the Republic (collectively, "Verify the Recall"), cooperated to organize and conduct a joint effort to verify the signatures on the Recall Petition (the "Citizen Verification Process"). Verify the Recall reported to GAB that its effort included the assistance of as many as 13,000 volunteers and offered to provide GAB the results of its verification efforts. On February 7, 2012, the Board acknowledged that its procedures make no provision for the involvement of interested third parties, either as full participants in the Recall Petition review process or as participants in an *amicus* capacity. Rather, the Board acknowledged that the results of any third-party review and analysis must be presented in the context of the officeholder's challenge.

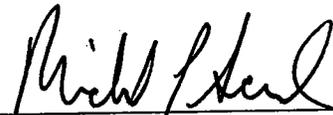
Verify the Recall has publicly stated that it believes it is barred by campaign finance laws from sharing the results of the Citizen Verification Process directly with Senator Galloway; however, it will be posting those results online and making them publicly available. Senator Galloway has incorporated into her Written Challenge the results of the Citizen Verification Process, to the extent those results reveal additional valid grounds for challenging the sufficiency of the Recall Petition, thus satisfying the Board's concern that such a third-party analysis must be presented to the Board in the context of the officeholder's challenge.

CONCLUSION

The Recall Petition contains numerous signatures that must be disregarded pursuant to Wis. Stat. § 9.10(2). Once the Board calculates the number of votes cast for governor in the territory encompassed by the 29th Senate District, it is likely that the remaining signatures on the Recall Petition are below the 25% of the votes cast threshold that is constitutionally required. Accordingly, the Board should determine that the Recall Petition is insufficient and so certify.

Dated this 9th day of February, 2012.

MICHAEL BEST & FRIEDRICH LLP
Attorneys for Senator Pam Galloway

By: 
Eric M. McLeod, State Bar No. 1021530
Joseph Louis Olson, State Bar No. 1046162
Michael P. Screnock, State Bar No. 1055271

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

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STATE OF WISCONSIN
BEFORE THE GOVERNMENT ACCOUNTABILITY BOARD

| | |
|---|------------------|
| IN RE PETITION TO RECALL SENATOR TERRY MOULTON OF THE 23 rd SENATE DISTRICT; | WGAB ID#0600019 |
| SENATOR PAM GALLOWAY OF THE 29 th SENATE DISTRICT; | WGAB ID#0600020 |
| SENATOR VAN WANGGAARD OF THE 21 st DISTRICT; AND | WGAB ID#0600021 |
| SENATOR SCOTT FITZGERALD OF THE 13 th SENATE DISTRICT. | WGAB ID #0600024 |

RECALL COMMITTEES' BRIEF IN OPPOSITION TO WRITTEN CHALLENGES

The above-specified recall committees, by their attorney Jeremy P. Levinson, submit this memorandum in response to the challenges to recall petitions and signatures submitted by Senators Moulton, Galloway, Wanggaard and Fitzgerald.

INTRODUCTION

The challenges do not, and cannot, call the validity of the recall effort into question. Each recall effort boasts thousands of valid signatures more than required to trigger recall elections. The challenges are overwhelmingly baseless for the following reasons:

- The bulk of the challenges rest on frivolous legal assertions that the GAB has already reviewed and rejected. The challenges contend that the recall efforts should be tied to the legislative districts that Wisconsin 2011 Act 43 may make effective as of the 2012 general election in November, rather than the districts that currently exist. The GAB correctly rejected this argument as contradicting the text of Act 43 and the recall committees and hundreds of thousands of Wisconsin electors were right to rely on the GAB's determination. The recalls appropriately proceeded in the existing districts – the ones from which the senators were elected.
- The challenges also take issue with the time-period for circulating petitions, as was already correctly determined by the GAB. As with the “districts” issue, and despite the challengers' efforts to sow confusion, this is not very complicated. All four recall committees filed on November 15, 2011 and signatures dated between that date and January 14, 2012 are valid.

- The challenges are rife with false assertions about identified petition pages and signatures, *i.e.*, the data on which their analyses are based does not reflect the content of the actual signature or petition page. The staggering number of these false assertions not only renders the specific challenges meritless, it strains credulity, and calls the quality and integrity of the challenges as a whole into question.
- The challenges often rest on misstatements about the legal standards for striking signatures. The challenges ask the GAB to discount electors merely because of, *e.g.*, a misspelled word, a voter not being currently registered to vote at their residence, or allegations that a signature is ineligible with no proof provided. These challenges fail to state a legal basis for invalidating a signature.
- The challenges also include several generalized assertions of fact that were “widely reported” or that otherwise have no factual support. This rhetoric does not begin to meet the challengers’ burden.
- Finally, the challenges turn the process on its head, contemplating review as an all-out effort to negate electors’ signatures based on the shoddiest of analysis, the most superficial quirk, *i.e.*, a misspelled word, or failed and rehashed misstatements of law that do not and cannot change the fact that thousands of electors more than the threshold for triggering recall elections signed the petitions. The challenges ignore the fact that where petitions are certified by circulators they are presumed to be valid. The burden of overcoming this presumption by clear and convincing evidence is part of a fundamental and long-established review framework that is focused on giving effect to the will of the electors more than it is concerned with fortunes of an incumbent official.

Despite the challenges’ sloppiness, dishonesty, and attempts to create uncalled for complexity and confusion, the challenges fail for simple, concrete, and specific reasons.

DISCUSSION

I. THE CHALLENGES IGNORE WELL-ESTABLISHED PRINCIPLES OF ELECTION LAW AND PETITION REVIEW

This process is intended to implement and safeguard the will of the electors. It is not a weapon for helping incumbent senators hide from the many thousands of their constituents who demand recall elections.

The Wisconsin Constitution, Article XIII, § 12, establishes the rights of qualified electors to petition for the recall of incumbent elected officials such as Senators Moulton, Galloway, Wanggaard and Fitzgerald. Article XIII, § 12, sub. (7), provides:

This section shall be self-executing and mandatory. Laws may be enacted to facilitate its operation but no law shall be enacted to hamper, restrict or impair the right of recall.

Accordingly, the policy of both the GAB and its predecessor agency has been to facilitate the will of the electorate with respect to the petition at hand, not to find a justification for impeding the will of the electorate as expressed in a particular petition. The statutory standard for compliance is “substantial compliance”:

CONSTRUCTION OF CHS. 5 TO 12. Except as otherwise provided, chs.5 to 12 shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to comply with some of their provisions.

§ 5.01(1), Wis. Stats.

“The object of election laws is to secure the rights of duly qualified electors and not to defeat them.” *Stahovic v. Rajchel*, 122 Wis. 2d 370, 376, 363 N.W.2d 243 (Ct. App. 1984). A review of Wisconsin case law demonstrates that substantial, and not literal, compliance with election laws has been deemed consistent with § 5.01(1), Wis. Stats., and the appellate courts have consistently construed the provisions of election statutes as directory, rather than mandatory, so as to preserve the will of the elector. *Stahovic*, 122 Wis. 2d at 377.

“Generally, statutory provisions relating to recall are liberally interpreted in favor of the electorate.” *Stahovic*, 122 Wis. 2d at 374; *see also Beckstrom v. Kornsi*, 63 Wis.2d 375, 388, 217 N.W.2d 283 (1974); *In re Redner v. Berning*, 153 Wis. 2d 383, 388, 450 N.W.2d 808 (Ct. App. 1989); *Carlson v. Jones*, 147 Wis. 2d 630, 636, 433 N.W.2d 635 (Ct. App. 1988); *In re Haase v. Angove*, 120 Wis. 2d 40, 46, 353 N.W.2d 821 (Ct. App. 1984). The statutory requirements for preparation, signing, and execution of petitions for recall are directory rather than mandatory. *In re Redner*, 153 Wis. 2d at 390; *see also Jensen v. Miesbauer*, 121 Wis. 2d

467, 469, 360 N.W.2d 535 (Ct. App. 1984). Only substantial compliance with the recall procedure is necessary and that merely requires the petitions to be circulated in a manner that protects against fraud and assures the signers knew the contents of the petitions. *In re Redner*, 153 Wis. 2d at 390-91; *see also In re Haase*, 120 Wis. 2d at 46.

GAB § 2.05(4), Wis. Adm. Code, provides that “[a]ny information on a nomination paper is entitled to a presumption of validity.” Pursuant to GAB § 2.09(1) and (5), Wis. Adm. Code, this presumption of validity is extended to the treatment and sufficiency of election petitions, including recall petitions. Consequently, any challenge to any information on the recall petition must provide clear and convincing evidence. *See also* GAB §§ 2.07(4) and 2.11(1), Wis. Adm. Code. In Wisconsin, this middle burden of proof requires a greater degree of certitude than that required in ordinary civil cases, but a lesser degree than that required to convict in a criminal case. *Kruse v. Horlamus Industires, Inc.*, 130 Wis. 2d 357, 363, 387 N.W.2d 64 (1986). “Any challenge to the validity of signatures on the petition shall be presented by affidavit or other supporting evidence demonstrating a failure to comply with the statutory requirements.” § 9.10(2)(h), Wis. Stats.¹

The tenor of the challenges contradicts the foregoing principles. Often the “challenges” amount to nothing more than a demand that the petitions prove an apparently valid signature to be so. Likewise, the challenges offer more unsupported assertions akin to “it has been reported” than “evidence,” clear and convincing or otherwise. Finally, the challenges rest in large part on disingenuous and previously rejected pronouncements of law that unsuccessfully attempt to complicate and change the straightforward and well-established meaning of two statutes. In other words, the challenges are overwhelmingly of exactly the type from which the standards of

¹ The foregoing discussion of basic principles draws on the analyses set forth by the GAB staff in analyzing challenges to recall petitions that led to recall elections during the Summer of 2011.

the review process seek to protect the electorate. They seek to undermine and obstruct rather than protect and facilitate the electoral process.

II. GAB WAS CORRECT IN DETERMINING THAT THE DISTRICTS THAT ACT 43 MAY IMPLEMENT IN THE FUTURE HAVE NO APPLICATION TO THESE RECALLS

The vast bulk of the incumbent Senators' challenges are *not* premised on the contention that specified signatures represent something other than the signatures of Wisconsin electors who demand recall elections. Rather, the main challenge the Senators raise rests on the contention that senate districts established by Wisconsin 2011 Act 43 are already in effect. So, despite the fact that the specific petitioners were the incumbent Senators' constituents since the Senators were elected, the Senators want those signatures excluded.

The Senators' assertion that the recall petitions were circulated in districts that had ceased to exist is frivolous. The text of Act 43 could not be more straightforward:

SECTION 10. Initial applicability.

(1) This act first applies, with respect to regular elections, to offices filled at the 2012 general election.

(2) This act first applies, with respect to special or recall elections, to offices filled or contested concurrently with the 2012 general election.

(emphasis supplied).

This is the beginning and end of the analysis. Act 43 has no application here because the recall elections at issue will occur before "the 2012 general election." The GAB was correct in determining that the issue is just this simple and clear:

The language of 2011 Wisconsin Act 43 is very clear as to the initial applicability exceptions from the Wisconsin Stats. s. 991.11 effective date of the Act (August 24, 2011). The Act initially applies for the purposes of regular elections to offices filled at the 2012 general election and to special or recall elections to offices

filled or contested concurrently with the 2012 general election. Therefore, for purposes of any elections in 2012, the new legislative districts found in Act 43 do not apply to special or recall elections to offices filled or contested prior to the November 6, 2012 general election.²

Beyond being flatly wrong in an entirely uncomplicated way, the challengers' argument on this point is dishonest. Their extravagant assertions ignore the foregoing and instead distort and mischaracterize the GAB's analysis on a totally different issue. The GAB had been asked whether an incumbent could properly use tax dollars to fund communications with people who may become the incumbent's constituents in November 2012, when the Act 43 districts may be implemented. The answer to this question was "yes." So the challengers simply ignore the GAB's determination on the issue they now raise and mischaracterize the GAB's analysis of a totally different issue. In all candor, this can only be called dishonest.

Also galling, the Republican members of the Wisconsin Senate attempted to amend Act 43's effective date language to garner the result demanded in the challenges – and the legislative proposal failed.³ The challenges ask GAB to ignore its own recent determination on this issue and the legislature's two separate determinations that the Act 43 districts should become effective concurrent with the general election in November 2012. It also worth noting that each of the incumbent Senators challenging the recall petitions voted in favor of Act 43's effective date, the statutory text they now attack.

The GAB has already resolved this point against the Senators. The GAB was correct in its announced decision. And, the recall committees and over a hundred thousand electors were

² This is excerpted from the GAB staff's analysis presented to the GAB at its November 2011 meeting at which the GAB adopted the analysis as its own determination. *See Open Meeting Materials for November 2011 Meeting* at 75.

³ On October 31, 2011, Republican State Senator Mary Lazich introduced a bill providing that Act 43 would first apply "with respect to special and recall elections for the office of senator held on or after November 9, 2011." The bill also provides that Act 43 first applies, with respect to petitions for the recall of senators, "to petitions filed on or after November 9, 2011." 2011 Senate Bill 268 available at <https://docs.legis.wisconsin.gov/2011/proposals/sb268>. This proposed legislation lacked requisite support and failed to make it out of Committee. *Id.*

right to rely on the GAB's determination. The "Act 43" argument, the basis for most of the challenges, is devoid of merit.

III. THE CHALLENGERS' ATTACK ON SIGNATURES BEARING THE SAME DATE AS THE COMMITTEES' REGISTRATIONS MOCKS THE VOTERS AND CONTRADICTS GAB'S CORRECT DETERMINATION OF A SIMPLE POINT OF LAW

The challengers correctly note that all four recall committee registrations occurred on November 15, 2011. Presumably because the GAB typically does not operate 24 hours a day, those registrations bear time-stamps reflecting that they were processed early that workday. The challengers then assert that "it has been widely reported" that pajama parties were had in the early, pre-business hours of November 15 at which petitions were signed. The challengers demand that whole swaths of signatures be stricken because they speculate that some may have been on November 15 prior to when the GAB was able to process the recall committees' registration forms.

The challengers (1) flatly contradict the controlling statute; (2) offer zero evidence; (3) fail to identify a single genuinely out-of-time signature; (4) improperly try to shift the burden to the GAB and the petitioners; and (5) seek a remedy – the wholesale exclusion of valid signatures – on a hunch that among them may be a sprinkling of problematic ones, which is flatly prohibited by *Stahovic*, 122 Wis. at 376 (only individual signatures proven to be invalid may be stricken).

Among the people of earth, it was found necessary to divide time into discernible units, *e.g.*, years, months, weeks, days, hours, minutes, seconds, and so forth. This permits communication about defined amounts of time in all manner of affairs including the establishment of statutory deadlines and time periods in which acts may or must be done. In this

regard, the statutes most typically deal in the units of time commonly known as “days.”⁴ It would seem that statutory periods cast in “hours,” “minutes,” or “seconds” would likely be unworkable and too administratively resource-intensive to apply.

While the challengers want to compute the circulation period in units of hours, § 9.10, Wis. Stats., uses days to define this period. As the GAB’s letter to the recall committees correctly indicates, November 15, 2011 was the first day of the 60-day period and January 14, 2012 was the last. Any signatures bearing these dates, or any date between them, were appropriately obtained during the circulation period.

Section 9.10(2)(e), Wis. Stats., could not be clearer:

An individual signature on a petition sheet may not be counted if:

...

2. The signature is **dated** outside the circulation period.

(emphasis supplied).

The circulation period is based on days. To strike a signature as out-of-time, it must be shown, by clear and convincing evidence, that the signature was obtained outside of the circulation period or the signature must bear a date outside of that period. “In the wee hours of November 15” is not a different “date” than November 15.

Apart from its mischaracterization of law, this aspect of the challenges fails to identify any particular signature it seeks to have stricken; it is unsupported by any evidence, clear and convincing, or otherwise; and it offends established law in two additional respects. First, it shrugs off the challengers’ burden by demanding the exclusion of all signatures dated November 15 on the very basis that challengers cannot discern whether any particular signatures were obtained in the early morning hours of that day. Second, in light of the challengers’ inability to

⁴ Of course, there are exceptions. For example, statutes of limitation often deal in units of time known as “years.”

identify signatures that would actually violate their off-base concept of the statute, they demand that all signatures dated November 15 be stricken, dooming signatures that even the challengers' fanciful re-write of the law would deem totally valid. Erring in favor of understatement and ignoring all other missing predicates, this would violate the rule of *Stahovic*.

Otherwise valid signatures dated November 15, 2011 or January 14, 2012, or any day in between, are valid.

IV. THE MAJORITY OF THE REMAINING CHALLENGES ARE FACTUALLY INACCURATE, UNSUPPORTED BY EVIDENCE, AND/OR LACK ANY BASIS IN LAW

The fact that the challengers' "Act 43 districts" and "circulation period" arguments are meritless renders these challenges incapable of blocking the recall elections. See Exhibits A of Affidavit of Mike Pfohl In Support of Committee to Recall Fitzgerald, Affidavit of Mike Pfohl In Support of Committee to Recall Galloway, Affidavit of Mike Pfohl In Support of Committee to Recall Moulton, Affidavit of Mike Pfohl In Support of Committee to Recall Wanggaard, (collectively, "Pfohl Affidavits"). Even if this were not the case, the balance of the challenges fail because they rest on factual misstatements about the petitions; they lack supporting evidence, and/or they misapply the law in an attempt to undermine petition-signers' constitutional rights to seek recall elections.

In many instances, merely looking at specific petition pages shows that the challengers' assertions that information is missing or invalid are simply false. See *Pfohl Affidavits* at ¶ 6 and Exs. A, C. In others, the challengers make bare assertions about signers not being old enough, not having signed the petition, or not having provided a valid residential address – but offer no evidence to support the assertions. *Id.* at Ex. C. Finally, the challengers make a number of challenges that clearly have no basis in the law. The challenges premised on a circulator not

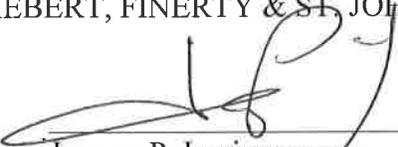
being a Wisconsin resident or a signer not currently registered to vote at their address lack any legal basis and should be disregarded. *See Id.*

CONCLUSION

For the foregoing reasons, the recall committees respectfully request that the GAB certify the petitions to recall Senators Moulton, Galloway, Wanggaard and Fitzgerald

Dated this 13th day of February, 2012.

FRIEBERT, FINERTY & ST. JOHN, S.C.

By: 

Jeremy P. Levinson
State Bar No. 1026359
Joseph M. Peltz
State Bar No. 1061442

Attorneys for Recall Committees

P.O. ADDRESS:

330 East Kilbourn Avenue
Two Plaza East, Suite 1250
Milwaukee, Wisconsin 53202
Phone: (414) 271-0130

STATE OF WISCONSIN
BEFORE THE GOVERNMENT ACCOUNTABILITY BOARD

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IN RE PETITION TO
RECALL SENATOR SCOTT FITZGERALD
OF THE 13th SENATE DISTRICT

WGAB ID# 0600021

IN RE PETITION TO
RECALL SENATOR WANGGAARD
OF THE 21ST SENATE DISTRICT

WGAB ID# 0600019

IN RE PETITION TO
RECALL SENATOR MOULTON
OF THE 23rd SENATE DISTRICT

IN RE PETITION TO
RECALL SENATOR PAM GALLOWAY
OF THE 29th SENATE DISTRICT

WGAB ID# 0600020

**SENATORS FITZGERALD, WANGGAARD, MOULTON AND GALLOWAY'S
JOINT REPLY IN SUPPORT OF THEIR RESPECTIVE WRITTEN CHALLENGES
TO THE RECALL PETITIONS OFFERED FOR FILING ON JANUARY 17, 2012**

INTRODUCTION

The joint rebuttal offered by the Committee to Recall Scott Fitzgerald, Committee to Recall Wanggaard, Committee to Recall Moulton and Recall Senator Pam Galloway (collectively, the "Recall Committees") is long on rhetoric and hyperbole and correspondingly short on analysis of the significant legal issues raised by the Senators. Senators Fitzgerald, Wanggaard, Moulton and Galloway by this joint reply will forgo the invitation to turn these proceedings into political theater and will, instead, focus on the issues before the Government Accountability Board ("GAB" or the "Board").

ARGUMENT

I. Only Signatures Of Qualified Electors Of The Respective Senate Districts May Be Counted.

The Wisconsin Constitution is very clear on a fundamental point – recall petitions must be signed by the electors of the district represented by the officeholder they seek to recall. “The qualified electors . . . of any . . . legislative district . . . may petition for the recall of any incumbent elective officer . . . by filing a petition . . . demanding the recall of the incumbent.” Wis. Const. Art. XIII, § 12 (intro). This unremarkable, fundamental requirement is restated in the recall statute: “The qualified electors . . . of any . . . legislative . . . district . . . may petition for the recall of [the] incumbent elective official.” Wis. Stat. § 9.10(1)(a).

The Board has concluded that those legislative districts created by 2011 Wisconsin Act 43 (“Act 43”) have been in effect since August 24, 2011 for representational purposes. The procedure by which the Board reached this conclusion does not appear to be in dispute, as the Recall Committees acknowledge that GAB staff members presented their analysis to the Board at its November 9, 2011 meeting and the Board adopted the staff analysis “as its own determination.” (Recall Committees’ Brief In Opposition To Written Challenges (hereafter, “Comms.’ Br.”) at 6 n.2.)

The staff analysis of the Recall Committees reference principally consisted of two separate, but related, memoranda.¹ The first is a memorandum dated October 19, 2011 from Kevin Kennedy, GAB’s Director and General Counsel, to the Chief Clerks of the Wisconsin Senate and Assembly on the subject of “Legislative Redistricting: Effective Date and Use of State Funds” (the “October Memo”). The second is a memorandum from Mr. Kennedy to the Members of the Board, prepared for the Board’s November 9, 2011 meeting on the subject of

¹ For the Board’s convenience, copies of these memoranda, as they were presented in the Board’s November meeting materials, are attached hereto as Exhibit A.

“2012 Redistricting Issues” (the “November Memo”). These two memos, collectively, identify a conundrum of sorts that GAB specifically addressed – Act 43 became effective in August 2011 for representational purposes, but will not become effective for purposes of conducting any election until November 2012.

As explained next, the Recall Committees are simply wrong in their assertion that the only issue implicated by the August 24, 2011 effective date was “whether an incumbent could properly use tax dollars to fund communications with people who may become the incumbent’s constituents in November 2012.” Comms.’ Br. at 6.

A. The Board Conclusively Determined That Each Senator Represents Those Electors Who Reside In The Districts Created By Act 43.

The breadth of GAB’s effective date determination – with respect to representation – is undeniably all-encompassing. Section 2 of the October Memo is titled: “Initial Applicability Date with Respect to Communication and Representation of Constituents: August 24, 2011.” Oct. Memo at 3. Subsection 2.b.i. is similarly titled: “2011 Wisconsin Act 43 is effective as of August 24, 2011 for representation purposes.” *Id.* Staff noted that even if the districts created by Act 43 “do not take effect for election purposes” until some later date, Act 43 could still be “effective for other purposes before that date,” and concluded that “the Legislature intended to effectuate the Act on [August 24, 2011] for purposes of representation.” *Id.* at 4.

The November Memo erased any possible doubt about the issue, stating unequivocally that “staff has concluded that *legislators began representing their new districts on August 24, 2011.*” Nov. Memo at 1 (emphasis added). Staff also noted that having different effective dates with respect to elector representation and the conduct of elections “creates a unique set of issues in the current political climate due to public statements that recall petitions against several state senators may be initiated prior to the 2012 General Election.” *Id.* at 2. Nevertheless, this unique

set of issues does not change the *constitutional* and corresponding statutory command that a recall petition must be signed by the electors in the legislative district that the incumbent represents.

B. The Board Similarly Concluded That Recall Elections, If Any, Held Prior To November 2012 Must Be Conducted Using The Former Legislative Districts.

As the Recall Committees note, Act 43 includes a specific provision that states that it “first applies, with respect to special or recall elections, to offices filled or contested concurrently with the 2012 general election.” Act 43, § 10(2). GAB has concluded that this provision of Act 43 requires that any recall election “contested prior to the 2012 General Election must be *conducted* using the legislative district boundaries which existed prior to the enactment of Act 43.” Nov. Memo at 2 (emphasis added). GAB staff noted that its conclusion in this regard raised a host of questions regarding the wisdom of conducting elections utilizing the former legislative district boundaries, particularly after the Spring Primary and Spring General elections, when all local election officials will have transitioned to new ward boundaries. *Id.* Nevertheless, GAB concluded that this result – and any attendant confusion – is required by the terms of Act 43. *Id.* This conclusion, however, is not dispositive of which electors are eligible to sign a recall petition pursuant to the Wisconsin constitutional provision.

C. Even If The Board Maintains That Recall Elections Should Be Conducted In The Former Legislative District Boundaries, The Recall Petitions Must Be Signed By Electors Within The Boundaries Established By Act 43.

The Board’s determination regarding the use of the former legislative district boundaries for the conduct of a future recall election becomes relevant only in the event that the Board first finds one or more of the Recall Petitions to be sufficient. As the Board noted, the State is faced with a “unique set of issues” created by the dual effective dates of Act 43. At this stage of the proceedings, the constitutional mandate clearly compels the Board to evaluate the Recall

Petitions based on residence within the districts created by Act 43. There is simply no way that GAB can on the one hand conclude that Senator Fitzgerald, for example, has been representing the electors of the 13th Senate District created by Act 43 since August 24, 2011 and on the other hand accept as sufficient a recall petition signed by electors that reside outside that district.

Such a result directly contravenes the constitutional command that the qualified electors of any legislative district may petition for the recall of the incumbent legislator. Wis. Const. Art. XIII, § 12 (intro). Furthermore, no provision of Act 43 or of Wis. Stat. § 9.10 authorizes, much less compels, GAB to accept as sufficient a recall petition signed by electors of a different district.

The question of where any recall election should be conducted becomes relevant only after the Board has made its determination of sufficiency or insufficiency.² Wisconsin's recall statute clearly differentiates between the recall petition process and the conduct of a recall election. The recall petition process involves the registration of the recall petitioner, followed by petition circulation, offering the petition for filing and the filing officer's review of the petition and any related challenges. The petition process culminates in a determination of sufficiency or insufficiency, and this final step of the recall petition process triggers, if appropriate, the beginning of the recall election process. Wis. Stat. § 9.10(3)(b) ("If the [Board] finds that the petition is sufficient, the [Board] shall file the petition and call a recall election to be held on the Tuesday of the 6th week commencing after the date of filing of the petition.") Thus, it is the

² In the event the Board determines that one or more of the Recall Petitions is sufficient, GAB or the Courts will need to determine whether holding an election in the former legislative districts is constitutionally permissible. Indeed, due to the conclusion of the 2010 census and the adoption of Act 43 there is little doubt that the former legislative districts are unconstitutionally malapportioned. As such an election in those districts would undermine the constitutional guaranty of one person one vote, *See Baker v. Carr*, 369 U.S. 186 (1962), and will impair the representative democracy established by Wisconsin's constitution (Wis. Con. Art. IV. Sec. 5 & Art. III, secs. 1&3) by allowing unrepresented electors the right to vote for a Senator and at the same time denying certain electors who are represented electors the right to vote for their Senator.

determination of sufficiency and the filing of the petition that sets in motion the recall election mechanism. Indeed, prospective candidates may not begin circulating nomination papers until after a recall petition is filed and an election called.

In the absence of the unique set of issues that the Board identified last fall, the transition from the recall petition process to the recall election process would be seamless and straightforward. But that is not the case under the present circumstances, and to review the sufficiency of the Recall Petitions as if Act 43 were not currently in effect for purposes of representation and, thus, incumbency, would require GAB to act in direct contravention of the state Constitution.

Any signature affixed to one of the Recall Petitions that was made by an elector who resides outside of the respective Senate District created by Act 43 may not be counted. Such signatures violate the statutory and constitutional command that the recall petition be brought by the electors of the legislative district represented by the incumbent.

II. The Recall Statutes Set Forth A Number Of Mandatory Requirements That Cannot Be Ignored In Favor Of Substantial Compliance, Including The Prohibition On Prematurely Circulating A Recall Petition.

The Recall Committees suggest that all provisions of the recall statute are directory in nature and subject to a standard of substantial compliance. Comms.' Br. at 2. While it is true that certain statutory provisions relating to recall petitions are directory, it is a misstatement of the law to suggest that every requirement set forth in Wis. Stat. § 9.10 is subject to mere substantial compliance. Indeed, statutory provisions governing the timing of filing election related petitions are mandatory in nature. *State ex rel. Ahlgrimm v. State Elections Board*, 82 Wis. 2d 585, 595-96, 263 N.W.2d 152 (1978).

Wisconsin's recall statute states unequivocally that "[n]o petitioner may circulate a petition for the recall of an officer prior to completing registration." Wis. Stat. § 9.10(2)(d).

GAB has no authority to count any signature that is collected prior to registration. Wis. Stat. § 9.10(2)(e)2. Because the consequence of failing to complete registration prior to circulation is that all signatures prematurely collected are void, the registration requirement is a mandatory provision of the recall statute. *Ahlgrimm*, 82 Wis. 2d at 594 (explaining that “[t]he difference between mandatory and directory provisions of election statutes lies in the consequence of nonobservance: An act done in violation of a mandatory provision is void . . .”). Wis. Stat. § 9.10(2)(d) is replete with mandatory provisions, including:

- “No petition may be offered for filing . . . unless the petitioner first files a registration statement . . .”
- “No petitioner may circulate a petition for the recall of an officer prior to completing registration. . .”
- “The last date that a petition . . . may be offered for filing is 5 p.m. on the 60th day commencing after registration.”
- “After the recall petition has been offered for filing, no name may be added or removed.”

As each of the Senators noted in their respective Written Challenges, the registration procedure is not “completed” until a GAB representative reviews the registration statement and accepts it. Specifically, GAB, as the filing officer, must inspect the registration statement and either reject it as insufficient, conditionally accept it and notify the registrant of minor errors or insufficiencies that must be corrected within fifteen days or accept it unconditionally. Wis. Admin. Code § GAB 6.02. Thus, the statute expressly prohibits circulation prior to the completion of registration and the GAB has established a process by which such completion is to occur.

The Recall Committees do not dispute this requirement or the consequence of violating it. Rather, they argue that the recall statute only recognizes days as a unit of time measure. *Comms.’ Br.* at 7-8. As an initial matter, the assertion is wrong. Indeed, the statutory deadline

for submitting any recall petition is “5:00 p.m. on the 60th day commencing after registration.” Wis. Stat. § 9.10(2)(d). This is so regardless of the filing officer’s normal business hours. More fundamentally, the Recall Committees’ assertion that the actual time of registration is irrelevant would require that GAB read the word “completing” out of the statute. This is not permissible. *State ex. rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58 ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110 (“language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results. Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage”)

Likewise, it would mean that a recall petitioner could circulate a recall petition for an entire day, register with the filing officer just prior to the close of business on that day and still meet the mandatory requirement that no petitioner may circulate a petition for the recall of an officer prior to completing registration. The plain language of the statute does not allow for such a strained interpretation. *Id.*

The Recall Committees’ other substantive response to challenges that signatures were collected prior to completing registration is to point out the complete futility of an officeholder attempting to challenge signatures in the first instance. Indeed, the only reason the officeholders cannot identify which specific signatures were collected prior to the completion of registration is because the Recall Committees failed to provide the time the signatures were made. Importantly, the Recall Committees do not assert that they waited until registration was completed before circulating the Recall Petitions. Instead, they rely on a deficiency of their own making to claim that the Senators failed to identify which specific signatures the petitioners collected prematurely.

III. The Board Must Review The Remaining Challenges To Determine Which Signatures Must Be Stricken As Invalid Pursuant To Wis. Stat. § 9.10(2).

The Recall Committees disagree with certain individual challenges made by the Senators. Each of the four Senators has presented his or her challenges and the respective Recall Committees have presented rebuttal. GAB now has the task of analyzing the challenges and rebuttals³ and, in addition to resolving the legal issues presented, determine whether a sufficient number of signatures have been presented on the Recall Petition. This is the process established by the Legislature pursuant to Wis. Stat. § 9.10(3)(b), and the Senators' decision to participate in that process is entirely proper.

Finally, it bears noting that the only meaningful safeguard to the validity of the recall petition process is the integrity of the individual circulators and the veracity of their respective certifications. Each individual circulator is required to certify as follows:

I personally circulated this recall petition and personally obtained each of the signatures on this paper. I know that the signers are electors of the jurisdiction or district represented by the officeholder named in this petition. I know that each person signed the paper with full knowledge of its content on the date indicated opposite his or her name. I know their respective residences given. I support this recall petition. I am aware that falsifying this certification is punishable under § 12.13(3)(a), Wis. Stats.

Such a certification is specifically required by Wis. Stat. § 8.40(2).

It is apparent that in many instances the seriousness of the certification – including the reference to § 12.13(3)(a), which makes falsifying the certification a Class I felony – provided no deterrent to circulators intent on falsely certifying signatures. It is equally apparent that many signers gave no thought to fraudulently signing the Recall Petitions. The Senators, working in

³ GAB's administrative task has been made more difficult by the fact that the Recall Committees deleted thousands of rows from the spreadsheets containing the Senators' challenge data. For example, in support of her written challenge Senator Galloway submitted a data file with 5,502 rows of data, yet the spreadsheet that accompanied Recall Senator Pam Galloway's rebuttal included less than 4,000 rows. It is unclear at this late hour which rows the Recall Committees deleted from each data file, or why.

conjunction with Committee to Elect a Republican Senate, shared data files relating to the Recall Petitions and found a significant number of individuals who cavalierly signed *each* of the Recall Petitions against Senators Wanggaard, Moulton and Galloway, and a number of other individuals who signed at least two of the Recall Petitions. It is doubtful that these signers were confused about what they were doing, since many of them signed multiple petitions on the same day.

More striking is the reality that a number of circulators falsely certified identical signatures on multiple Recall Petitions – many on the same day – despite the fact that the signers did not reside in *any* of the relevant Senate Districts. A list of some of the individual signers that signed multiple Recall Petitions is attached hereto as Exhibit B, along with a sampling of various petition pages that include patently false certifications. For example, the circulator of page number 2474 of the Wanggaard petition, page number 2272 of the Moulton petition and page number 1607 of the Galloway petition lives in Wisconsin Rapids, in the 24th Senate District. She falsely certified her own signature, as well as the signatures of two other Wisconsin Rapids-area residents on all three Recall Petitions. See Ex. B, Tab B-3. Exhibit A includes numerous other examples from areas of the state as diverse as Door County (Tab B-2), Cashton (located in Monroe County) (Tab B-7) and Mequon (Tab B-5). These false certifications call into question the petition process, because in the absence of a reliable certification there is no other evidence that they were “circulated in a manner that protects against fraud.” *In re Jensen*, 121 Wis. 2d 467, 469-70, 360 N.W.2d 535 (1984).

Adding to the disappointment that GAB and the residents of this State should feel regarding this blatant disregard for state law, is the fact that the Recall Committees were perfectly willing to submit such obviously invalid petition pages as part of the Recall Petitions. It is remarkable, for instance, that the Committee to Recall Wanggaard would find it acceptable to submit a petition page containing only signatures corresponding to Wisconsin Rapids

addresses (or Stevens Point or Mequon) for a Senate District located in the Racine area. Yet, that is exactly what they did.

The only way that integrity can be returned to this process is if GAB refers these individuals for prosecution.

CONCLUSION

For the reasons set forth above and in their previous submissions, the Senators respectfully request GAB eliminate all invalid and inadequate signatures from the four petitions. Moreover, the Senators request that GAB evaluate the sufficiency of the petitions in the legislative districts created by Act 43.

Dated this 15TH day of February, 2012.

MICHAEL BEST & FRIEDRICH LLP
Attorneys for Senator Scott Fitzgerald, Senator Van
Wanggaard, Senator Terry Moulton and Senator
Pam Galloway

By: 
Eric M. McLeod, State Bar No. 1021530
Joseph Louis Olson, State Bar No. 1046162
Michael P. Screnock, State Bar No. 1055271

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

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Exhibit A

A-1

State of Wisconsin\Government Accountability Board

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



JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

DATE: October 19, 2011

TO: Robert Marchant, Senate Chief Clerk
Patrick Fuller, Assembly Chief Clerk

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

SUBJECT: Legislative Redistricting: Effective Date and Use of State Funds

On September 6, 2011, Jonathan Becker, Nathaniel Robinson and I from the Government Accountability Board ("G.A.B.") met with you and staff of the Legislative Council to discuss the impact of redistricting on incumbent legislators. Prior to this meeting, you and Legislative Council staff received a number of inquiries about the impact of 2011 Wisconsin Act 43 with respect to the ability of incumbent legislators to communicate with constituents and to run for and hold legislative office. Because these were not new issues, we agreed to review past decisions of the former Elections and Ethics Boards and guidance from the Department of Justice.

On October 10, 2011, I received copies of past guidance from the Department of Justice. G.A.B. staff forwarded this information to Legislative Council staff and you. We had a brief meeting on October 12, 2011, in which you asked whether a 1982 Attorney General Opinion, OAG 48-82, 71 Wis. Op. Atty. Gen. 157 (Wis. A.G. 1982), resolved the issues on the use of state funds by incumbent legislators to communicate with constituents and travel in legislative districts created by 2011 Wisconsin Act 43, as well as the conduct of special or recall elections. At the time of that meeting, I believed it did, but I noted that the G.A.B. staff had not fully analyzed the material.

After reviewing all of the material, the G.A.B. staff believes that the 1982 Attorney General Opinion to Senator Risser (71 Wis. Op. Atty. Gen. 157 (Wis. A.G. 1982)) is not directly on point with the current issue. That opinion was based on a federal court finding that existing legislative districts were unconstitutional. As a consequence of that finding, the federal district court specifically ordered that the then-existing legislative districts could not be used for purposes of nomination and election after June 17, 1982, at which time and by the same court order new legislative district lines became effective. In the present situation, unlike 1982, there has been no judicial determination that the existing legislative districts are unconstitutional, and the Legislature has specifically addressed the initial applicability of 2011 Wisconsin Act 43 for various purposes.

Although the 1982 Attorney General Opinion is not directly on point, some of its language, as well as subsequent opinions including a 1983 Attorney General Opinion (OAG 47-83, 72 Wis. Op. Atty. Gen. 172 (Wis. A.G. 1983)), and the language of 2011 Wisconsin Act 43 itself all provide helpful analysis and application to the current situation, as affected by 2011 Wisconsin Act 43.

At the October 12, 2011 meeting, I promised to provide the G.A.B. staff position as quickly as possible. Below are the G.A.B. staff opinions and analyses regarding the initial applicability of

2011 Wisconsin Act 43 with respect to 1) elections, and 2) communication and representation of constituents.

1. Initial Applicability Date with Respect to Elections: November 6, 2012

a. Opinion

It is the G.A.B. staff's position that the legislative districts created by 2011 Wisconsin Act 43 are not in effect for the purpose of "special or recall elections to offices filled or contested" prior to the General Election on November 6, 2012.

b. Analysis

The Legislature enacted legislation reapportioning the legislative districts and members, 2011 Wisconsin Act 43, as required by the state constitution. Wis. Const. art. IV, § 3. The legislation was signed by the Governor and published on August 23, 2011. Unless specified in the legislation, every act is effective on the day following publication. WIS. STAT. § 991.11. However, 2011 Wisconsin Act 43 specifically provided for the initial applicability of the act for certain purposes. The Act "first applies, with respect to regular elections, to offices filled at the 2012 general election." 2011 Wis. Act 43, § 10 (1). In addition, the Act "first applies, with respect to special or recall elections, to offices filled or contested concurrently with the 2012 general election." 2011 Wis. Act § 10 (2).

"First applies" historically means that an act is in effect for the first time on a certain date or occurrence and remains in effect after that date or occurrence. *Dettwiler v. Wisconsin Dept. of Revenue*, 2007 WI App 125, ¶6 n.3, 301 Wis. 2d 512, 517, 731 N.W.2d 663, 666 (Wis. Ct. App. 2007).

Wisconsin Stats. s. 5.02 (5) defines "general election" as the election held in even-numbered years on the Tuesday after the first Monday in November conducted to elect, among other offices, state senators and representatives to the assembly. WIS. STAT. §5.02 (2011). The next general election will occur on November 6, 2012.

By the specific terms of 2011 Wisconsin Act 43, any recall election or special election to fill a vacancy conducted before November 6, 2012 shall be conducted in the legislative districts in effect prior to the enactment of 2011 Wisconsin Act 43. For example, the special election to fill the vacancy in the 95th Assembly District was ordered by the Governor on September 2, 2011 to be conducted under the district lines in effect before the passage of 2011 Wisconsin Act 43. 2011 Executive Order 41.

This differs significantly from the situation presented in 1982 when the Attorney General Opinion (71 Wis. Op. Att. Gen. 157) was issued. As noted above, in 1982, a federal court had found that existing legislative districts were unconstitutional and ordered all subsequent elections to be conducted under a reapportionment plan set out in the court order and beginning on the specific date of June 17, 1982. *The Wisconsin State AFL-CIO et al. v. Elections Board et al.*, No. 82-C-0112 (E.D. Wis. 1982). In the 1982 Attorney General Opinion to Senator Risser (71 Wis. Op. Att. Gen. 157), the Attorney General interpreted and applied this specific court order and opined that the former districts were not in effect for the conduct of elections or the use of public funds by incumbent legislators after June 17, 1982. The Attorney General's opinion was released on August 19, 1982,

and therefore the language in the opinion assumes that the new court-ordered legislative districts were already in place and effective.

The meaning and effect of the initial applicability provisions of 2011 Wisconsin Act 43 are better understood in the context of the October 4, 1983 Attorney General Opinion to Representative Loftus (72 Wis. Op. Atty. Gen. 172). Here, the Attorney General offered an opinion on the effective dates of the redistricting described in 1983 Wisconsin Act 29, the Act adopted to replace the federal district court's redistricting plan that had been effective since June 17, 1982.¹ This Attorney General's opinion concluded that the effective date of the Act is also the effective date for new legislative districts unless the legislature specifically provided other exceptions to the initial applicability of the Act for certain purposes. The Attorney General opinion concluded that, by reason of Wisconsin Stats. s. 991.11, the publication date of the Act, July 20, 1983, was also the effective date of the Act except for specific statutory exceptions. The only exception in the Act was related to specific language setting the initial applicability of sections 8.15(9) and 8.20(10) of the statutes, which related to the Election Board's duty to provide new district maps to candidates.

The language of 2011 Wisconsin Act 43 is very clear as to the initial applicability exceptions from the Wisconsin Stats. s. 991.11 effective date of the Act (August 24, 2011). The Act initially applies for the purposes of regular elections to offices filled at the 2012 general election and to special or recall elections to offices filled or contested concurrently with the 2012 general election. Therefore, for purposes of any elections in 2012, the new legislative districts found in Act 43 do not apply to special or recall elections to offices filled or contested prior to the November 6, 2012 general election.

2. Initial Applicability Date with Respect to Communication and Representation of Constituents: August 24, 2011

a. Opinion

It is the G.A.B. staff's position that beginning on August 24, 2011, neither this legislation nor any provisions of the Code of Ethics for Public Officials and Employees, Wisconsin Stats. Ch 19, Subchapter III, restricts the use of public funds by incumbent legislators to send mail or travel within the boundaries set forth in 2011 Wisconsin Act 43 for the purpose of conducting legislative business.

b. Analysis

- i. 2011 Wisconsin Act 43 is effective as of August 24, 2011 for representation purposes.

The effective date of 2011 Wisconsin Act 43 with respect to representation differs from its effective date for election purposes. The 1982 Attorney General Opinion to Senator Risser (71 Wis. Op. Att. Gen. 157) specifically provides that with respect to the former legislative districts, the "vitality

¹ The 1982 redistricting plan was found unconstitutional in 1992, following the 1990 census. See *Prosser et al. v. Elections Board, et al.*, 793 F. Supp. 859, 865 (W.D. Wis. 1992). In 1992, a three-judge panel created a redistricting plan that was effective for all elections held after June 2, 1992. *Prosser v. Elections Board*, 793 F. Supp. at 871. The 1992 redistricting plan was held unconstitutional in 2002, following the 2000 census. See *Baumgart et al. v. Wendelberger*, Case No. 01-C-0121; see *Jenson et al. v. Wendelberger*, Case No. 02-C-0366. The federal district court created a redistricting plan that was effective for all elections held after May 30, 2002. *Id.* However, 1983 Wisconsin Act 22, first held unconstitutional in the context of the 1990 census, was not challenged as unconstitutional between its effective date of July 29, 1983 and the 1990 census. *Prosser v. Elections Board*, 793 F. Supp. at 871

depends upon the purpose being inquired into.” OAG 48-82, 71 Wis. Op. Att. Gen. 157 (Wis. A.G. 1982). The 1983 Attorney General Opinion to Representative Loftus (72 Wis. Op. Atty. Gen. 172) emphasized that even though the Elections Board did not need to provide new district maps to candidates until the 1984 primary and general elections, this did not mean that the “the new districts [we]re not effective before 1984.” 72 Wis. Op. Atty. Gen. 172. Thus, even though the new districts do not take effect for election purposes until November 6, 2012, this does not mean that 2011 Wisconsin Act 43 is not effective for other purposes before that date.

It appears that it is constitutionally permissible, per the 1983 Attorney General Opinion, for the Legislature to enact redistricting legislation that will “apportion and district anew the members of the senate and assembly,” Wis. Const. art IV, Section 3, upon publication of an act, while at the same time the act provides exceptions for initial applicability of the act for specific purposes. In 2011 Wisconsin Act 43, it seems the Legislature intended to effectuate the Act on the Wis. Stats. s. 991.11 date (August 24, 2011) for purposes of representation.

ii. 2011 Wisconsin Act 43 does not affect the current status of elected officials.

Even though the new districts took effect on August 24, 2011, this does not affect the current status of elected senators and representatives. The 1982 Attorney General Opinion to Senator Risser (71 Wis. Op. Att. Gen. 157) and the 1983 Attorney General Opinion to Representative Loftus (72 Wis. Op. Atty. Gen. 172) also provide applicable guidance on the treatment of the residence of incumbent legislators with respect to retaining their current office and running for election under the new district plan. The former Elections Board applied these opinions in response to inquiries with respect to the 2002 redistricting. Correspondence to Representative David Travis, April 25, 2002. In the response to Representative Travis, the Elections Board noted that for purposes of representation (and absent contrary language in the act or statute), redistricting takes effect with the adoption of the new plan. Representation is based on a previous election and holding office, not on a future reelection. Seeking reelection is not relevant to representation and is only relevant to campaigning for the office to which a candidate seeks election.

iii. 2011 Wisconsin Act 43 does not change how current elected officials may use state funds.

The new legislation does not affect the laws governing how currently sitting elected officials who seek reelection or election to another office may use state funds. The guidance from the Attorney General in 1983 discussed the use of state funds by incumbent legislators with respect to the former and new districts under the judicial and legislative plans. 72 Wis. Op. Atty. Gen. 172. The opinion noted that the restrictions of Wis. Stats. s. 11.33, limiting the use of public funds after the first day for circulating nomination papers, are still applicable. It also provided that a legislator may not use funds for a purely private, non-public, purpose. However, a legislator may expend funds which have been appropriated for the legislator’s use for mailings and travel within or outside the legislator’s district if connected with the legislator’s representation of his or her constituents subject to legislative rules and applicable statutes. 72 Wis. Op. Atty. Gen. 172.

The G.A.B. and the former Ethics Board have consistently found that great deference should be given to the Legislature’s determination of public purpose consistent with other statutes such as the restriction on the distribution of 50 or more substantially similar items or communications after the first date for circulating nomination papers, see Wis. Stats. s. 11.33, the use of public office to obtain a private benefit, see Wis. Stats. s. 19.45 (2), or the use of public office to obtain an unlawful benefit

or advantage, see Wis. Stats. s. 19.45 (5). In light of the discussion in the 1983 Attorney General opinion, the use of public funds to communicate or travel in districts related to the legislator's initial election or subsequent re-assignment by 2011 Wisconsin Act 43 does not appear to be actively designed to obtain a private benefit or unlawful benefit or advantage as restricted under the Code of Ethics for Public Officials.

The Legislature appears to have developed fiscal and policy restraints on the use of public funds by legislators with respect to constituent communication and travel. The proposed policy that permits the use of public funds within those constraints to communicate and travel within the district from which a legislator was elected and the related district under 2011 Wisconsin Act 43 does not contravene provisions in Wis. Stats. s. 19.45. Such communications are, however, also subject to the limitation in Wis. Stats. s. 11.33.

This does not mean that a legislator may use public funds for communications or travel to obtain a private benefit or unlawful benefit or advantage, including for campaign purposes. The G.A.B. would investigate a complaint that set forth facts alleging such activity.

3. Conclusion

This is an opinion of the G.A.B. staff. It is not an opinion issued pursuant to Wis. Stats. s. 5.05 (6a). As we discussed in our initial meeting, the staff plans to present its conclusions to the Board in the form of recommended guidance to share with legislators and the public.

Sincerely,

GOVERNMENT ACCOUNTABILITY BOARD



Kevin J. Kennedy
Director and General Counsel

A-2

State of Wisconsin \ Government Accountability Board

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



JUDGE THOMAS BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of November 9, 2011

TO: Members, Wisconsin Government Accountability Board

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

SUBJECT: 2012 Redistricting Issues

Summary

Board staff has received inquiries from the Legislature and the public regarding the effective dates related to the recently-enacted redistricting legislation. Based on the language of the legislation as well as prior Attorney General opinions, staff has concluded that legislators began representing their new districts on August 24, 2011, but that the new district boundaries would not govern any special or recall elections conducted prior to the 2012 General Election. This memorandum summarizes administrative issues raised by the delayed effective date for recall elections, as well as the potential effect of pending federal litigation challenging the constitutionality of the new legislative districts.

Staff recommends that the Board affirm the guidance contained in the attached memorandum to the Senate and Assembly Chief Clerks as well as the attached draft Guideline pertaining to the effective date of Act 43 for purposes of legislative elections and constituent representation. **However**, it is important to note that at the time this memorandum was prepared, new legislation was being introduced to change the effective date for elections to recall state senators, so that the new legislative districts would govern any such elections after November 9, 2011. Therefore, this recommended action may be modified depending upon developments in the Legislature prior to the Board's meeting.

Background

The attached memorandum provides a more detailed analysis regarding the effective dates of the redistricting legislation. The Legislature and the Governor enacted 2011 Wisconsin Act 43 to reapportion Wisconsin's legislative districts, and the Act was published on August 23, 2011. As outlined in the attached memorandum and draft Guideline, therefore, the general effective date of the Act is August 24, 2011, and that is the date at which legislators began representing their new districts. However, Section 10 of the Act also states as follows:

SECTION 10. Initial applicability.

- (1) This act first applies, with respect to regular elections, to offices filled at the 2012 general election.
- (2) This act first applies, with respect to special or recall elections, to offices filled or contested concurrently with the 2012 general election.

Based upon the plain language of section 10(2) of Act 43, staff has concluded that any special or recall election to be filled or contested prior to the 2012 General Election must be conducted using the legislative district boundaries which existed prior to the enactment of Act 43. Redistricting typically results in some constituents being represented by a legislator before having an opportunity to vote in that legislative district. But the difference between the effective dates for regular and recall elections in Act 43 creates a unique set of issues in the current political climate due to public statements that recall petitions against several state senators may be initiated prior to the 2012 General Election.

Following the issuance of the attached staff opinion, several legislators have questioned the wisdom of conducting recall elections under the old legislative districts, especially after the Spring Primary and Spring Election for local and county offices will be conducted using new municipal and county ward boundaries. Unless recall petitions are submitted early in 2012 and there are no administrative or legal delays in certifying the petitions and scheduling elections, recall elections for state senators are likely to occur after the April election. Municipal clerks would need to conduct elections using different sets of ward maps in a short period of time. After voting in the spring elections using the new wards and possibly new polling places, some electors will then return to voting in their former wards and polling places for a recall election, and then vote using the new district boundaries again in the regular fall elections in 2012. While these procedures present some administrative complications and potential confusion for election officials and voters, it is the result that is required pursuant to the effective dates in Act 43.

An additional complication is that the legislative districts created by Act 43 are the subject of a court challenge in *Baldus et al. v. Brennan et al.*, in the Eastern District federal court. The Board is represented by the Department of Justice in that litigation. On October 21, 2012, the Court denied the State's motion to dismiss the plaintiffs' complaint. Staff expects trial dates to be scheduled in the early part of 2012. In the event that the Court finds the Act 43 legislative districts to be unconstitutional and draws new boundaries, relying on the new districts to govern recall petitions and elections could also lead to complications and confusion for recall petitioners, election officials, and voters.

The Board's SVRS staff is currently working with the Legislative Technical Services Bureau (LTSB) to convert the new legislative boundaries as created by Act 43 into the correct data files so that the necessary election administration tools can be set up in SVRS. LTSB is creating map-based files which will be used by Board staff to determine the voters that reside in each district, so that voter lists, poll lists, ballot styles, and other election tools can be produced. If recall elections prior to November 2012 are governed by the new districts pursuant to the proposed legislation, and depending on the timing of any recall petitions, the new voter and district data may not be available in SVRS to assist the public and incumbents in

determining the residences in each district, and to assist in the Board's review of recall petitions.

On October 26, 2012, the Senate Committee on Transportation and Elections held a public hearing to discuss several election-related proposals and issues, including the guidance issued by Board staff regarding the effective dates of Act 43. At that time I outlined our analysis contained in the attached memorandum and responded to questions regarding some of the administrative issues summarized above. Another public hearing by the Committee was scheduled for October 31, 2012 to consider a proposed bill to require that any senate recall petitions initiated after November 8, 2012 be governed by the new districts created by Act 43. A copy of the proposed bill is also attached.

Finally, Board staff has drafted the attached Guideline to summarize its opinions related to the effective dates contained in Act 43. Guidelines approved and issued by the Board are intended to serve as a plain language summary of the law. Absent any additional legislative action, staff recommends that the Board approve the draft Guideline. If legislation is enacted to alter the effective date of Act 43 for senate recall elections, staff recommends adopting the Guideline except that the analysis related to the first issue listed would require modification.

Recommended Motions

1. The Board adopts the analysis and conclusions contained in the attached staff memorandum dated October 19, 2011 related to the effective dates governing elections and constituent representation established by 2011 Wisconsin Act 43.
2. The Board approves the attached draft Guideline pertaining to the effective dates established in Act 43, subject to any legislation which alters the conclusions contained in the draft Guideline.

Legislative Redistricting: Act 43 Effective Dates for Election and Representation Purposes

This Guideline is provided as an information resource only. For authoritative advice, contact the Wisconsin Government Accountability Board.

The Wisconsin Legislature, through 2011 Wisconsin Act 43, changed the boundaries of senate and assembly districts in this state, due to the results of the 2010 federal census. Constituents who previously lived in one legislative district may now reside in another. This Guideline summarizes the effective date and implications of the new districts with regard to elections, incumbents in changed districts, and communication with constituents.

When do the new districts take effect for elections? The legislative districts created by 2011 Wisconsin Act 43 will first take effect for the General Election on November 6, 2012, due to the specific applicability date contained in the Act. Candidates will campaign and electors will vote in the new districts starting with the 2012 General Election. Any special or recall election for a state office held before this date will reflect the previous district lines.

When do the new districts take effect with regard to constituent representation and communication? For purposes of representation, the legislative districts created by 2011 Wisconsin Act 43 took effect on August 24, 2011, the general effective date for the remainder of Act 43. On and after that date, legislators elected under the previous districts represent constituents assigned to the corresponding numbered districts created by Act 43. Subject to legislative rules, legislators may use state funds for the public purpose of communicating with new constituents. Legislators may also continue to communicate with constituents in the former district regarding legislative business, but may not use public funds to produce or distribute campaign communications to any individuals.

How do the new districts affect incumbents in changed districts? Although the new districts took effect, for purposes of representation, on August 24, 2011, new boundaries do not affect the current status of elected officials. All legislators elected under the previous districts now represent the constituents of the corresponding numbered district created by 2011 Act 43. This remains true even if the elected official no longer lives within the new district. In that case, the legislator may reside outside the new district which he or she represents, but must become a resident of that district prior to taking office if re-elected.

Note: This guideline reflects the language of 2011 Wisconsin Act 43, which specifically provides that the effective date, with respect to elections, does not occur until the 2012 general election. This guideline is also based upon prior Opinions of the Attorney General which concluded that redistricting legislation became effective on the date of publication except as provided explicitly in the legislation.

Legal references: WIS. STAT. §§ 5.02; 11.33; 11.37; 19.45(2); 991.11; 2011 Wis. Acts 39, 43, 44, 45; Opinion Attorney General 47-83, 72 Wis. Op. Atty. Gen. 172 (Wis. A.G. 1983); 71 Wis. Op. Atty. Gen. 157 (Wis. A.G. 1982).

State of Wisconsin
JOINT COMMITTEE ON LEGISLATIVE ORGANIZATION

Co-Chair
PRESIDENT MIKE ELLIS
State Senate



Co-Chair
SPEAKER JEFF FITZGERALD
State Assembly

November 9, 2011

JOINT COMMITTEE ON LEGISLATIVE ORGANIZATION

Mail Ballot

MOTION: I vote [YES] [NO] that the Joint Committee on Legislative Organization (JCLO) adopt a policy that an individual may carry a weapon in any space that is assigned to a legislative service agency, provided the individual is not prohibited by law or other JCLO policy from carrying the weapon.

MOTION: For purposes of administering the policies of the Assembly and Senate regarding the expenditure of public funds, a Representative or Senator represents the numbered district as shown in 2011 Wisconsin Act 43 that matches the number of the district from which the Representative or Senator was last elected. As a result, a Representative or Senator may expend public funds to send mail and travel within the boundaries of the numbered district as shown in 2011 Wisconsin Act 43, and to provide constituent services to individuals residing in such numbered district. Furthermore, a Representative or Senator may continue to expend public funds to send mail and travel within the boundaries of the district from which the Representative or Senator was last elected, and provide constituent services to individuals residing in such district, in order to ensure that citizens residing in that territory are adequately represented until the date on which a new Representative or Senator elected from that territory takes office. Expenditures authorized under this policy would accomplish a valid public purpose.

This policy does not permit the use of state funds in violation of s. 11.33 of the statutes.

This policy takes effect immediately upon adoption. To the extent feasible, the Legislative Technology Services Bureau shall take steps to organize and administer legislative databases in a manner that facilitates implementation of this policy.

Upon adoption, this policy shall be retained in the policy manuals of the Senate and Assembly.

I vote [YES] [NO] that the Joint Committee on Legislative Organization approve the policy.

Signature

Date

PLEASE RETURN BY NOVEMBER 16, 2011 TO:

Terry C. Anderson, Director
Legislative Council Staff
One East Main Street, Suite 401
Madison, WI 53703

EXHIBIT A

CAMPAIGN REGISTRATION STATEMENT STATE OF WISCONSIN GAB-1

FOR OFFICE USE ONLY

RECEIVED

IF A CANDIDATE DOES NOT FILE THIS STATEMENT BY THE DEADLINE FOR FILING NOMINATION PAPERS,
THE CANDIDATE'S NAME WILL NOT BE PLACED ON THE BALLOT.

NOTICE: ANY CHANGE OF INFORMATION ON THIS REGISTRATION STATEMENT MUST BE FILED WITHIN 10 DAYS.

IS THIS AN AMENDMENT? Yes No

1. CANDIDATE AND CANDIDATE COMMITTEE INFORMATION

| | | |
|--|-------------------|---|
| Name of Candidate | Party Affiliation | Office Sought (include district or branch number) |
| Residence Address (number and street) | Primary Date | Candidate Telephone Number (residence) |
| City, State and Zip Code | Election Date | Candidate Telephone Number (employment) |
| Campaign Committee Name (if any) Check One: <input type="checkbox"/> Personal Campaign Committee <input type="checkbox"/> Support Committee | | Candidate Email Address |
| Campaign Committee Address (if different than above) - Number, Street, City, State and Zip Code | | Committee Email Address |
| Telephone Number (if different than above) | | |

2. POLITICAL COMMITTEE INFORMATION

(For use ONLY by Political Action Committees, Political Party Committees, Political Groups, etc.)

| | |
|---|---|
| Name of Committee Committee to Recall Scott Fitzgerald | |
| Address - Number, Street, City, State and Zip Code 326 Garfield St. Fort Atkinson, WI 53538 | |
| Telephone Number 920-397-9749 | Committee Email Address RecallFitzNow@gmail.com |
| Sponsoring Organization - Name and Complete Address | |
| Acronym (if any) | |
| Type of Committee: A. <input type="checkbox"/> Special Interest Committee (PAC) <input type="checkbox"/> Resident Committee <input type="checkbox"/> Nonresident Committee <input type="checkbox"/> Incorporated Labor Organization - Attach Information Required by s.11.05(3)(n), Stats. B. <input type="checkbox"/> Political Party Committee <input type="checkbox"/> National <input type="checkbox"/> State <input type="checkbox"/> County <input type="checkbox"/> Other _____ C. <input type="checkbox"/> Legislative Campaign Committee - Attach Statement Required by s.11.05(3)(o), Stats. D. <input type="checkbox"/> Political Group (Referendum) _____ <input type="checkbox"/> Support <input type="checkbox"/> Oppose Name of Referendum E. <input checked="" type="checkbox"/> Recall Committee Scott Fitzgerald, SD 13 <input checked="" type="checkbox"/> Support Recall <input type="checkbox"/> Oppose Recall Name of Officer Subject to Recall - Attach Statement Required by s.9.10(2)(d) F. <input type="checkbox"/> Independent Committee - Also, Complete Oath of Independent Expenditures, Form GAB-6 G. <input type="checkbox"/> Individual - Also, Complete Oath of Independent Expenditures, Form GAB-6 | |

Exhibit 118

3. COMMITTEE TREASURER (Campaign finance correspondence is mailed to this address.)

| | |
|---|---|
| Treasurer's Name LOPI COMPAS | Telephone Number (residence) 920-506-72 508-9821 |
| Address (number and street) 326 Garfield St. | Telephone Number (employment) 920-397-9749 |
| City, State and Zip Code Fort Atkinson WI 53538 | Treasurer Email Address lori.compas@gmail.com |

4. PRINCIPAL OFFICERS OF COMMITTEE AND OTHER CUSTODIANS OF BOOKS AND ACCOUNTS

Attach additional listing if necessary. Indicate which officers or committee members are authorized to fill a vacancy in nomination due to death of candidate by an asterisk(*). This provision only applies to independent and local nonpartisan candidates. s.8.35, Stats.

| NAME | MAILING ADDRESS | Email Address | Phone # | POSITION |
|------|-----------------|---------------|---------|----------|
| | | | | |

5. DEPOSITORY INFORMATION

| | |
|---|---|
| Name of Financial Institution UW Credit Union | Account Number (Attach list of any additional accounts and deposit boxes, location, type and number, i.e., savings, checking, money market, etc.) 1632068-4 |
| Address (number and street) 326 Garfield St. | City, State and Zip Code Fort Atkinson WI 53538 |

CERTIFICATION

TREASURER

I, LOPI COMPAS (print full name) certify the information in this statement is true, correct and complete.

Signature Lori Compas, Treasurer 11/15/11
Date

CANDIDATE

I, _____ (print full name) certify the information in this statement is true, correct and complete, and that this is the only committee authorized to act on my behalf.

Signature _____, Candidate _____
Date

+++ EXEMPTION FROM FILING CAMPAIGN FINANCE REPORTS §11.05(2r), Wis. Stats. +++

You may be eligible for an exemption from filing campaign finance reports. Consult the Campaign Finance Instruction and Bookkeeping Manual to determine if the registrant qualifies for exemption.

This registrant is eligible for exemption. This registrant will not accept contributions, make disbursements or incur obligations in an aggregate amount of more than \$1,000 in a calendar year or accept any contribution or cumulative contributions of more than \$100 from a single source during the calendar year, except contributions by a candidate to his or her campaign of \$1,000 or less in a calendar year.

This registrant is no longer eligible to claim exemption.

Lori Compas 11/15/11
Signature of Candidate or Treasurer Date

THE INFORMATION ON THIS FORM IS REQUIRED BY §§9.10(2)(d), 11.05, 11.06(7), WIS. STATS. FAILURE TO PROVIDE THE INFORMATION MAY SUBJECT YOU TO THE PENALTIES OF §§8.30(2), 11.60, 11.61, 11.66, WIS. STATS.

RECEIVED

11 NOV 16 AM 9:38

CAMPAIGN REGISTRATION STATEMENT

STATE OF WISCONSIN

GAB-1

0600021
FOR OFFICE USE ONLY

GOVERNMENT
ACCOUNTABILITY BOARD

IF A CANDIDATE DOES NOT FILE THIS STATEMENT BY THE DEADLINE FOR FILING NOMINATION PAPERS, THE CANDIDATE'S NAME WILL NOT BE PLACED ON THE BALLOT.

NOTICE: ANY CHANGE OF INFORMATION ON THIS REGISTRATION STATEMENT MUST BE FILED WITHIN 10 DAYS.

IS THIS AN AMENDMENT? Yes No

Handwritten initials and marks

I. CANDIDATE AND CANDIDATE COMMITTEE INFORMATION

| | | |
|---|-------------------------|---|
| Name of Candidate | Party Affiliation | Office Sought (include district or branch number) |
| Residence Address (number and street) | Primary Date | Candidate Telephone Number (residence) |
| City, State and Zip Code | Election Date | Candidate Telephone Number (employment) |
| Campaign Committee Name (if any) Check One: <input type="checkbox"/> Personal Campaign Committee <input type="checkbox"/> Support Committee | Candidate Email Address | |
| Campaign Committee Address (if different than above) - Number, Street, City, State and Zip Code | Committee Email Address | |
| Telephone Number (if different than above) | | |

II. POLITICAL COMMITTEE INFORMATION

(For use ONLY by Political Action Committees, Political Party Committees, Political Groups, etc.)

| | |
|---|-------------------------|
| Name of Committee Committee to Recall Wanggaard | |
| Address - Number, Street, City, State and Zip Code PO Box 2569 Madison, WI 53703 | |
| Telephone Number | Committee Email Address |
| Sponsoring Organization - Name and Complete Address | |
| Acronym (if any) | |
| Type of Committee: A. <input type="checkbox"/> Special Interest Committee (PAC) <input type="checkbox"/> Resident Committee <input type="checkbox"/> Nonresident Committee <input type="checkbox"/> Incorporated Labor Organization - Attach Information Required by s.11.05(3)(n), Stats. B. <input type="checkbox"/> Political Party Committee <input type="checkbox"/> National <input type="checkbox"/> State <input type="checkbox"/> County <input type="checkbox"/> Other _____ C. <input type="checkbox"/> Legislative Campaign Committee - Attach Statement Required by s.11.05(3)(o), Stats. D. <input type="checkbox"/> Political Group (Referendum) _____ <input type="checkbox"/> Support <input type="checkbox"/> Oppose Name of Referendum _____ E. <input checked="" type="checkbox"/> Recall Committee <u>Senator Wanggaard</u> <input checked="" type="checkbox"/> Support Recall <input type="checkbox"/> Oppose Recall Name of Officer Subject to Recall _____ - Attach Statement Required by s.9.10(2)(d) F. <input type="checkbox"/> Independent Committee - Also, Complete Oath of Independent Expenditures, Form GAB-6 G. <input type="checkbox"/> Individual - Also, Complete Oath of Independent Expenditures, Form GAB-6 | |

GAB-1 (Rev. 12/2009) THIS FORM IS PRESCRIBED BY: WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD
212 East Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, WI 53707-7984
608-266-8005 <http://gab.wi.gov> Email: gab@wi.gov

Exhibit C

3. COMMITTEE TREASURER (Campaign finance correspondence is mailed to this address.)

| | |
|--|---|
| Treasurer's Name Randolph Brandt | Telephone Number (residence) 262-681-9361 |
| Address (number and street) 3429 N Main St | Telephone Number (employment) NA |
| City, State and Zip Code Racine, WI 53402 | Treasurer Email Address brandt.randolph@gmail.com |

4. PRINCIPAL OFFICERS OF COMMITTEE AND OTHER CUSTODIANS OF BOOKS AND ACCOUNTS

Attach additional listing if necessary. Indicate which officers or committee members are authorized to fill a vacancy in nomination due to death of candidate by an asterisk(*). This provision only applies to independent and local nonpartisan candidates. s.8.35, Stats.

| NAME | MAILING ADDRESS | Email Address | Phone # | POSITION |
|-----------------|----------------------------------|---------------------------|--------------|------------|
| Randolph Brandt | 3429 N Main St, Racine, WI 53402 | brandt.randolph@gmail.com | 262-681-9361 | petitioner |

5. DEPOSITORY INFORMATION

| | |
|---|--|
| Name of Financial Institution Summit Credit Union | Account Number (Attach list of any additional accounts and deposit boxes, location, type and number, i.e., savings, checking, money market, etc.) 1852XXXX |
| Address (number and street) PO Box 8046 | City, State and Zip Code Madison, WI 53708 |

CERTIFICATION

TREASURER

I, Randolph Brandt (print full name) certify the information in this statement is true, correct and complete.

Signature Randolph Brandt, Treasurer Date Nov. 15, 2011

CANDIDATE

I, _____ (print full name) certify the information in this statement is true, correct and complete, and that this is the only committee authorized to act on my behalf.

Signature _____, Candidate Date _____

+++ EXEMPTION FROM FILING CAMPAIGN FINANCE REPORTS §11.05(2r), Wis. Stats. +++

You may be eligible for an exemption from filing campaign finance reports. Consult the Campaign Finance Instruction and Bookkeeping Manual to determine if the registrant qualifies for exemption.

- This registrant is eligible for exemption. This registrant will not accept contributions, make disbursements or incur obligations in an aggregate amount of more than \$1,000 in a calendar year or accept any contribution or cumulative contributions of more than \$100 from a single source during the calendar year, except contributions by a candidate to his or her campaign of \$1,000 or less in a calendar year.
- This registrant is no longer eligible to claim exemption.

Signature of Candidate or Treasurer _____ Date _____

THE INFORMATION ON THIS FORM IS REQUIRED BY §§9.10(2)(d), 11.05, 11.06(7), WIS. STATS. FAILURE TO PROVIDE THE INFORMATION MAY SUBJECT YOU TO THE PENALTIES OF §§8.30(2), 11.60, 11.61, 11.66, WIS. STATS.

STATE OF WISCONSIN

Racine
(Name of County)

City of Racine
(Name of Municipality)

STATEMENT OF INTENT TO CIRCULATE RECALL PETITION

THE UNDERSIGNED RECALL PETITIONER, Randolph Brandt
(Print Name)

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

Van Wanggaard - State Senate District 21
(Indicate the name of, and office held by, the official being recalled).

Because he supported Scott Walker's assault
on working families.

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

Dated this 15th day of November, 2011
(Notary Not Required)

Randolph Brandt
(Signature of Petitioner)

SPECIAL INTEREST COMMITTEE REGISTRATION STATEMENT
STATE OF WISCONSIN
GAB-1

RECEIVED
 11 NOV 17 AM 10:1
 GOVERNMENT
 ACCOUNTABILITY BOA

NOTICE: ANY CHANGE OF INFORMATION ON THIS REGISTRATION STATEMENT MUST BE FILED WITHIN 10 DAYS.

POLITICAL COMMITTEE INFORMATION

(For use ONLY by Political Action Committees, Political Party Committees, Political Groups, etc.)

06 00019

| | | | |
|---------------------------------------|-----------------------------|---------------------------|--|
| Name of Committee/Corporation: | Committee to Recall Moulton | Acronym (if any): | |
| Address (Number and Street): | PO Box 2569 | | |
| City, State and Zip: | Madison, WI 53701 | | |
| Email: | jkidd_1@charter.net | | |
| Telephone Number: | (715) 723-9059 | | |
| Sponsoring Organization Name: | | | |
| Address: | | | |
| Committee Type/Corporation: | Recall | Committee SubType: | |

Handwritten:
 Dec
 →
 CRR
 JS

COMMITTEE TREASURER INFORMATION

| | | | |
|-------------------------------------|--------------------------|---------------|----------------|
| Treasurer Name: | Kidd, John | | |
| Address (Number and Street): | 10034 152nd St | | |
| City, State and Zip: | Chippewa Falls, WI 54729 | | |
| Email: | jkidd_1@charter.net | Phone: | (715) 723-9059 |

ADDITIONAL CONTACTS

| Name | Address | Title | Email | Phone | Primary |
|-------------------|--|---------------------|---------------------|----------------|--------------------------|
| Kidd, John jkidd_ | 10034 152nd St, Chippewa Falls, WI 54729 | Petitioner (Recall) | jkidd_1@charter.net | (715) 723-9050 | <input type="checkbox"/> |

DEPOSITORY INFORMATION

| | | | |
|---------------------------------------|---------------------|------------------------|-------|
| Name of Financial Institution: | Summit Credit Union | Account Number: | ***** |
| Address (Number and Street): | PO Box 8048 | | |
| City, State and Zip: | Madison, WI 53708 | | |

Exhibit#25D

+++ EXEMPTION FROM FILING CAMPAIGN FINANCE REPORTS s.11.05(2r), Stats. +++

You may be eligible for an exemption from filing campaign finance reports. Consult the Campaign Finance Instruction and Bookkeeping Manual to determine if the registrant qualifies for exemption.

This registrant is eligible for exemption. This registrant will not accept contributions, make disbursements or incur obligations in an aggregate amount of more than \$1,000 in a calendar year or accept any contribution or cumulative contributions of more than \$100 from a single source during the calendar year, except contributions by a candidate to his or her campaign of \$1,000 or less in a calendar year.

This registrant is no longer eligible to claim exemption.

CERTIFICATE

TREASURER

I, Kidd, John

certify the information in this statement is true and complete.

Signature

John Kidd

Treasurer

Date

11/15/2010^{9K}

CANDIDATE

I, Committee to Recall Moulton

certify the information in this statement is true, correct and complete, and that this is the only committee authorized to act on my behalf.

Signature

Candidate

Date

THE INFORMATION ON THIS FORM IS REQUIRED BY ss.9.10(2)(d), 11.05, 11.06(7), STATS. FAILURE TO PROVIDE THE INFORMATION MAY SUBJECT YOU TO THE PENALTIES OF ss.8.30(2), 11.80, 11.61, 11.66, STATS.

Report Generated On: 11/15/2011

RECEIVED

11 NOV 16 AM 9:47

CAMPAIGN REGISTRATION STATEMENT STATE OF WISCONSIN GAB-1

060020
FOR OFFICE USE ONLY

IF A CANDIDATE DOES NOT FILE THIS STATEMENT BY THE DEADLINE FOR FILING NOMINATION PAPERS, THE CANDIDATE'S NAME WILL NOT BE PLACED ON THE BALLOT.

NOTICE: ANY CHANGE OF INFORMATION ON THIS REGISTRATION STATEMENT MUST BE FILED WITHIN 10 DAYS.

IS THIS AN AMENDMENT? Yes No

1. CANDIDATE AND CANDIDATE COMMITTEE INFORMATION

| | | |
|---|-------------------------|---|
| Name of Candidate | Party Affiliation | Office Sought (include district or branch number) |
| Residence Address (number and street) | Primary Date | Candidate Telephone Number (residence) |
| City, State and Zip Code | Election Date | Candidate Telephone Number (employment) |
| Campaign Committee Name (if any) Check One: <input type="checkbox"/> Personal Campaign Committee <input type="checkbox"/> Support Committee | Candidate Email Address | |
| Campaign Committee Address (if different than above) - Number, Street, City, State and Zip Code | Committee Email Address | |
| Telephone Number (if different than above) | | |

2. POLITICAL COMMITTEE INFORMATION

(For use ONLY by Political Action Committees, Political Party Committees, Political Groups, etc.)

| | |
|--|--|
| Name of Committee <i>Recall Senator Pam Galloway</i> | |
| Address - Number, Street, City, State and Zip Code <i>119 SUNRISE DRIVE WAUSAU WI 54401</i> | |
| Telephone Number <i>715-581-7983</i> | Committee Email Address <i>nstencil@charter.net</i> |
| Sponsoring Organization - Name and Complete Address <i>N/A</i> | |
| Acronym (if any) <i>N/A</i> | |
| Type of Committee: A. <input type="checkbox"/> Special Interest Committee (PAC) <input type="checkbox"/> Resident Committee <input type="checkbox"/> Nonresident Committee <input type="checkbox"/> Incorporated Labor Organization - Attach Information Required by s.11.05(3)(n), Stats. B. <input type="checkbox"/> Political Party Committee <input type="checkbox"/> National <input type="checkbox"/> State <input type="checkbox"/> County <input type="checkbox"/> Other _____ C. <input type="checkbox"/> Legislative Campaign Committee - Attach Statement Required by s.11.05(3)(o), Stats. D. <input type="checkbox"/> Political Group (Referendum) _____ <input type="checkbox"/> Support <input type="checkbox"/> Oppose E. <input checked="" type="checkbox"/> Recall Committee <i>Sen. Pam Galloway</i> <input checked="" type="checkbox"/> Support Recall <input type="checkbox"/> Oppose Recall Name of Officer Subject to Recall _____ - Attach Statement Required by s.9.10(2)(d). F. <input type="checkbox"/> Independent Committee - Also, Complete Oath of Independent Expenditures, Form GAB-6 G. <input type="checkbox"/> Individual - Also, Complete Oath of Independent Expenditures, Form GAB-6 | |

Exhibit E

3. COMMITTEE TREASURER (Campaign finance correspondence is mailed to this address.)

| | |
|--|--|
| Treasurer's Name <i>Rita Pachal</i> | Telephone Number (residence) <i>715-675-6728</i> |
| Address (number and street) <i>1310 Maple Hill Road</i> | Telephone Number (employment) <i>N/A</i> |
| City, State and Zip Code <i>Wausau, WI 54403</i> | Treasurer Email Address <i>ritapachal@gmail.com</i> |

4. PRINCIPAL OFFICERS OF COMMITTEE AND OTHER CUSTODIANS OF BOOKS AND ACCOUNTS

Attach additional listing if necessary. Indicate which officers or committee members are authorized to fill a vacancy in nomination due to death of candidate by an asterisk(*). This provision only applies to independent and local nonpartisan candidates. s.8.35, Stats.

| NAME | MAILING ADDRESS | Email Address | Phone # | POSITION |
|-----------------------------|--|-----------------------------|---------------------|-------------------|
| <i>Nancy Tabaka-Stencil</i> | <i>119 Sunrise Drive Wausau, WI 54401</i> | <i>nstencil@charter.net</i> | <i>715-581-7993</i> | <i>Petitioner</i> |
| <i>Rita Pachal</i> | <i>1310 maple Hill Rd Wausau, WI 54403</i> | <i>mrpachal@charter.net</i> | <i>715 675 6728</i> | <i>Petitioner</i> |

5. DEPOSITORY INFORMATION

| | |
|---|--|
| Name of Financial Institution <i>Co-Vantage Credit Union</i> | Account Number (Attach list of any additional accounts and deposit boxes, location, type and number, i.e., savings, checking, money market, etc.) <i>156061</i> |
| Address (number and street) <i>110 South 1st Ave.</i> | City, State and Zip Code <i>Wausau, WI 54401</i> |

CERTIFICATION

TREASURER

I, *Rita Pachal* (print full name) certify the information in this statement is true, correct and complete.
 Signature *Rita Pachal*, Treasurer Date *11/15/11*

CANDIDATE

I, _____ (print full name) certify the information in this statement is true, correct and complete, and that this is the only committee authorized to act on my behalf.
 Signature _____, Candidate Date _____

+++ EXEMPTION FROM FILING CAMPAIGN FINANCE REPORTS §11.05(2r), Wis. Stats. +++

You may be eligible for an exemption from filing campaign finance reports. Consult the Campaign Finance Instruction and Bookkeeping Manual to determine if the registrant qualifies for exemption.

This registrant is eligible for exemption. This registrant will not accept contributions, make disbursements or incur obligations in an aggregate amount of more than \$1,000 in a calendar year or accept any contribution or cumulative contributions of more than \$100 from a single source during the calendar year, except contributions by a candidate to his or her campaign of \$1,000 or less in a calendar year.

This registrant is no longer eligible to claim exemption.

Signature of Candidate or Treasurer _____

Date _____

THE INFORMATION ON THIS FORM IS REQUIRED BY §§9.10(2)(d), 11.05, 11.06(7), WIS. STATS. FAILURE TO PROVIDE THE INFORMATION MAY SUBJECT YOU TO THE PENALTIES OF §§8.30(2), 11.60, 11.61, 11.66, WIS. STATS.

STATE OF WISCONSIN

MARATHON
(Name of County)

Town of Rib Mt.
(Name of Municipality)

STATEMENT OF INTENT TO CIRCULATE RECALL PETITION

THE UNDERSIGNED RECALL PETITIONER, NANCY A. STENCIL,
(Print Name)

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

SENATOR Pam Galloway (29th Senate District WI)
(Indicate the name of, and office held by, the official being recalled).

Senator Pam Galloway is a rubber stamp
and does not have Wisconsin
Communities best interests

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

Dated this 15 day of NOVEMBER, 2011

(Notary Not Required)

Nancy A. Stencil
(Signature of Petitioner)

| Committee ID | Committee Name | Address | Register Date | Register Time |
|--------------|---|---|---------------|---------------|
| 0600002 | Recall Judge Jon Counsell | N6460 CTH K, Neillsville, WI 54456 | 04/27/2010 | 7:33AM |
| 0600003 | Recall Southworth | N9695 State Road 80, Necedah, WI 54646 | 05/20/2010 | 12:13PM |
| 0600004 | Jim Holperin Recall Committee | PO Box 961, Eagle River, WI 54521 | 02/23/2011 | 2:01PM |
| 0600005 | Taxpayers to Recall Robert Wirch | P.O. Box 26, Silver Lake, WI 53170 | 02/24/2011 | 10:48AM |
| 0600006 | Recall Dave Hansen | 935 Elmore St., Green Bay, WI 54303 | 02/27/2011 | 2:08PM |
| 0600007 | Committee to Recall Mark Miller | 639 Eaglewatch Drive, DeForest, WI 53532 | 02/28/2011 | 8:16AM |
| 0600009 | Committee to Recall Darling | PO Box 1748, Madison, WI 53701-1748 | 03/03/2011 | 3:12PM |
| 0600010 | Committee to Recall Olsen | PO Box 1748, Madison, WI 53701-1748 | 03/03/2011 | 3:23PM |
| 0600011 | Committee to Recall Cowles | PO Box 1748, Madison, WI 53701-1748 | 03/03/2011 | 3:33PM |
| 0600012 | Committee to Recall Hopper | PO Box 1748, Madison, WI 53701-1748 | 03/03/2011 | 3:40PM |
| 0600013 | Committee to Recall Grothman | PO Box 1748, Madison, WI 53701-1748 | 03/03/2011 | 3:43PM |
| 0600014 | Committee to Recall Lazich | PO Box 1748, Madison, WI 53701-1748 | 03/03/2011 | 3:47PM |
| 0600015 | Committee to Recall Harsdorf | PO Box 1748, Madison, WI 53701-1748 | 03/03/2011 | 3:51PM |
| 0600016 | Committee to Recall Kapanke | PO Box 1748, Madison, WI 53701-1748 | 03/03/2011 | 3:56PM |
| 0600017 | Committee to Recall Dave Hansen | 1593 Reostone Trail, Green Bay, WI 54313 | 03/16/2011 | 2:11PM |
| 0600021 | Committee to Recall Wanggaard | PO Box 2569, Madison, WI 53701 | 11/15/2011 | 12:04AM |
| 0600022 | Committee to Recall Walker | PO Box 2569, Madison, WI 53701 | 11/15/2011 | 12:12AM |
| 0600020 | Recall Senator Pam Galloway | 119 Sunrise Dr, Wausau, WI 54401 | 11/15/2011 | 12:19AM |
| 0600023 | Committee to Recall Kleefisch | PO Box 2569, Madison, WI 53701 | 11/15/2011 | 12:22AM |
| 0600019 | Committee to Recall Moulton | PO Box 2569, Madison, WI 53701 | 11/15/2011 | 12:26AM |
| 0600024 | Committee to Recall Scott Fitzgerald | 326 Garfield St., Fort Atkinson, WI 53538 | 11/15/2011 | 10:27AM |
| 0600025 | Wisconsin Common Sense Citizens for Accountability and Recall aka Recall Walker PAC | 1718 Wind Dale Drive, Racine, WI 53402 | 11/21/2011 | 8:27AM |

EXHIBIT F

State of Wisconsin \ Government Accountability Board

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



JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 12, 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: Senator Scott Fitzgerald (Senate District 13)

I. Introduction:

This Memorandum summarizes Board staff's review of the recall petition submitted against Senator Scott Fitzgerald and any challenges, rebuttal, or replies filed by the petitioner and the officeholder.

The staff's analysis and recommendations regarding the legal arguments presented by Senator Fitzgerald's challenges and the petitioner's rebuttals, as described in the Evaluation of Challenges Memorandum, are incorporated into the calculations and conclusions outlined below and on the spreadsheet attached as Exhibit A-Fitzgerald. To exercise their right for a recall election against Senator Fitzgerald, qualified electors of the 13th Senate District were required to submit at least 16,742 valid signatures. Following analysis of the 20,735 total signatures submitted by the petitioners, Board staff recommends striking 867 for reasons cited on the attached Exhibit A- Fitzgerald. Although each signature was personally reviewed at least twice, staff did not separately assess the remaining 1,586 signatures individually challenged by Senator Fitzgerald. Staff determined that this level of analysis was unwarranted given that, should Senator Fitzgerald prevail on all those remaining challenges, the petition would still contain 18,282 valid signatures; exceeding the sufficiency requirement by 1,540 signatures.

Based upon its review of the Fitzgerald recall petition and the challenge documents, Board staff recommends that the Board recognize at least 18,282 signatures as valid and certify that the petition is sufficient to order a recall election.

Summary of Challenge Documents:

A. Senator Fitzgerald's Written Challenge

Senator Fitzgerald's Written Challenge, with accompanying affidavits of Daniel Romportl and a spreadsheet identifying specific signature lines, presents the following challenges:

1. At least 877 individual signatures to the recall petition were affixed prior to the Recall Petition's completion of registration and therefore these signatures fall outside of the circulation period and pursuant to Wis. Stats. §9.10(2)(e)2., these signatures may not be counted.
2. At least 84 individuals do not reside at the respective addresses given on the Recall Petition based on United States Postal Service conclusions that mail is undeliverable or that the addresses are non-existent.
3. At least 227 signatories to the Recall Petition did not date their signatures, signed outside the circulation period, or signed subsequent to the respective circulator's certification. Wis. Stats. §9.10(2)(e)1-3.
4. The residency of at least 569 (11 P.O. Boxes, 33 missing municipalities, 52 indeterminate addresses, and 473 missing apartment numbers) signatories to the Recall Petition cannot be determined by the address given. Wis. Stats. §9.10(2)(e)4.
5. At least 5,944 signatories to the Recall Petition reside outside the new "Act 43" 13th Senate District. Wis. Stats. §9.10(2)(e)5.
6. At least 777 signatories to the Recall Petition reside outside the "former" 13th Senate District. Wis. Stats. §9.10(2)(e)5.
7. At least 5 signatories to the Recall Petition are not qualified electors, as their names appear on the ineligible voter list provided by the G.A.B. Wis. Stats. §9.10(2)(e)8.
8. At least 205 signatories signed the recall petition more than once. Wis. Stats. §9.10(2)(i).
9. At least 1,739 signatures appear on pages that were not properly certified by the circulator. Wis. Stats. §§ 8.40(2) and 9.10(2)(em).
10. At least 24 signatories to the Recall Petition failed to sign the petition.
11. At least 188 signatures to the Recall Petition appear to be in the same handwriting. Wis. Stats. §9.10(2)(e)1., (e)4. and (j).
12. At least 45 signatures (including one "fictitious name") to the Recall Petition are invalid because of miscellaneous insufficiencies.

B. Memorandum In Support of Challenge to Individual Signatures and Joint Reply

In Section III and IV of the Memorandum in Support of Senator Scott Fitzgerald's Written Challenge to the Recall Petition, Senator Fitzgerald argues that the recall petitions fall well below the mandatory 25% threshold required to establish sufficiency and trigger a recall election. Senator Fitzgerald argues that this is so, due to the substantial number of signatures collected from electors that reside outside of the new "Act 43" legislative districts and to the substantial number of signatures collected prior to proper registration of the Recall Petition. In section V of the Memorandum, Senator Fitzgerald also argues that numerous signatures fail to meet the technical standards required by Wis. Stats. §9.10(2) in order to be deemed valid.

The Joint Reply filed on behalf of Senator Fitzgerald focused on the issues of the appropriate legislative districts to conduct recall elections, allegations that signatures were obtained prior to registration of the recall committee, and concerns regarding potential falsification of signatures, issues which are addressed more completely in separate Board materials.

C. Recall Committees' Rebuttal to Senator Fitzgerald's Written Challenge

In the Recall Committees' Brief in Opposition to Written Challenges, the Recall Committees' contend that once the "meritless" "Act 43 districts" and "circulation period" arguments are dispensed with, the overwhelming number of signatures collected render the remaining challenges moot as they are too few to be capable of halting a recall election. However, in Section IV of the Recall Committees' Rebuttal, the Petitioners assert that the majority of the remaining challenges are factually inaccurate, unsupported by evidence and/or lack any basis in law. Although the Rebuttal supplies no correcting affidavits responding specifically to Senator Fitzgerald's written challenge, the Recall Committee did supply correcting affidavits along with the petitions prior to the written challenge.

II. Evaluation of Challenges and Staff Recommendations:

A total of 16,742 valid recall petition signatures are required for a certification of sufficiency to recall Senator Fitzgerald. Following staff's first and second review of the recall petition, a total of 20,129 valid signatures were verified, but subsequent to duplicate review, that total was adjusted downwards to 19,868 verified signatures. Staff reviewed the categories of challenges filed by Senator Fitzgerald and the number of challenges in each category after deducting the signatures already struck by staff. Using the attached Exhibit A-Fitzgerald, staff determined whether it was necessary to review the remaining individual challenges to reach a conclusion as to whether the petition was sufficient. The staff's calculations regarding the categories of challenges submitted by Senator Fitzgerald is set out below and in the attached Exhibit A-Fitzgerald, and they incorporate the conclusions and recommendations in the accompanying Evaluation of Challenges Memorandum.

A. Premature Circulation of Petitions Challenges:

Senator Fitzgerald challenges 877 signatures dated November 15, 2012, alleging that the signatures were executed prior to the petitioner registering with the Government Accountability

Board and should therefore be struck pursuant to Wis. Stat. § 9.10(2)(e)2. During the first and second reviews, staff struck 20 signatures as being dated outside the registration period, but did not strike any signatures due to being dated on November 15, 2012. Staff also struck 23 signatures challenged in this category for reasons other than being executed on those dates.

This challenge category is addressed in the accompanying Evaluation of Challenges Memorandum, in which staff recommends denying all such challenges due to insufficient proof that any particular signature was executed prior to the recall committee's registration being executed. Staff recommends that the remaining 854 challenged signatures in this category, as listed in the "After GAB Struck" column on the attached Exhibit A-Fitzgerald, be excluded from the calculation of the possible "Remaining Challenges.

Recommendation – Deny 854 challenges and no change to total verified signatures.

B. Postcard Mailing Challenges:

According to the "Affidavit of Daniel Romportl In Support of Senator Fitzgerald's Written Challenge," to "ensure the integrity of the recall process" Scott Fitzgerald for Senate authorized a mailing of postcards to 5,000 signature names selected from the Fitzgerald Recall Petition at random. See *Romportl Affidavit* at ¶5. This effort resulted in 84 postcards being returned as undeliverable. *Id.*

Any information that appears on a petition is entitled to a presumption of validity. Wis. Adm. Code §§ 2.05(4) and 2.09(1). Senator Fitzgerald's challenge asserts that these 84 individuals did not add their signatures to the Recall Petition. Senator Fitzgerald bears the burden of proof on this challenge and that burden is clear and convincing evidence of an insufficiency. Wis. Stats. §§ 9.10(2)(g), See also Wis. Adm. Code GAB §§ 2.07(3)(a) and (4) and 2.11(1). The Administrative Code requires the Board to review any evidence that the parties may offer, including "affidavit[s] or other supporting evidence demonstrating a failure to comply with statutory or legal requirements." See Wis. Adm. Code §§ 2.07(4) and 2.11(1); see also, Wis. Stats. §9.10(2)(h) and §§ 2.07(2)(a) and 2.11(1), Wis. Adm. Code.

Senator Fitzgerald submitted no affidavits from individuals who claimed that their names were fraudulently added to the recall petitions. These challenges arose out of mailings distributed by Senator Fitzgerald, but G.A.B. staff was not given any information with which to verify these challenges apart from their designation in the challenge category on Senator's Fitzgerald's Exhibit C. In addition, names and addresses on many of the postcards were not consistent with the spelling of the individual's name or address on the recall petition. In the absence of any supporting evidence, the challenge does not rebut the administrative presumption of validity, thereby shifting the burden of proof to the Petitioner. Without a single affidavit to support Senator Fitzgerald's challenge, staff cannot recommend striking any signatures based upon the results of Senator Fitzgerald's postings via the U.S. Mail.

However, subsequent to staff's initial review, one of these 84 challenge signatures was struck for reasons other than the United States Postal Service issue identified by Senator Fitzgerald. Accordingly, 83 of the remaining challenges were incorporated into the "After GAB Struck" column of the attached Exhibit A - Fitzgerald. But those challenges are designated as "Not Included" because staff recommends that all such challenges be denied for failure to demonstrate

by clear and convincing evidence a failure to comply with statutory or other legal requirements. The challenges in this category, therefore, are not included in the total of possible “Remaining Challenges.”

Recommendation – Exclude 83 signatures from the total verified signatures and classify as “Remaining Challenges.”

C. Circulation Date Challenges:

The Challenger asserts that 227 signatories to the Recall Petition did not date their signatures, signed outside the circulation period, or signed subsequent to the respective circulator’s certification.

Following staff’s first and second review of petitions, staff recommends that the Board strike 74 signatures for failure to date signatures, for signing outside the circulation period, and for signing subsequent to circulator’s certification.

Additionally, staff recommends that 120 of the 227 challenged signatures that were not struck during staff’s initial review, be incorporated into the “After GAB Struck” column of the attached Exhibit A-Fitzgerald, and included in the possible “Remaining Challenges total.

Recommendation – Exclude 120 signatures from the total verified signatures and classify as “Remaining Challenges.”

D. Indeterminate Residency Challenges:

The Challenger asserts that 569 individual signatures to the Recall Petition failed to meet statutory requirements regarding a signer’s address.

Following staff’s first and second review of petitions, staff recommends that the Board strike 22 signatures for failure to meet statutory requirements regarding a signer’s address.

Additionally, staff recommends that 505 of the 569 challenged signatures that were not struck during staff’s initial review, be incorporated into the “After GAB Struck” column of the attached Exhibit A-Fitzgerald, and included in the possible “Remaining Challenges total.

Recommendation – Exclude 505 signatures from the total verified signatures and classify as “Remaining Challenges.”

E. Signatures from Persons Residing Outside the New 13th Senate District

Senator Fitzgerald challenges 5,944 signatures as being executed by individuals living outside the new 13th Senate District as created by 2011 Act 43. During the first and second reviews, staff did not strike any signatures due to individuals residing outside the new 13th Senate District. Staff did strike 158 of these challenged signatures for other reasons.

This challenge category is addressed in the accompanying Evaluation of Challenges Memorandum, in which staff recommends denying all such challenges due to the Board’s

determination that any recall elections conducted prior to November 6, 2012 must be conducted in the pre-Act 43 legislative districts. Even if the allegation was proven by clear and convincing evidence, this category of challenges does not constitute a failure to comply with statutory or other legal requirements. Staff recommends that the remaining 5,786 challenged signatures in this category, indicated in the “After GAB Struck” column on the attached Exhibit A -Fitzgerald, be denied as a challenge and excluded from the calculation of the possible “Remaining Challenges.”

Senator Fitzgerald also challenges the entire recall petition based upon an argument that the recall petitioner, Lori Compas, does not reside in the new 13th Senate District. According to the committee registration statement Ms. Compas filed with the Board, she resides at 326 Garfield Street, Fort Atkinson, Wisconsin 53538-1409. Attached as Exhibit B is a copy of a printout from the Legislature’s website indicating the legislative district for Ms. Compas’ address, based on the pre-Act 43 districts as well as the new districts. The printout indicates that she resides in the 13th Senate District prior to the enactment of 2011 Act 43. She is a qualified elector of the district in which the recall election must be held according to the effective dates of Act 43. Staff recommends denial of this challenge because it does not establish a violation of statutory or other law.

Recommendation – Deny 5,786 challenges and no change to total verified signatures. Also, deny the challenge to the petitioner’s

F. Signatures from Persons Outside the Former 13th Senate District Challenges:

The Challenger asserts that 777 signatures belong to persons residing outside the 13th Senate District.

Following staff’s first and second review of petitions, staff recommends that the Board strike 412 signatures as belonging to persons who live outside the 13th Senate District.

Additionally, staff recommends that 318 of the 589 challenged signatures that were not struck during staff’s initial review, be incorporated into the “After GAB Struck” column of the attached Exhibit A-Fitzgerald and included in the possible “Remaining Challenges” total.

Recommendation – Exclude 318 signatures from the total verified signatures and classify as “Remaining Challenges.”

G. Unqualified Electors Challenges:

The Challenger asserts that 5 individual signatures belong to unqualified electors because their names appear on the Ineligible Voter List provided by the G.A.B.

During the first and second reviews, staff does not examine elector qualification and eligibility of persons having signed the recall petition; however, since during the course of that review staff did not recommend striking any of these signatures for reasons other than belonging to unqualified electors staff now recommends incorporating these 5 signatures into the “After GAB Struck” column of the attached Exhibit A-Fitzgerald and included in the possible “Remaining Challenges” total.

Recommendation – Exclude 5 signatures from the total verified signatures and classify as “Remaining Challenges.”

H. Duplicate Challenges:

The Challenger asserts that at least 510 signatures belong to persons who had already signed the Recall Petition.

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 a duplicate analysis took place which resulted in 261 additional signatures being struck. Of the 510 instances alleged by the Challenger (205 x 2 = 510), 272 signatures remained after staff’s two staged process and were incorporated into the “After GAB Struck” column of the attached Exhibit A-Fitzgerald included in the possible “Remaining Challenges” total.

Recommendation –Exclude 272 signatures from the total verified signatures and classify as “Remaining Challenges.”

I. Improper Certification Challenges:

The Challenger asserts 1,739 individual signatures appear on pages not properly certified by the circulator.

1. 1,280 of these challenges are “possible” circulator edits subsequent to certification. Following staff’s first and second review of petitions, 140 of these 1,280 challenged signatures were struck for reasons other than circulator edits. The remaining 1,440 challenges attributed to “possible” circulator edits were incorporated into the “After GAB Struck” column of the attached Exhibit A – Fitzgerald; **however**, these challenges are designated as “Not Included” because staff recommends that all such challenges be denied for failure to demonstrate by clear and convincing evidence a failure to comply with statutory or other legal requirements. The challenges in this category, therefore, are not included in the total of possible “Remaining Challenges.”
2. Challenger asserts that 599 individual signatures appear on pages otherwise improperly certified by the circulator.

Following staff’s first and second review of petitions, 99 signatures were struck for appearing on pages that were not properly validated by the circulator.

Additionally, staff recommends that 359 of the 559 challenged signatures that were not struck during staff’s initial review, be incorporated into the “After GAB Struck” column of the attached Exhibit A -Fitzgerald and included in the possible “Remaining Challenges” total.

Recommendation – Deny 1,440 challenges with no change to total verified signatures. Exclude 359 signatures from the total verified signatures and classify as “Remaining Challenges.”

J. Failure to Sign Challenges:

The Challenger asserts that 24 individuals failed to sign the Recall Petition.

Following staff's first and second review of petitions, 1 signature was struck for failure to sign.

Staff recommends that the 14 of the 24 challenged signatures that were not struck during staff's initial review, be incorporated into the "After GAB Struck" column of the attached Exhibit A-Fitzgerald and included in the possible "Remaining Challenges" total.

Recommendation – Exclude 14 signatures from the total verified signatures and classify as "Remaining Challenges."

K. Fraud/Fakes/Forgeries and Miscellaneous Challenges:

The Challenger asserts 232 individual signatures are either in the same handwriting (188) or constitute instances of fraud (45) for miscellaneous deficiencies.

Following staff's first and second review of petitions, 0 signatures were struck for similar handwriting or miscellaneous instances of fraud; additionally, during the course of that review staff did recommend striking 13 of the challenged signatures for reasons other than similar handwriting or miscellaneous instances of fraud.

This challenge category is addressed in the accompanying Evaluation of Challenges Memorandum, in which staff recommends denying all such challenges due to insufficient proof that any particular signature was fraudulently executed in similar handwriting. Staff recommends that the remaining 183 challenged "handwriting" signatures in this category, as listed in the "After GAB Struck" column on the attached Exhibit A-Fitzgerald, be excluded from the calculation of the possible "Remaining Challenges" total. Staff also recommends that the 33 remaining miscellaneous challenges be incorporated into the "After GAB Struck" column of the attached Exhibit A-Fitzgerald and included in the possible "Remaining Challenges" total.

Recommendation – Deny 183 challenges with no change to total verified signatures and exclude 33 signatures from the total verified signatures and classify as "Remaining Challenges."

III. Determination Regarding Sufficiency of Recall Petition:

Based upon the above findings, Board staff recommends that the Board strike 261 signatures as duplicate names and an additional 606 signatures from the recall petition filed against Senator Fitzgerald as invalid for the reasons listed on Exhibit A -Fitzgerald. Staff also recommends, that the Board accept the recommendations of staff regarding resolution of the categories of challenges filed by Senator Fitzgerald, including denying the challenges designated as "Not Included" on the attached Exhibit A -Fitzgerald, and terminating any further analysis of the challenges of individual signatures. Staff recommends that, for purposes of determining sufficiency of the recall petition, the Board directs that the 1,586 "Remaining Challenges" will

be deducted from the total of 19,868 verified signatures, and that the Board certify sufficiency of the recall petition with at least 18,282 valid signatures.

Recommended Motion:

The Board accepts staff's recommendation as outlined above, to deny certain challenges filed by Senator Fitzgerald for the reasons stated in the accompanying Evaluation of Challenges memorandum: to strike 261 signatures as duplicate names; to strike an additional 606 invalid signatures; and, to deduct 1,586 "Remaining Challenges" signatures from the staff-determined total of verified signatures. The Board verifies that at least 18,282 valid signatures are contained in the recall petition offered for filing against Senator Fitzgerald. The Board further directs staff to file the recall petition and attach a certificate of sufficiency on a date to be determined by the Board in accordance with any court order governing this matter.

| Senate District 13 - Sen. Scott Fitzgerald | | Valid Signatures | GAB Stricken | Duplicate Stricken | Needed | Diff |
|---|-----|------------------|--|--------------------|--------|--------------------|
| Summary | | 18,282 | 606 | 261 | 1,586 | 16,742 |
| Stricken | | Total | | | Total | After GAB Struck |
| Body - Address Blank | 5 | | Challenge Details | | 52 | 36 |
| Body - Address Illegible | 2 | | Address - missing, incomplete, or illegible | | 11 | 4 |
| Body - Address Incomplete | 13 | | Address - PO Box | | 3 | 1 |
| Body - Address Outside District | 412 | | Circulator - dated outside circulation period | | 131 | 126 |
| Body - Date Blank | 11 | | Circulator - missing apartment number | | 8 | 5 |
| Body - Date Incomplete | 13 | | Circulator Date - Miscellaneous | | 59 | 16 |
| Body - Dated After Circulator's Certification | 30 | | Circulator Date - Missing or Partially Missing | | 1,280 | 1,140 Not Included |
| Body - Dated Outside Registration | 20 | | Circulator edits possibly after certification | | 237 | 205 |
| Body - No Signature | 1 | | Circulator Municipality of Residence - Missing | | 21 | 7 |
| Body - P.O. Box only | 2 | | Circulator Signature - Missing | | 109 | 41 |
| Footer - Circulator Address Missing | 23 | | Date - Missing or Partially Missing | | 54 | 46 |
| Footer - Circulator Date Incomplete | 11 | | Date - Outside circulation period (11/15/11 - 1/14/12) | | 64 | 33 |
| Footer - Circulator Date Outside Registration | 52 | | Date - Signed after circulator | | 877 | 854 Not Included |
| Footer - Circulator Name Missing | 10 | | Dated outside circulation period - 11-15-11 | | 510 | 272 |
| Footer - Signature Missing | 3 | | Duplicate | | 1 | 1 |
| | 608 | | Fictitious name | | 5 | 5 |
| | | | GAB Ineligible to vote list | | 44 | 32 |
| | | | Miscellaneous | | 473 | 444 |
| | | | Missing apartment number | | 33 | 21 |
| | | | Municipality - Missing or Partially Missing | | 5,944 | 5,786 Not Included |
| | | | Not a resident of Senate District 13 - New Maps | | 777 | 318 |
| | | | Not a resident of Senate District 13 - Old Maps | | 24 | 14 |
| | | | Signature missing | | 188 | 183 Not Included |
| | | | Similar or identical handwriting | | 84 | 83 |
| | | | USPS - address issue | | 10,989 | |

EXHIBIT
A - FITZGERALD
140



Wisconsin State Legislature

The Wisconsin Government Accountability Board has indicated that the legislative districts established in 2002 remain in effect for election purposes and that the legislative districts established in 2011 Wisconsin Act 43 are also in effect for purposes of providing services to constituents.

The Joint Committee on Legislative Organization has adopted a policy authorizing the provision of constituent services to individuals residing in either set of legislative districts.

Each of the legislators listed below is authorized to provide constituent services for the address provided.

Results based on the district boundaries as defined by Federal District Court, May 22, 2002.

| | |
|--|--|
| State Senate | State Assembly |
|  |  |
| Senate District 13 Senator Scott Fitzgerald (608) 266-5660 Email Senator Scott Fitzgerald | Assembly District 37 Representative Andy Jorgensen (608) 266-3790 Email Representative Andy Jorgensen |

Results based on district boundaries as defined by 2011 Wisconsin Act 43.

| | |
|--|--|
| State Senate | State Assembly |
|  |  |
| Senate District 11 Senator Neal Kedzie (608) 266-2635 Email Senator Neal Kedzie | Assembly District 33 Representative Chris Kapenga (608) 266-3007 Email Representative Chris Kapenga |

Please include your mailing address in your email to your legislator.

EXHIBIT B

United States Congress

House of Representatives

Contact your US House Representative

Senate

Herb Kohl
and
Ron Johnson

About these results

This district determination is based on the most recent geographic data available for **326 Garfield St, Fort Atkinson, WI 53538-1409**

This address was matched to a Street Address, the center of which is located in the above legislative districts.

These results are intended to be used as a tool for contacting your State Senator or Representative. Please contact your local municipal clerk for the most up to date and accurate voting district information or look up your voter information through the Government Accountability Board

State of Wisconsin \ Government Accountability Board

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



JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 12, 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: Senator Van Wanggaard (Senate District 21)

I. Introduction:

This Memorandum summarizes Board staff's review of the recall petition submitted against Senator Van Wanggaard and any challenges, rebuttal, or replies filed by the petitioner and the officeholder.

The staff's analysis and recommendations regarding the legal arguments presented by Senator Wanggaard's challenges and the petitioner's rebuttals, as described in the Evaluation of Challenges Memorandum, are incorporated into the calculations and conclusions outlined below and on the spreadsheet attached as Exhibit A-Wanggaard. To exercise their right for a recall election against Senator Wanggaard, qualified electors of the 21st Senate District were required to submit at least 15,353 valid signatures. Following analysis of the 23,712 total signatures submitted by the petitioners, Board staff recommends striking 643 for reasons cited on the attached Exhibit A- Wanggaard. Although each signature was personally reviewed at least twice, staff did not separately assess the remaining 3,827 signatures individually challenged by Senator Wanggaard. Staff determined that this level of analysis was unwarranted given that, should Senator Wanggaard prevail on all those remaining challenges, the petition would still contain 19,142 valid signatures; exceeding the sufficiency requirement by 3,789.

Based upon its review of the Wanggaard recall petition and the challenge documents, Board staff recommends that the Board recognize at least 19,142 signatures as valid and certify that the petition is sufficient to order a recall election.

II. Summary of Challenge Documents:

A. Senator Wanggaard's Written Challenge

Senator Wanggaard's Written Challenge, with accompanying affidavits of Daniel Romportl and a spreadsheet identifying specific signature lines, presents the following challenges:

1. At least 2,404 individual signatures to the recall petition were affixed prior to the Recall Petition's completion of registration and therefore these signatures fall outside of the circulation period and pursuant to Wis. Stats. §9.10(2)(e)2., these signatures may not be counted.
2. At least 27 individuals do not reside at the respective addresses given on the Recall Petition based on United States Postal Service conclusions that mail is undeliverable or that the addresses are non-existent.
3. At least 913 signatories to the Recall Petition did not date their signatures, signed outside the circulation period, or signed subsequent to the respective circulator's certification. Wis. Stats. §9.10(2)(e)1-3.
4. The residency of at least 1,217 (1,158 indeterminate address, 59 missing municipality) signatories to the Recall Petition cannot be determined by the address given. Wis. Stats. §9.10(2)(e)4.
5. At least 12,935 signatories to the Recall Petition reside outside the new "Act 43" 21st Senate District. Wis. Stats. §9.10(2)(e)5.
6. At least 134 signatories to the Recall Petition reside outside the "former" 21st Senate District. Wis. Stats. §9.10(2)(e)5.
7. At least 13 signatories to the Recall Petition are not qualified electors, as their names appear on the ineligible voter list provided by the G.A.B. Wis. Stats. §9.10(2)(e)8.
8. At least 137 signatories signed the recall petition more than once. Wis. Stats. §9.10(2)(i).
9. At least 1,733 signatures appear on pages that were not properly certified by the circulator. Wis. Stats. §§ 8.40(2) and 9.10(2)(em).
10. At least 24 signatories to the Recall Petition failed to sign the petition.
11. At least 632 signatures to the Recall Petition appear to be in the same handwriting. Wis. Stats. §9.10(2)(e)1., (e)4. and (j).
12. At least 119 signatures to the Recall Petition are invalid because of miscellaneous insufficiencies.

B. Memorandum In Support of Challenge to Individual Signatures and Joint Reply

In Section III and IV of the Memorandum in Support of Senator Van Wanggaard's Written Challenge to the Recall Petition, Senator Wanggaard argues that the recall petitions fall well

below the mandatory 25% threshold required to establish sufficiency and trigger a recall election. Senator Wanggaard argues that this is so, due to the substantial number of signatures collected from electors that reside outside of the new “Act 43” legislative districts and to the substantial number of signatures collected prior to proper registration of the Recall Petition. In section V of the Memorandum, Senator Wanggaard also argues that numerous signatures fail to meet the technical standards required by Wis. Stats. §9.10(2) in order to be deemed valid.

The Joint Reply filed on behalf of Senator Wanggaard focused on the issues of the appropriate legislative districts to conduct recall elections, allegations that signatures were obtained prior to registration of the recall committee, and concerns regarding potential falsification of signatures, issues which are addressed more completely in separate Board materials.

C. Recall Committees’ Rebuttal to Senator Wanggaard’s Written Challenge

In the Recall Committees’ Brief in Opposition to Written Challenges, the Recall Committees’ contend that once the “meritless” “Act 43 districts” and “circulation period” arguments are dispensed with, the overwhelming number of signatures collected render the remaining challenges moot as they are too few to be capable of halting a recall election. However, in Section IV of the Recall Committees’ Rebuttal, the Petitioners assert that the majority of the remaining challenges are factually inaccurate, unsupported by evidence and / or lack any basis in law. Although the Rebuttal supplies no correcting affidavits responding specifically to Senator Wanggaard’s written challenge, the Recall Committee did supply correcting affidavits along with the petitions prior to the written challenge.

III. Evaluation of Challenges and Staff Recommendations:

A total of 15,353 valid recall petition signatures are required for a certification of sufficiency to recall Senator Wanggaard. Following staff’s first and second review of the recall petition, a total of 23,109 valid signatures were verified, but subsequent to duplicate review, that total was adjusted downwards to 22,969 verified signatures. Staff reviewed the categories of challenges filed by Senator Wanggaard and the number of challenges in each category after deducting the signatures already struck by staff. Using the attached Exhibit A-Wanggaard, staff determined whether it was necessary to review the remaining individual challenges to reach a conclusion as to whether the petition was sufficient. The staff’s calculations regarding the categories of challenges submitted by Senator Wanggaard is set out below and in the attached Exhibit A-Wanggaard, and they incorporate the conclusions and recommendations in the accompanying Evaluation of Challenges Memorandum.

A. Premature Circulation of Petitions Challenges:

Senator Wanggaard challenges 2,404 signatures which are dated November 15, 2012 and November 16, 2012, alleging that the signatures were executed prior to the petitioner registering with the Government Accountability Board and should therefore be struck pursuant to Wis. Stat. § 9.10(2)(e)2. During the first and second reviews, staff struck 16 signatures as being dated outside the registration period, but did not strike any signatures due to being dated on November 15 or 16, 2012. Staff also struck 101 signatures challenged in this category for reasons other than being executed on those dates.

This challenge category is addressed in the accompanying Evaluation of Challenges Memorandum, in which staff recommends denying all such challenges due to insufficient proof that any particular signature was executed prior to the recall committee's registration being executed. Staff recommends that the remaining 2,303 challenged signatures in this category, as listed in the "After GAB Struck" column on the attached Exhibit A-Wanggaard, be excluded from the calculation of the possible "Remaining Challenges."

Recommendation – Deny 2,303 challenges and no change to total verified signatures.

B. Postcard Mailing Challenges:

According to the "Affidavit of Daniel Romportl In Support of Senator Wanggaard's Written Challenge," to "ensure the integrity of the recall process" Friends of Van Wanggaard and the Committee to Elect a Republican Senate authorized a mailing of postcards to 5,000 signature names selected from the Wanggaard Recall Petition at random. See *Romportl Affidavit* at ¶5. This effort resulted in 27 postcards being returned as undeliverable. *Id.*

Any information that appears on a petition is entitled to a presumption of validity. Wis. Adm. Code §§ 2.05(4) and 2.09(1). Senator Wanggaard's challenge asserts that these 27 individuals did not add their signatures to the Recall Petition. Senator Wanggaard bears the burden of proof on this challenge and that burden is clear and convincing evidence of an insufficiency. Wis. Stats. §§ 9.10(2)(g), See also Wis. Adm. Code GAB §§ 2.07(3)(a) and (4) and 2.11(1). The Administrative Code requires the Board to review any evidence that the parties may offer, including "affidavit[s] or other supporting evidence demonstrating a failure to comply with statutory or legal requirements." See Wis. Adm. Code §§ 2.07(4) and 2.11(1); see also, Wis. Stats. §9.10(2)(h) and §§ 2.07(2)(a) and 2.11(1), Wis. Adm. Code.

Senator Wanggaard submitted no affidavits from individuals who claimed that their names were fraudulently added to the recall petitions. These challenges arose out of mailings distributed by Senator Wanggaard, but G.A.B. staff was not given any information with which to verify these challenges apart from their designation in the challenge category on Senator's Wanggaard's Exhibit C. In the absence of any supporting evidence, the challenge does not rebut the administrative presumption of validity, thereby shifting the burden of proof to the Petitioner. Without a single affidavit to support Senator Wanggaard's challenge, staff cannot recommend striking any signatures based upon the results of Senator Wanggaard's postings via the U.S. Mail. Accordingly, these 27 challenges were incorporated into the "After GAB Struck" column of the attached Exhibit A - Wanggaard. But those challenges are designated as "Not Included" because staff recommends that all such challenges be denied for failure to demonstrate by clear and convincing evidence a failure to comply with statutory or other legal requirements. The challenges in this category, therefore, are not included in the total of possible "Remaining Challenges."

Recommendation – Exclude 27 signatures from the total verified signatures and classify as "Remaining Challenges."

C. Circulation Date Challenges:

The Challenger asserts that 930 signatories to the Recall Petition did not date their signatures, signed outside the circulation period, or signed subsequent to the respective circulator's certification.

Following staff's first and second review of petitions, staff recommends that the Board strike 273 signatures for failure to date signatures, for signing outside the circulation period, and for signing subsequent to circulator's certification.

Additionally, staff recommends that 690 of the 913 challenged signatures that were not struck during staff's initial review, be incorporated into the "After GAB Struck" column of the attached Exhibit A-Wanggaard, and included in the possible "Remaining Challenges total.

Recommendation – Exclude 690 signatures from the total verified signatures and classify as "Remaining Challenges."

D. Indeterminate Residency Challenges:

The Challenger asserts that 1,217 individual signatures to the Recall Petition failed to meet statutory requirements regarding a signer's address.

Following staff's first and second review of petitions, staff recommends that the Board strike 79 signatures for failure to meet statutory requirements regarding a signer's address.

Additionally, staff recommends that 1,135 of the 1,217 challenged signatures that were not struck during staff's initial review, be incorporated into the "After GAB Struck" column of the attached Exhibit A-Wanggaard, and included in the possible "Remaining Challenges total.

Recommendation – Exclude 1,135 signatures from the total verified signatures and classify as "Remaining Challenges."

E. Signatures from Persons Residing Outside the New 21st Senate District

Senator Wanggaard challenges 12,935 signatures as being executed by individuals living outside the new 21st Senate District as created by 2011 Act 43. During the first and second reviews, staff did not strike any signatures due to individuals residing outside the new 21st Senate District. Staff did strike 410 of these challenged signatures for other reasons.

This challenge category is addressed in the accompanying Evaluation of Challenges Memorandum, in which staff recommends denying all such challenges due to the Board's determination that any recall elections conducted prior to November 6, 2012 must be conducted in the pre-Act 43 legislative districts. Even if the allegation was proven by clear and convincing evidence, this category of challenges does not constitute a failure to comply with statutory or other legal requirements. Staff recommends that the remaining 12,525 challenged signatures in this category, indicated in the "After GAB Struck" column on the attached Exhibit A - Wanggaard, be denied as a challenge and excluded from the calculation of the possible "Remaining Challenges."

Recommendation – Deny 12,525 challenges and no change to total verified signatures.

F. Signatures from Persons Outside the Former 21st Senate District Challenges:

The Challenger asserts that 134 signatures belong to persons residing outside the 21st Senate District.

Following staff's first and second review of petitions, staff recommends that the Board strike 116 signatures as belonging to persons who live outside the 21st Senate District.

Additionally, staff recommends that 24 of the 134 challenged signatures that were not struck during staff's initial review, be incorporated into the "After GAB Struck" column of the attached Exhibit A-Wanggaard and included in the possible "Remaining Challenges" total.

Recommendation – Exclude 24 signatures from the total verified signatures and classify as "Remaining Challenges."

G. Unqualified Electors Challenges:

The Challenger asserts that 13 individual signatures belong to unqualified electors because their names appear on the Ineligible Voter List provided by the G.A.B.

During the first and second reviews, staff does not examine elector qualification and eligibility of persons having signed the recall petition; however, since during the course of that review staff did not recommend striking any of these signatures for reasons other than belonging to unqualified electors staff now recommends incorporating these 13 signatures into the "After GAB Struck" column of the attached Exhibit A-Wanggaard and included in the possible "Remaining Challenges" total.

Recommendation – Exclude 13 signatures from the total verified signatures and classify as "Remaining Challenges."

H. Duplicate Challenges:

The Challenger asserts that at least 275 signatures belong to persons who had already signed the Recall Petition.

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 a duplicate analysis took place which resulted in 140 additional signatures being struck. Of the 275 instances alleged by the Challenger 156 signatures remained after staff's two-stage process and were incorporated into the "After GAB Struck" column of the attached Exhibit A-Wanggaard included in the possible "Remaining Challenges" total.

Recommendation –Exclude 156 signatures from the total verified signatures and classify as "Remaining Challenges."

I. Improper Certification Challenges:

The Challenger asserts 1,733 individual signatures appear on pages not properly certified by the circulator.

Following staff's first and second review of petitions, 139 signatures were struck for appearing on pages that were not properly validated by the circulator.

Additionally, staff recommends that 1,706 challenged signatures that were not struck during staff's initial review, be incorporated into the "After GAB Struck" column of the attached Exhibit A -Wanggaard and included in the possible "Remaining Challenges" total.

Recommendation --Exclude 1,706 signatures from the total verified signatures and classify as "Remaining Challenges."

J. Failure to Sign Challenges:

The Challenger asserts that 24 individuals failed to sign the Recall Petition.

Following staff's first and second review of petitions, 1 signature was struck for failure to sign.

Staff recommends that 24 of the 24 challenged signatures that were not struck during staff's initial review, be incorporated into the "After GAB Struck" column of the attached Exhibit A--Wanggaard and included in the possible "Remaining Challenges" total.

Recommendation – Exclude 24 signatures from the total verified signatures and classify as "Remaining Challenges."

K. Fraud/Fakes/Forgeries and Miscellaneous Challenges:

The Challenger asserts 751 individual signatures are either in the same handwriting (632), constitute instances of fraud (79), or fall under some other miscellaneous deficiency (40 challenged for underage).

Following staff's first and second review of petitions, 0 signatures were struck for similar handwriting, fraud, or some other miscellaneous deficiency; additionally, during the course of that review staff did recommend striking 10 of the challenged signatures for reasons other than similar handwriting, fraud, or some other miscellaneous deficiency.

Challenge related to similar handwriting are addressed in the accompanying Evaluation of Challenges Memorandum, in which staff recommends denying all such challenges due to insufficient proof that any particular signature was fraudulently executed in similar handwriting. Staff recommends the remaining 154 challenged signatures in these categories, as listed in the "After GAB Struck" column on the attached Exhibit A-Wanggaard, be incorporated in the calculation of the possible "Remaining Challenges" total.

In addition, based upon information provided by the Racine County Sheriff's Department regarding admissions of a circulator falsifying signatures, staff struck 11 signatures from petition pages the individual had circulated, and these have been added to the "G.A.B. Stricken" record.

Recommendation – Deny 626 challenges with no change to total verified signatures and exclude 154 signatures from the total verified signatures and classify as “Remaining Challenges.”

IV. Determination Regarding Sufficiency of Recall Petition:

Based upon the above findings, Board staff recommends that the Board strike 140 signatures as duplicate names and an additional 603 signatures from the recall petition filed against Senator Wanggaard as invalid for the reasons listed on Exhibit A -Wanggaard. Staff also recommends, that the Board accept the recommendations regarding resolution of the categories of challenges filed by Senator Wanggaard, including denying the challenges designated as “Not Included” on the attached Exhibit A -Wanggaard, and terminating any further analysis of the challenges of individual signatures. Staff recommends that, for purposes of determining sufficiency of the recall petition, the Board directs that the 3,827 “Remaining Challenges” will be deducted from the total of 22,969 verified signatures, and that the Board certify sufficiency of the recall petition with at least 19,142 valid signatures.

Recommended Motion:

The Board accepts staff’s recommendation as outlined above: to deny certain challenges filed by Senator Wanggaard for the reasons stated in the accompanying Evaluation of Challenges memorandum; to strike 140 signatures as duplicate names; to strike an additional 603 invalid signatures; and, to deduct 3,827 “Remaining Challenges” signatures from the staff-determined total of verified signatures. The Board verifies that at least 19,142 valid signatures are contained in the recall petition offered for filing against Senator Wanggaard. The Board further directs staff to file the recall petition and attach a certificate of sufficiency on a date to be determined by the Board in accordance with any court order governing this matter.

| Senate District 21 - Sen. Van Wanggaard | | | | | | | | | | | | | |
|---|-----|------------------|--|--|--|--------------------|--|----------------------|--|------------------|--|--------------|--|
| Summary | | Valid Signatures | | GAB Stricken | | Duplicate Stricken | | Remaining Challenges | | Total Signatures | | Diff | |
| | | 19,142 | | 603 | | 140 | | 3,827 | | 23,712 | | 15,353 | |
| | | 1 | | | | | | | | | | | |
| Stricken | | Total | | Challenge Details | | Total | | After GAB Struck | | | | | |
| Body - Address Blank | 1 | | | Address Issue | | 1,158 | | 1,076 | | | | | |
| Body - Address Incomplete | 74 | | | Age of Signatory in Question | | 79 | | 76 | | | | | |
| Body - Address Outside District | 116 | | | Circulator Edits | | 1,506 | | 1,488 | | | | | |
| Body - Date Blank | 17 | | | Circulator Issue | | 227 | | 218 | | | | | |
| Body - Date Cutoff by Petitioner | 34 | | | Date Issue | | 913 | | 690 | | | | | |
| Body - Date Incomplete | 136 | | | Duplicate | | 275 | | 156 | | | | | |
| Body - Dated After Circulator's Certification | 70 | | | GAB ineligible to vote list | | 13 | | 13 | | | | | |
| Body - Dated Outside Registration | 16 | | | Miscellaneous | | 40 | | 39 | | | | | |
| Body - No Signature | 1 | | | Municipality Issue | | 59 | | 59 | | | | | |
| Body - P.O. Box only | 4 | | | Out-of-district - new maps | | 12,935 | | 12,525 | | | | Not included | |
| Footer - Circulator Address Missing | 102 | | | Out-of-district - Old Maps | | 134 | | 24 | | | | | |
| Footer - Circulator Date Incomplete | 15 | | | Signature - Missing or Partially Missing | | 24 | | 24 | | | | | |
| Footer - Circulator Date Outside Registration | 9 | | | Signed Outside Circulation Period - 11-15-11 | | 1,256 | | 1,197 | | | | Not included | |
| Footer - Circulator Name Illegible | 7 | | | Signed Outside Circulation Period - 11-16-11 | | 1,148 | | 1,106 | | | | Not included | |
| Footer - Signature Missing | 6 | | | Similar handwriting | | 632 | | 626 | | | | Not included | |
| Header - Missing Words | 10 | | | USPS - Undeliverable | | 27 | | 27 | | | | Not included | |
| Other | 11 | | | | | 20,426 | | | | | | | |
| | 629 | | | | | | | | | | | | |

EXHIBIT A -
WANGGAARD
151

State of Wisconsin \ Government Accountability Board

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



JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 12, 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: Senator Terry Moulton (Senate District 23)

I. Introduction:

This Memorandum summarizes Board staff's review of the recall petition submitted against Senator Terry Moulton and any challenges, rebuttal, or replies filed by the petitioner and the officeholder.

The staff's analysis and recommendations regarding the legal arguments presented by Senator Moulton's challenges and the petitioner's rebuttals, as described in the Evaluation of Challenges Memorandum, are incorporated into the calculations and conclusions outlined below and on the spreadsheet attached as Exhibit A-Moulton. To exercise their right for a recall election against Senator Moulton, qualified electors of the 23rd Senate District were required to submit at least 14,958 valid signatures. Following analysis of the 20,907 total signatures submitted by the petitioners, Board staff recommends striking 1,212 for reasons cited on the attached Exhibit A-Moulton. Although each signature was personally reviewed at least twice, staff did not separately assess the remaining 1,038 signatures individually challenged by Senator Moulton. Staff determined that this level of analysis was unwarranted given that, should Senator Moulton prevail on all those remaining challenges, the petition would still contain 18,657 valid signatures; exceeding the sufficiency requirement by 3,699.

Based upon its review of the Moulton recall petition and the challenge documents, Board staff recommends that the Board recognize at least 18,657 signatures as valid and certify that the petition is sufficient to order a recall election.

II. Summary of Challenge Documents:

A. Senator Moulton's Written Challenge

Senator Moulton's Written Challenge, with accompanying affidavits of Daniel Romportl and a spreadsheet identifying specific signature lines, presents the following challenges:

1. At least 4,155 individual signatures to the recall petition were affixed prior to the Recall Petition's completion of registration and therefore these signatures fall outside of the circulation period and pursuant to Wis. Stats. §9.10(2)(e)2., these signatures may not be counted.
2. At least 234 signatories to the Recall Petition did not date their signatures, signed outside the circulation period, or signed subsequent to the respective circulator's certification. Wis. Stats. §9.10(2)(e)1-3.
3. The residency of at least 160 (98 street address missing, 62 municipality missing) signatories to the Recall Petition cannot be determined by the address given. Wis. Stats. §9.10(2)(e)4.
4. At least 6,261 signatories to the Recall Petition reside outside the new "Act 43" 23rd Senate District. Wis. Stats. §9.10(2)(e)5.
5. At least 589 signatories to the Recall Petition reside outside the "former" 23rd Senate District. Wis. Stats. §9.10(2)(e)5.
6. At least 6 signatories to the Recall Petition are not qualified electors, as their names appear on the ineligible voter list provided by the G.A.B. Wis. Stats. §9.10(2)(e)8.
7. At least 265 signatories signed the recall petition more than once. Wis. Stats. §9.10(2)(i).
8. At least 206 signatures appear on pages that were not properly certified by the circulator. Wis. Stats. §§ 8.40(2) and 9.10(2)(em).
9. At least 94 signatories to the Recall Petition failed to sign the petition.
10. At least 125 signatures to the Recall Petition appear to be in the same handwriting. Wis. Stats. §9.10(2)(e)1., (e)4. and (j).
11. At least 12 signatures to the Recall Petition are invalid because of miscellaneous insufficiencies.

B. Memorandum In Support of Challenge to Individual Signatures and Joint Reply

In Section III and IV of the Memorandum in Support of Senator Terry Moulton's Written Challenge to the Recall Petition, Senator Moulton argues that the recall petitions fall well below the mandatory 25% threshold required to establish sufficiency and trigger a recall election. Senator Moulton argues that this is so, due to the substantial number of signatures collected from electors that reside outside of the new "Act 43" legislative districts and to the substantial number of signatures collected prior to proper registration of the Recall Petition. In section V of the

Memorandum, Senator Moulton also argues that numerous signatures fail to meet the technical standards required by Wis. Stats. §9.10(2) in order to be deemed valid.

The Joint Reply filed on behalf of Senator Moulton focused on the issues of the appropriate legislative districts to conduct recall elections, allegations that signatures were obtained prior to registration of the recall committee, and concerns regarding potential falsification of signatures, issues which are addressed more completely in separate Board materials.

C. Recall Committees' Rebuttal to Senator Moulton's Written Challenge

In the Recall Committees' Brief in Opposition to Written Challenges, the Recall Committees' contend that once the "meritless" "Act 43 districts" and "circulation period" arguments are dispensed with, the overwhelming number of signatures collected render the remaining challenges moot as they are too few to be capable of halting a recall election. However, in Section IV of the Recall Committees' Rebuttal, the Petitioners assert that the majority of the remaining challenges are factually inaccurate, unsupported by evidence and/or lack any basis in law. Although the Rebuttal supplies no correcting affidavits responding specifically to Senator Moulton's written challenge, the Recall Committee did supply correcting affidavits along with the petitions prior to the written challenge.

III. Evaluation of Challenges and Staff Recommendations:

A total of 14,958 valid recall petition signatures are required for a certification of sufficiency to recall Senator Moulton. Following staff's first and second review of the recall petition, a total of 19,958 valid signatures were verified, but subsequent to duplicate review, that total was adjusted downwards to 19,695 verified signatures. Staff reviewed the categories of challenges filed by Senator Moulton and the number of challenges in each category after deducting the signatures already struck by staff. Using the attached Exhibit A-Moulton, staff determined whether it was necessary to review the remaining individual challenges to reach a conclusion as to whether the petition was sufficient. The staff's calculations regarding the categories of challenges submitted by Senator Moulton is set out below and in the attached Exhibit A-Moulton, and they incorporate the conclusions and recommendations in the accompanying Evaluation of Challenges Memorandum.

A. Premature Circulation of Petitions Challenges:

Senator Moulton challenges 4,155 signatures which are dated November 15, 2012, November 16, 2012, and November 17, 2012 alleging that the signatures were executed prior to the petitioner registering with the Government Accountability Board and should therefore be struck pursuant to Wis. Stat. § 9.10(2)(e)2. During the first and second reviews, staff struck 38 signatures as being dated outside the registration period, but did not strike any signatures due to being dated on November 15, 16, or 17, 2012. Staff also struck 135 signatures challenged in this category for reasons other than being executed on those dates.

This challenge category is addressed in the accompanying Evaluation of Challenges Memorandum, in which staff recommends denying all such challenges due to insufficient proof that any particular signature was executed prior to the recall committee's registration being executed. Staff recommends that the remaining 4,020 challenged signatures in this category, as

listed in the “After GAB Struck” column on the attached Exhibit A-Moulton, be excluded from the calculation of the possible “Remaining Challenges.

Recommendation – Deny 4,155 challenges and no change to total verified signatures.

B. Circulation Date Challenges:

The Challenger asserts that 234 signatories to the Recall Petition did not date their signatures, signed outside the circulation period, or signed subsequent to the respective circulator’s certification.

Following staff’s first and second review of petitions, staff recommends that the Board strike 368 signatures for failure to date signatures, for signing outside the circulation period, and for signing subsequent to circulator’s certification.

Additionally, staff recommends that 80 of the 234 challenged signatures that were not struck during staff’s initial review, be incorporated into the “After GAB Struck” column of the attached Exhibit A-Moulton, and included in the possible “Remaining Challenges total.

Recommendation – Exclude 80 signatures from the total verified signatures and classify as “Remaining Challenges.”

C. Indeterminate Residency Challenges:

The Challenger asserts that 160 individual signatures to the Recall Petition failed to meet statutory requirements regarding a signer’s address.

Following staff’s first and second review of petitions, staff recommends that the Board strike 81 signatures for failure to meet statutory requirements regarding a signer’s address.

Additionally, staff recommends that 107 of the 160 challenged signatures that were not struck during staff’s initial review, be incorporated into the “After GAB Struck” column of the attached Exhibit A-Moulton, and included in the possible “Remaining Challenges total.

Recommendation – Exclude 107 signatures from the total verified signatures and classify as “Remaining Challenges.”

D. Signatures from Persons Residing Outside the New 23rd Senate District

Senator Moulton challenges 6,261 signatures as being executed by individuals living outside the new 23rd Senate District as created by 2011 Act 43. During the first and second reviews, staff did not strike any signatures due to individuals residing outside the new 23rd Senate District. Staff did strike 258 of these challenged signatures for other reasons.

This challenge category is addressed in the accompanying Evaluation of Challenges Memorandum, in which staff recommends denying all such challenges due to the Board’s determination that any recall elections conducted prior to November 6, 2012 must be conducted in the pre-Act 43 legislative districts. Even if the allegation was proven by clear and convincing

evidence, this category of challenges does not constitute a failure to comply with statutory or other legal requirements. Staff recommends that the remaining 6,003 challenged signatures in this category, indicated in the “After GAB Struck” column on the attached Exhibit A -Moulton, be denied as a challenge and excluded from the calculation of the possible “Remaining Challenges.”

Recommendation – Deny 6,003 challenges and no change to total verified signatures.

E. Signatures from Persons Outside the Former 23rd Senate District Challenges:

The Challenger asserts that 589 signatures belong to persons residing outside the 23rd Senate District.

Following staff’s first and second review of petitions, staff recommends that the Board strike 296 signatures as belonging to persons who live outside the 23rd Senate District.

Additionally, staff recommends that 412 of the 589 challenged signatures that were not struck during staff’s initial review, be incorporated into the “After GAB Struck” column of the attached Exhibit A-Moulton and included in the possible “Remaining Challenges” total.

Recommendation – Exclude 412 signatures from the total verified signatures and classify as “Remaining Challenges.”

F. Unqualified Electors Challenges:

The Challenger asserts that 6 individual signatures belong to unqualified electors because their names appear on the Ineligible Voter List provided by the G.A.B.

During the first and second reviews, staff does not examine elector qualification and eligibility of persons having signed the recall petition; however, since during the course of that review staff did not recommend striking any of these signatures for reasons other than belonging to unqualified electors staff now recommends incorporating these 6 signatures into the “After GAB Struck” column of the attached Exhibit A-Moulton and included in the possible “Remaining Challenges” total.

Recommendation – Exclude 6 signatures from the total verified signatures and classify as “Remaining Challenges.”

G. Duplicate Challenges:

The Challenger asserts that at least 265 signatures belong to persons who had already signed the Recall Petition.

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 a duplicate analysis took place which resulted in 263 additional signatures being struck. Of the 531 instances alleged by the Challenger (265 x 2 = 531), 281 signatures remained after staff’s two staged process and

were incorporated into the “After GAB Struck” column of the attached Exhibit A-Moulton and included in the possible “Remaining Challenges” total.

Recommendation – Exclude 281 signatures from the total verified signatures and classify as “Remaining Challenges.”

H. Improper Certification Challenges:

The Challenger asserts 206 individual signatures appear on pages not properly certified by the circulator.

Following staff’s first and second review of petitions, 193 signatures were struck for appearing on pages that were not properly validated by the circulator.

Additionally, staff recommends that 108 of the 206 challenged signatures that were not struck during staff’s initial review, be incorporated into the “After GAB Struck” column of the attached Exhibit A-Moulton and included in the possible “Remaining Challenges” total.

Recommendation – Exclude 108 signatures from the total verified signatures and classify as “Remaining Challenges.”

I. Failure to Sign Challenges:

The Challenger asserts that 94 individuals failed to sign the Recall Petition.

Following staff’s first and second review of petitions, 2 signatures were struck for failure to sign.

Staff recommends that the 44 of the 94 challenged signatures that were not struck during staff’s initial review, be incorporated into the “After GAB Struck” column of the attached Exhibit A-Moulton and included in the possible “Remaining Challenges” total.

Recommendation – Exclude 44 signatures from the total verified signatures and classify as “Remaining Challenges.”

J. Fraud/Fakes/Forgeries and Miscellaneous Challenges:

The Challenger asserts 137 individual signatures are in the same handwriting (125) or constitute instances of fraud (12) for miscellaneous deficiencies.

Following staff’s first and second review of petitions, 0 signatures were struck for similar handwriting or miscellaneous instances of fraud; additionally, during the course of that review staff did recommend striking 16 of the challenged signatures for reasons other than similar handwriting or miscellaneous instances of fraud.

This challenge category is addressed in the accompanying Evaluation of Challenges Memorandum, in which staff recommends denying all such challenges due to insufficient proof that any particular signature was fraudulently executed in similar handwriting. Staff recommends that the remaining 110 challenged “handwriting” signatures in this category, as

listed in the “After GAB Struck” column on the attached Exhibit A-Moulton, be excluded from the calculation of the possible “Remaining Challenges” total. Staff also recommends that the 11 remaining miscellaneous challenges be incorporated into the “After GAB Struck” column of the attached Exhibit A–Moulton and included in the possible “Remaining Challenges” total.

Recommendation – Deny 110 challenges with no change to total verified signatures and exclude 11 signatures from the total verified signatures and classify as “Remaining Challenges.”

IV. Determination Regarding Sufficiency of Recall Petition:

Based upon the above findings, Board staff recommends that the Board strike 263 signatures as duplicate names and an additional 949 signatures from the recall petition filed against Senator Moulton as invalid for the reasons listed on Exhibit A -Moulton. Staff also recommends, that the Board accept the recommendations of staff regarding resolution of the categories of challenges filed by Senator Moulton, including denying the challenges designated as “Not Included” on the attached Exhibit A -Moulton, and terminating any further analysis of the challenges of individual signatures. Staff recommends that, for purposes of determining sufficiency of the recall petition, the Board directs that the 1,038 “Remaining Challenges” will be deducted from the total of 19,695 verified signatures, and that the Board certify sufficiency of the recall petition with at least 18,657 valid signatures.

Recommended Motion:

The Board accepts staff’s recommendation as outlined above, to deny certain challenges filed by Senator Moulton for the reasons stated in the accompanying Evaluation of Challenges memorandum; to strike 263 signatures as duplicate names; to strike an additional 949 signatures; and to deduct 1,038 “Remaining Challenges” signatures from the staff-determined total of verified signatures. The Board verifies that at least 18,657 valid signatures are contained in the recall petition offered for filing against Senator Moulton. The Board further directs staff to file the recall petition and attach a certificate of sufficiency on a date to be determined by the Board in accordance with any court order governing this matter.

| Senate District 23 - Sen. Terry Moulton | | | | | | | | | | | | | |
|---|-------|------------------|--|---|--------|--------------------|-------|-------------------------|--|------------------|--|-------|--------------|
| Summary | | Valid Signatures | | GAB Stricken | | Duplicate Stricken | | Remaining Challenges | | Total Signatures | | Diff | |
| | | 18,657 | | 949 | | 263 | | 1,038 | | 20,907 | | 3,699 | |
| | | 18,657 | | 949 | | 263 | | 1,038 | | 20,907 | | 3,699 | |
| Stricken | | Total | | Challenge Details | | Total | | After GAB Struck | | | | | |
| Body - Address Blank | 1 | | | Address - Missing or Partially Missing | 98 | | 63 | | | | | | |
| Body - Address Illegible | 10 | | | Circulator - Address Missing | 18 | | 11 | | | | | | |
| Body - Address Incomplete | 63 | | | Circulator - Signature Missing | 36 | | 18 | | | | | | |
| Body - Address Outside District | 296 | | | Circulator - Date Issue | 117 | | 66 | | | | | | |
| Body - Date Blank | 15 | | | Circulator - Municipality Issue | 35 | | 13 | | | | | | |
| Body - Date Cutoff by Petitioner | 7 | | | Date - Missing or Partially Missing | 95 | | 31 | | | | | | |
| Body - Date Incomplete | 177 | | | Date - Outside Circulation Period | 22 | | 12 | | | | | | |
| Body - Dated After Circulator's Certification | 131 | | | Date - Signed after circulator | 117 | | 37 | | | | | | |
| Body - Dated Outside Registration | 38 | | | Dated outside circulation period - 11-15-11 | 1,544 | | 1,499 | | | | | | Not Included |
| Body - P.O. Box only | 7 | | | Dated outside circulation period - 11-16-11 | 1,434 | | 1,381 | | | | | | Not Included |
| Footer - Circulator Address Missing | 2 | | | Dated outside circulation period - 11-17-11 | 1,177 | | 1,140 | | | | | | Not Included |
| Footer - Circulator Address Incomplete | 46 | | | Duplicate | 531 | | 281 | | | | | | |
| Footer - Circulator Date Incomplete | 73 | | | GAB Ineligible to vote list | 6 | | 6 | | | | | | |
| Footer - Circulator Date Outside Registration | 41 | | | Miscellaneous | 12 | | 11 | | | | | | |
| Footer - Circulator Name Missing | 29 | | | Municipality - Missing or Partially Missing | 62 | | 44 | | | | | | |
| Footer - Missing Words | 31 | | | Out of District - Old Maps | 589 | | 412 | | | | | | |
| Footer - Signature Missing | 2 | | | Out-of-district - New Maps | 6,261 | | 6,003 | | | | | | Not Included |
| Header - Does Not Identify Officeholder | 2 | | | Signature - missing | 94 | | 44 | | | | | | |
| Header - Missing Words | 31 | | | Similar Handwriting | 125 | | 110 | | | | | | Not Included |
| | 1,002 | | | | 12,373 | | | | | | | | |

EXHIBIT
A-MOULTON

State of Wisconsin \ Government Accountability Board

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



JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 12, 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: Senator Pam Galloway (Senate District 29)

I. Introduction:

This Memorandum summarizes Board staff's review of the recall petition submitted against Senator Pam Galloway and any challenges, rebuttal, or replies filed by the petitioner and the officeholder.

The staff's analysis and recommendations regarding the legal arguments presented by Senator Galloway's challenges and the petitioner's rebuttals, as described in the Evaluation of Challenges Memorandum, are incorporated into the calculations and conclusions outlined below and on the spreadsheet attached as Exhibit A - Galloway. To exercise their right for a recall election against Senator Galloway, qualified electors of the 29th Senate District were required to submit at least 15,647 valid signatures. Following analysis of the 21,022 total signatures submitted by the petitioners, Board staff recommends striking 1,658 for reasons cited on the attached Exhibit A - Galloway. Although each signature was personally reviewed at least twice, staff did not separately assess the remaining 853 signatures individually challenged by Senator Galloway which were not already struck by staff. Staff determined that this level of analysis was unwarranted given that, should Senator Galloway prevail on all those remaining challenges, the petition would still contain 18,511 valid signatures; exceeding the sufficiency requirement by 2,864 signatures.

Based upon its review of the Galloway recall petition and the challenge documents, Board staff recommends that the Board recognize at least 18,239 signatures as valid and certify that the petition is sufficient to order a recall election.

II. Summary of Challenge Documents:

A. Senator Galloway's Written Challenge

Senator Galloway's Written Challenge, with accompanying affidavits of Daniel Romportl and a spreadsheet identifying specific signature lines, presents the following challenges:

1. At least 1,576 individual signatures to the recall petition were affixed prior to the Recall Petition's completion of registration and therefore these signatures fall outside of the circulation period and pursuant to Wis. Stats. §9.10(2)(e)2., these signatures may not be counted.
2. At least 28 individuals contacted the campaign to assert that that they did not sign the Recall Petition and that their names were fraudulently added to the Recall Petition. Pursuant to Wis. Stats. §9.10(2)(j)., these signatures may not be counted.
3. At least 72 individuals do not reside at the respective addresses given on the Recall Petition based on United States Postal Service conclusions that mail is undeliverable or that the addresses are non-existent.
4. At least 271 signatories to the Recall Petition did not date their signatures, signed outside the circulation period, or signed subsequent to the respective circulator's certification. Wis. Stats. §9.10(2)(e)1-3.
5. The residency of at least 102 (45 street address missing, 15 P.O. Box only, 42 municipality missing) signatories to the Recall Petition cannot be determined by the address given. Wis. Stats. §9.10(2)(e)4.
6. At least 1,684 signatories to the Recall Petition reside outside the new "Act 43" 29th Senate District. Wis. Stats. §9.10(2)(e)5.
7. At least 675 signatories to the Recall Petition reside outside the "former" 29th Senate District. Wis. Stats. §9.10(2)(e)5.
8. At least 9 signatories to the Recall Petition are not qualified electors, as their names appear on the ineligible voter list provided by the G.A.B. Wis. Stats. §9.10(2)(e)8.
9. At least 403 signatories signed the recall petition more than once. Wis. Stats. §9.10(2)(i).
10. At least 249 signatures appear on pages that were not properly certified by the circulator. Wis. Stats. §§ 8.40(2) and 9.10(2)(em).
11. At least 19 signatories to the Recall Petition failed to sign the petition.

12. At least 9 signatures to the Recall Petition appear to be in the same handwriting. Wis. Stats. §9.10(2)(e)1., (e)4. and (j).
13. At least 4 signatures to the Recall Petition are invalid because of miscellaneous insufficiencies

B. Memorandum In Support of Challenge to Individual Signatures and Joint Reply

In Section III and IV of the Memorandum in Support of Senator Pam Galloway's Written Challenge to the Recall Petition, Senator Galloway argues that the recall petitions fall well below the mandatory 25% threshold required to establish sufficiency and trigger a recall election. Senator Galloway argues that this is so due to the substantial number of signatures collected from electors that reside outside of the new "Act 43" legislative districts and to the substantial number of signatures collected prior to proper registration of the Recall Petition. In section V of the Memorandum, Senator Galloway also argues that numerous signatures fail to meet the technical standards required by Wis. Stats. §9.10(2) in order to be deemed valid

The Joint Reply filed on behalf of Senator Galloway focuses on the issues of the appropriate legislative districts to conduct recall elections, allegations that signatures were obtained prior to registration of the recall committee, and concerns regarding potential falsification of signatures, issues which are addressed more completely in separate Board materials.

C. Recall Committees' Rebuttal to Senator Galloway's Written Challenge

In the Recall Committees' Brief in Opposition to Written Challenges, the Recall Committees' contend that once the "meritless" "Act 43 districts" and "circulation period" arguments are dispensed with, the overwhelming number of signatures collected render the remaining challenges moot as they are too few to be capable of halting a recall election. However, in Section IV of the Recall Committees' Rebuttal, the Petitioners also assert that the majority of the remaining challenges are factually inaccurate, unsupported by evidence and /or lack any basis in law. Although the Rebuttal supplies no correcting affidavits responding specifically to Senator Galloway's written challenge, the Recall Committee did supply correcting affidavits along with the petitions prior to the written challenge.

III. Evaluation of Challenges and Staff Recommendations:

A total of 15,647 valid recall petition signatures are required for a certification of sufficiency to recall Senator Galloway. Following staff's first and second review of the recall petition, a total of 19,771 valid signatures were verified, but subsequent to checking for duplicate names, that total was adjusted downwards to 19,364 verified signatures. Staff reviewed the categories of challenges filed by Senator Galloway and the number of challenges in each category after deducting the signatures already struck by staff. Using the attached Exhibit A - Galloway, staff determined whether it was necessary to review the remaining individual challenges to reach a conclusion as to whether the petition was sufficient. The staff's calculations regarding the categories of challenges submitted by Senator Galloway is set out below and in the attached Exhibit A-Galloway, and they incorporate the conclusions and recommendations in the accompanying Evaluation of Challenges Memorandum.

A. Premature Circulation of Petitions Challenges:

Senator Galloway challenges 1576 signatures which are dated November 15, 2012 and November 16, 2012, alleging that the signatures were executed prior to the petitioner registering with the Government Accountability Board and should therefore be struck pursuant to Wis. Stat. § 9.10(2)(e)2. During the first and second reviews, staff struck 37 signatures as being dated outside the registration period, but did not strike any signatures due to being dated on November 15 or 16, 2012. Staff also struck 76 signatures challenged in this category for reasons other than being executed on those dates.

This challenge category is addressed in the accompanying Evaluation of Challenges Memorandum, in which staff recommends denying all such challenges due to insufficient proof that any particular signature was executed prior to the recall committee's registration being executed. Staff recommends that the remaining 1500 challenged signatures in this category, as listed in the "After GAB Struck" column on the attached Exhibit A-Galloway, be excluded from the calculation of the possible "Remaining Challenges."

Recommendation – Deny 1576 challenges and no change to total verified signatures.

B. Postcard Mailing Challenges:

According to the "Affidavit of Daniel Romportl In Support of Senator Galloway's Written Challenge," to "ensure the integrity of the recall process" the Committee to Elect Republican Senators authorized a mailing of postcards to 10,000 signature names selected from the Galloway Recall Petition at random. See *Romportl Affidavit* at ¶5. This effort resulted in 72 postcards being returned as undeliverable, and 28 phone calls from recipients who called Senator Galloway's offices claiming that they had not added their signatures to the recall petition. *Id.*

Any information that appears on a petition is entitled to a presumption of validity. Wis. Adm. Code §§ 2.05(4) and 2.09(1). Senator Galloway's challenge asserts that these 100 individuals did not add their signatures to the Recall Petition. Senator Galloway bears the burden of proof on this challenge and that burden is clear and convincing evidence of an insufficiency. Wis. Stats. §§ 9.10(2)(g), See also Wis. Adm. Code GAB §§ 2.07(3)(a) and (4) and 2.11(1). The Administrative Code requires the Board to review any evidence that the parties may offer, including "affidavit[s] or other supporting evidence demonstrating a failure to comply with statutory or legal requirements." See Wis. Adm. Code §§ 2.07(4) and 2.11(1); see also, Wis. Stats. §9.10(2)(h) and §§ 2.07(2)(a) and 2.11(1), Wis. Adm. Code.

Senator Galloway submitted no affidavits from individuals who claimed that their names were fraudulently added to the recall petitions. These challenges arose out of mailings distributed by Senator Galloway, but G.A.B. staff was not given any information with which to verify these challenges apart from their designation in the challenge category on Senator's Galloway's Exhibit C. Further, these challenges were noted on the challenge spreadsheet only for the returned postcards, not for the 28 electors who contacted the campaign indicating they had not signed the petition. Accordingly, these 28 challenges were not incorporated into the attached Exhibit A - Galloway because no specific signature lines were identified in the challenge. In the absence of any supporting evidence, the challenge does not rebut the administrative presumption of validity, thereby shifting the burden of proof to the Petitioner. Without a single

affidavit to support Senator Galloway's challenge, staff cannot recommend striking any signatures based upon the results of Senator Galloway's postings via the U.S. Mail. However, subsequent to staff's initial review, two of those 72 challenge signatures were struck for reasons other than the United States Postal Service issue identified by Senator Galloway. Accordingly, 70 of the remaining challenges were incorporated into the "After GAB Struck" column of the attached Exhibit A - Galloway. But those challenges are designated as "Not Included" because staff recommends that all such challenges be denied for failure to demonstrate by clear and convincing evidence a failure to comply with statutory or other legal requirements. The challenges in this category, therefore, are not included in the total of possible "Remaining Challenges."

Recommendation – Deny 98 challenges and no change to total verified signatures.

C. Circulation Date Challenges:

The Challenger asserts that 271 signatories to the Recall Petition did not date their signatures, signed outside the circulation period, or signed subsequent to the respective circulator's certification.

Following staff's first and second review of the petition, staff recommends that the Board strike 286 signatures for failure to date signatures, for signing outside the circulation period, and for signing subsequent to circulator's certification.

Additionally, staff recommends that 56 of the 271 challenged signatures that were not struck during staff's initial review, be incorporated into the "After GAB Struck" column of the attached spreadsheet, and included in the possible "Remaining Challenges total.

Recommendation – Exclude 56 signatures from the total verified signatures and classify as "Remaining Challenges."

D. Indeterminate Residency Challenges:

The Challenger asserts that 102 individual signatures to the Recall Petition failed to meet statutory requirements regarding a signer's address.

Following staff's first and second review of petitions, staff recommends that the Board strike 113 signatures for failure to meet statutory requirements regarding a signer's address.

Additionally, staff recommends that 56 of the 102 challenged signatures that were not struck during staff's initial review, be incorporated into the "After GAB Struck" column of the attached Exhibit A - Galloway and included in the possible "Remaining Challenges" total.

Recommendation – Exclude 56 signatures from the total verified signatures and classify as "Remaining Challenges."

E. Signatures from Persons Residing Outside the New 29th Senate District

Senator Galloway challenges 1684 signatures as being executed by individuals living outside the new 29th Senate District as created by 2011 Act 43. During the first and second reviews, staff did not strike any signatures due to individuals residing outside the new 29th Senate District. Staff did strike 75 of these challenged signatures for other reasons.

This challenge category is addressed in the accompanying Evaluation of Challenges Memorandum, in which staff recommends denying all such challenges due to the Board's determination that any recall elections conducted prior to November 6, 2012 must be conducted in the pre-Act 43 legislative districts. Even if the allegation was proven by clear and convincing evidence, this category of challenges does not constitute a failure to comply with statutory or other legal requirements. Staff recommends that the remaining 1,609 challenged signatures in this category, indicated in the "After GAB Struck" column on the attached Exhibit A - Galloway, be denied as a challenge and excluded from the calculation of the possible "Remaining Challenges."

Recommendation – Deny 1,684 challenges and no change to total verified signatures.

F. Signatures from Persons Outside the Former 29th Senate District Challenges:

The Challenger asserts that 675 signatures belong to persons residing outside the former 29th Senate District.

Following staff's first and second review of petitions, staff recommends that the Board strike 588 signatures as belonging to persons who live outside the 29th Senate District.

Additionally, staff recommends that the 113 of the 675 challenged signatures that were not struck during staff's initial review, be incorporated into the "After GAB Struck" column of the attached Exhibit A - Galloway and included in the possible "Remaining Challenges" total.

Recommendation – Exclude 113 signatures from the total verified signatures and classify as "Remaining Challenges."

G. Unqualified Electors Challenges:

The Challenger asserts that 9 individual signatures belong to unqualified electors because their names appear on the Ineligible Voter List provided by the G.A.B.

During the first and second reviews, staff does not examine elector qualification and eligibility of persons having signed the recall petition; however, during the course of that review staff recommends striking 3 of these signatures for reasons other than belonging to unqualified electors, and incorporating the remaining 6 signatures into the "After GAB Struck" column of the attached Exhibit A - Galloway and included in the possible "Remaining Challenges" total.

Recommendation – Exclude 6 signatures from the total verified signatures and classify as "Remaining Challenges."

H. Duplicate Challenges:

The Challenger asserts that at least 403 signatures belong to persons who had already signed the Recall Petition.

During the first and second reviews, staff does not specifically examine the recall petition for duplicate signatures (although 4 were found and struck at this stage); however, after staff's initial review was complete a duplicate analysis took place which resulted in 407 additional signatures being struck. Of the 806 instances alleged by the Challenger ($403 \times 2 = 806$), 443 remained after staff's two-stage process and were incorporated into the "After GAB Struck" column of the attached Exhibit A – Galloway and included in the possible "Remaining Challenges" total.

Recommendation – Exclude 443 signatures from the total verified signatures and classify as "Remaining Challenges."

I. Improper Certification Challenges:

The Challenger asserts 249 individual signatures appear on pages not properly validated by the circulator.

Following staff's first and second review of petitions, 234 signatures were struck for appearing on pages that were not properly validated by the circulator.

Additionally, staff recommends that 73 of the 249 challenged signatures that were not struck during staff's initial review, be incorporated into the "After GAB Struck" column of the attached Exhibit A - Galloway and included in the possible "Remaining Challenges" total.

Recommendation – Exclude 73 signatures from the total verified signatures and classify as "Remaining Challenges."

J. Failure to Sign Challenges:

The Challenger asserts that 19 individuals failed to sign the Recall Petition.

Following staff's first and second review of petitions, 0 signatures were struck for failure to sign the petition, but 3 of the challenged signatures were struck for other reasons.

Staff recommends that the 16 of the 19 challenged signatures that were not struck during staff's initial review, be incorporated into the "After GAB Struck" column of the attached Exhibit A - Galloway and included in the possible "Remaining Challenges" total.

Recommendation – Exclude 16 signatures from the total verified signatures and classify as "Remaining Challenges."

K. Fraud/Fakes/Forgeries and Miscellaneous Challenges:

The Challenger asserts 13 individual signatures are in the same handwriting (9) or constitute instances of fraud (4) for miscellaneous deficiencies.

Following staff's first and second review of petitions, 0 signatures were struck for similar handwriting or miscellaneous instances of fraud; additionally, during the course of that review staff did not recommend striking any of these signatures for reasons other than similar handwriting or miscellaneous instances of fraud. Therefore, staff recommends incorporating all 13 challenged signatures into the "After GAB Struck" column of the attached Exhibit A - Galloway and included in the possible "Remaining Challenges" total.

Recommendation – Exclude 13 signatures from the total verified signatures and classify as "Remaining Challenges."

IV. Determination Regarding Sufficiency of Recall Petition:

Based upon the above findings, Board staff recommends that the Board strike 407 signatures as duplicate names and an additional 1,251 signatures from the recall petition filed against Senator Galloway as invalid for the reasons listed on Exhibit A - Galloway. Staff also recommends that the Board accept the recommendations of staff regarding resolution of the categories of challenges filed by Senator Galloway, including denying the challenges designated as "Not Included" on the attached Exhibit A - Galloway, and terminating any further analysis of the challenges of individual signatures. Staff recommends that, for purposes of determining sufficiency of the recall petition, the Board directs that 853 "Remaining Challenges" will be deducted from the total of 19,364 verified signatures, and that the Board certify sufficiency of the recall petition with at least 18,511 valid signatures.

Recommended Motion:

The Board accepts staff's recommendation as outlined above to deny certain challenges filed by Senator Galloway for the reasons stated in the accompanying Evaluation of Challenges memorandum: to strike 407 signatures as duplicate names; to strike an additional 1,251 invalid signatures; and to deduct 853 "Remaining Challenge" signatures from the staff-determined total of verified signatures. The Board verifies that at least 18,511 valid signatures are contained in the recall petition offered for filing against Senator Galloway. The Board further directs staff to file the recall petition and attach a certificate of sufficiency on a date to be determined by the Board in accordance with any court order governing this matter.

State of Wisconsin \ Government Accountability Board

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



JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of March 12, 2012

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: Recall Petitions against Governor and Lieutenant Governor – Status and Legal Issues

Board staff is continuing to process the recall petitions submitted against Governor Walker and Lieutenant Governor Kleefisch. Data entry of the names on the Governor petition has been completed and staff has begun the process of checking for duplicate names which may appear on that petition. Data entry of names on the Lt. Governor petition is ongoing and is expected to be completed during the week of March 12th. Staff will provide the Board with any update on the progress of the review of the two statewide petitions at the Board meeting.

The primary legal issue raised in the challenges filed by the Governor and Lt. Governor is whether the Board can or should review any information or challenges filed by the Verify the Recall organization. The officeholders' Written Challenges state that they incorporate the results of the Citizen Verification Process made publicly available by the Verify the Recall organization as a separate written challenge. A copy of the Rebuttal filed by the petitioners is attached along with the argument section of the Governor's Reply for the Board's review. Counsel for the Governor and Lt. Governor as well as the recall petitioners have been advised they will be provided an opportunity to address the Board regarding this matter.

Verify the Recall is a joint effort of two nonprofit corporations, Wisconsin GrandSons of Liberty and We the People of the Republic. The Governor and Lt. Governor indicate that the Senators believe the results of the Citizen Verification Process would be made publicly available. The officeholders argue that existing campaign finance laws prohibit the two nonprofit organizations from directly providing results of the Citizen Verification Process or otherwise coordinating efforts with the officeholders. Referring to the Board's February 7, 2012 meeting, they also allege that Board staff has referred individuals who believe their names were improperly signed to any of the recall petitions to the Verify the Recall organization, and therefore Board staff has

prevented information about potential challenges from being shared directly with the officeholders.

Board staff has received calls from a number of people who inquired as to whether their names were on the petitions. Staff referred those callers to the Republican Party of Wisconsin's "no sign list" and the Verify the Recall page. If people called with specific concerns about something on a recall petition page, they were referred to the officeholder. The videotape of the Board's February 7, 2012 meeting is available 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 us and are concerned that their name may appear on a recall petition when they did not sign. 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."

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 officeholders and the petitioners. In fact, Wis. Stat. § 9.10(3)(b) states only that "Within 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 written challenges was February 27, 2012, and the deadline for the Lt. Governor to file written challenges was March 5, 2012.

While Board staff has indicated the Board is free to review any information submitted by the public as a check on its own work, or to assess whether its procedures could be improved, staff continues to believe that the Board is not authorized to accept challenges of recall petition signatures from any party other than the officeholder. In addition, staff believes the issue is moot because the Verify the Recall organizations did not file any written challenges with the Board by the deadlines of February 27, 2012 or March 5, 2012.

It also should be noted that Verify the Recall is not prohibited from sharing information or coordinating efforts with the officeholders under Wisconsin campaign finance laws; they are only prohibited from providing their services to an officeholder's campaign committee without charge because of their corporate status. Wis. Stat. § 11.38 prohibits foreign and domestic corporations from making a political contribution to a candidate or political committee. Board staff advised representatives of Verify the Recall that the organization could share the results of its efforts with officeholders if those results were purchased by the campaign committees. Apparently there was no effort or agreement to share that information in a way that would comply with the campaign finance laws.

For these reasons, Board staff recommends that the Board determine that it will deny any challenges filed by the Governor or Lt. Governor which are based on the assertion that information produced by Verify the Recall is incorporated into the Written Challenges. If the Board desires to review information produced by Verify the Recall as part of the challenge process, the Board should direct staff to analyze any information provided or made available to the public.

Recommended Motion:

The Board finds that Wis. Stat. § 9.10(3)(b) does not provide the Board with authority to entertain challenges filed by parties other than the officeholder. The Board further finds that no purported challenges have been timely filed by the Verify the Recall organization regarding the Governor and Lt. Governor petitions. The Board further finds that it will deny challenges asserted by Governor Walker of Lt. Governor Kleefisch which are based on the assertion that information produced by the Verify the Recall organization is incorporated into the Written Challenges.

STATE OF WISCONSIN
BEFORE THE GOVERNMENT ACCOUNTABILITY BOARD

IN RE: PETITION TO
RECALL GOVERNOR SCOTT K. WALKER

**THE COMMITTEE TO RECALL WALKER'S RESPONSE TO
GOVERNOR WALKER'S SUBMISSION**

The Committee to Recall Walker, by its attorney Jeremy P. Levinson, submits this response to Governor Walker's February 27, 2012 filing.

Governor Walker's "challenge" is nothing more than political theater and an attempt to manipulate the process and mislead the public. He issues various "demands" that the GAB take steps in its review process that the GAB has already undertaken. While Governor Walker decided not to challenge any signatures, he insists that the GAB permit two corporations that hold themselves out as self-appointed guardians of the process to bring challenges and participate in the process as though they were targets of the recall.

The Governor's demand is not only contrary to law, he makes it while entirely aware that the GAB has already determined that challenges may be brought only by the official targeted for recall. *See* § 9.10(3)(b), Wis. Stats., (challenges may be brought only by the "officer against whom the petition is filed)." At its February 9, 2012 meeting, the GAB went on to specifically reject efforts by "Verify the Recall" and "True the Vote" (collectively "VTR") to involve themselves in these proceedings.

Governor Walker's submission, like those of the Republican Senators, presents arguments that the GAB has already specifically determined to be contrary to law. Made with the knowledge that the GAB has already rejected them, they seek to perpetuate a public perception of chaos and to denigrate the GAB as unreliable and incapable.

Governor Walker's "demands" should be rejected and the GAB should proceed as it determined it would at its last meeting, by considering only verified challenges submitted by the "officer against whom the petition is filed" § 9.10(3)(b), Wis. Stats. And such verified challenges must be physically submitted to the GAB within the (now exhausted) time provided by the statute. These established rules of law define the basic structure of the review process and ensure that it is orderly and fair. Permitting the participation of any individual or organization who felt so moved would quickly destroy the process.

As a separate matter, Governor Walker's complaint that he did not have enough time to conduct a meaningful review – after being given triple the time provided for by statute – is baseless. As either an astonishing coincidence or a choreographed fraud, VTR publicly disseminated what it claimed to be a thorough analysis of the petitions to recall the Governor – on the very day the Governor's challenges were due. If VTR could complete the review, the Governor could have done the same. His campaign finance reports show that he has raised many millions of dollars to fight the recall. He could have hired VTR to review the petitions for him or he could have completed the review process that his committee began.¹ His claim that he was incapable of having his committee review the petitions for challenges purposes is false.

VTR distributed its so-called analysis in time for Governor Walker to submit it as his own. He chose not to do so. The explanation for this is apparent: Governor Walker did not want to take political and legal responsibility for an analysis that is thoroughly misleading in its attempt to smear the recall effort. He wants someone to attack the petition effort, but he knows such an attack is totally baseless and wants to avoid responsibility for it much less submitting it

¹ At the February 17, 2012 hearing in Dane County Circuit Court, the Governor's attorneys indicated that his review effort had already reviewed approximately half the signatures needed to trigger a recall election. Given that the review to that point revealed far too few problematic signatures to call a recall election into doubt, it must be inferred that Walker abandoned an analysis that would only serve to confirm that hundreds of thousands of valid signatures beyond the required threshold were submitted. Or he completed the review and has no interest in sharing the results for the same reason.

under oath. He cannot have it both ways. He could have adopted VTR's analysis and submitted it as his own *verified* challenge. He opted not to do so.²

The most cursory review of VTR's analysis explains why the Governor decided against submitting it. Setting aside a number of false premises and distortions,³ VTR's own results claim an "ineligible" signature rate of less than 7%, confirming again that there are many hundreds of thousands of valid signatures beyond the number required to trigger an election. VTR's analysis then proceeds to concoct a nonsense category of signatures that it thinks merit "further investigation." This category is vastly larger than the actual "ineligible" category. VTR then unveils its gimmick by subtracting *both* categories from what VTR states was the total number of signatures.

At first blush, this seems nonsensical because the assertion that signatures merit "further investigation" does not disqualify them or even state a basis for a challenge. But there is an explanation: The combination of two dissimilar categories of signatures that have no business being combined produces a nonsense number that is just shy of the threshold for the election. The only discernible rationale behind the manipulation of these numbers is to create the false impression that there is some chance the recall fell just shy of what was required. But the VTR analysis fails to accomplish even this because it rests on an inaccurate and artificially low total

² It should be noted that Governor Walker executed his "Sworn Written Challenge" on February 21, 2012. It purported to "incorporate . . . the written challenges" submitted by his lawyers. But his lawyers' submission is dated February 27, 2012 and VTR did not make its purported analysis public until that very day. Governor Walker's challenge is not only inconsistent with the laws of Wisconsin but it flouts the laws of physics insofar as it "authorize[s] and incorporates" materials that did not exist until almost one week later.

³ VTR's purported analysis is riddled with falsehoods, sleight-of-hand, and bad data. Because that analysis is *not* part of Governor Walker's challenge, this response does not present a full discussion of it. For the convenience of the GAB, an overview of these issues is appended hereto as Exhibit A.

number of signatures.⁴ Even if its “further investigation” number was not meaningless, VTR’s own numbers show that the recall succeeds.

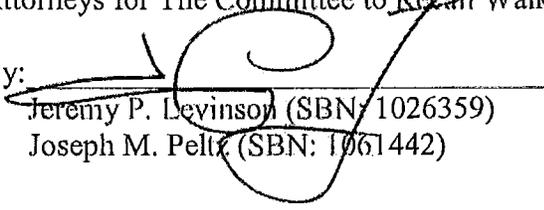
But VTR’s analysis is not before the GAB because Governor Walker opted against submitting it despite the fact that it was publically available. The GAB should decline Governor Walker’s invitation to pretend that the sole basis of his “challenge” has not already been resolved against exactly the position he takes. The GAB should summarily apply its decision not to consider challenges raised by individuals or corporations other than the incumbent facing recall, a decision made with specific consideration of VTR. Anything else plays into Governor Walker’s continued strategy of obstruction and denigration of the process. The GAB should simply stick by its recent decision. Any reluctance to enforce the GAB’s recent determination of this matter should be promptly resolved by the myriad defects and false premises of VTR’s purported analysis, starting with the fact that it claims to have found an amount of ineligible signatures that falls hundreds of thousands short of any possibility of derailing the recall.

Because Governor Walker has not challenged a single signature or petition page and has not presented any argument that the recall effort falls short, following the GAB’s statutory review, it should file the petition and order a recall election.

Dated this 1st day of March, 2012.

FRIEBERT, FINERTY & ST. JOHN, S.C.
Attorneys for The Committee to Recall Walker

By:


Jeremy P. Levinson (SBN: 1026359)
Joseph M. Peltz (SBN: 1061442)

P.O. ADDRESS:

330 East Kilbourn Avenue
Two Plaza East, Suite 1250
Milwaukee, Wisconsin 53202
Phone: (414) 271-0130

⁴ VTR asserts a total signature count of approximately 820,000. Yet VTR’s own numbers show this number is a result of a failure on its own part to complete data entry of all 152,000 pages submitted. See Ex. A.



Data Analysis of Verify the Recall & True the Vote¹ Walker Challenges

I. Abstract Summary of Analysis

Reading True the Vote's summary analysis reveals that True the Vote has drawn many false conclusions not supported by their own data. Their data actually reveals that there is no widespread problem with signatures and that not enough signatures could be challenged to stop the recall. Despite their data confirming the validity of the recall, True the Vote has made many false claims to the media:

True the Vote's claim that 50% of signatures are invalid is false

True the Vote's own data show they simply do not have any way to mathematically support a claim of a 50% invalid rate. What their data does suggest is a conclusion of an 'invalid rate' of only 6%, far less than any other recall to date.

True the Vote did not challenge enough signatures to stop the recall

There is no need for GAB to consider True the Vote's challenges because they fall hundreds of thousands of signatures short of threatening to stop the recall. Well over 400,000 signatures would need to be challenged and True the Vote comes nowhere near this number.

The sheer number of factual errors in the line-by-line challenges calls into question True the Vote's entire operation

True the Vote claims to have found 55,000 invalid signatures. Yet a simple review of many of those challenged pages reveal the challenges are simply inaccurate and false on their face- claiming information is missing that is clearly present on the page. The sheer number of these inaccuracies – when True the Vote claims each challenge was reviewed by volunteers 3 times – leads one to suspect that either True the Vote's claimed quality control methods were not implemented, or that factually inaccurate claims were submitted despite their own quality control indicating they were false.

True the Vote's claim about total signatures submitted is false

True the Vote has made the claim that the recall committee submitted less than 820,000 signatures, despite the fact that their own data proves the recall committees submitted hundreds of thousands of signatures more than that number.

¹ For the purposes of this document, this 3rd party challenge effort will be referred to as "True the Vote"

I. True the Vote's own data analysis disproves the pro-Walker spin they have promoted in the press. The recalls should proceed.

True the Vote's analysis of their own data is included in the document "Walker Executive Summary" available on their website. It is as follows²:

| True the Vote Analysis of Walker Recall Petition | |
|--|---------------------|
| Only 50% of ~1,500,000 Records Submitted Will Be Eligible, Based on Current Data Trends | |
| Total Signatures Submitted Will Be ~ 150,000 FEWER Than the Touted Million Signature Mark | |
| Governor Scott Walker Recall Petition Audit - Summary Analysis as of 2.26.12 | |
| Variables Analyzed* | Total Counts |
| 1 Total Number of Pages Submitted | 152,508 |
| 2 Total Number of Pages Processed | 138,203 |
| 3 Number of Pages Unable to Access | undetermined |
| 4 Number Records Processed | 1,382,358 |
| 5 Blank Lines | 557,469 |
| 6 Unique Records | 819,233 |
| 7 Incomplete / Indecipherable Records | 36,127 |
| 8 Sign Date Out of Range | 14,753 |
| 9 Out of State | 1718 |
| 10 Duplicate Signatures | 5358 |
| 11 Total Ineligible Signatures | 55,608 |
| 12 Total Signatures for Further Investigation** | 228,940 |
| 13 Total Eligible Signatures based on data available | 534,685 |

Despite the numbers provided in their own data summary above, True the Vote makes the following factually false claims to the media:

1. *The 'invalid rate' for the signatures they have analyzed is 50%.* This claim is false.
2. *If all of True the Vote's challenges would be accepted by GAB, they have challenged enough signatures to stop the recall.* This claim is false.
3. *They have found 55,608 ineligible signatures.* This claim is false.
4. *The recall committees submitted less than 820,000 signatures.* This claim is false.

These claims are refuted below.

² The red line numbers to the summary table added for reference purposes throughout this document.

II. False Claim- 'Invalid Rate' for The Signatures They Have Analyzed is 50%.

The sub headline to True the Vote's Executive Summary Analysis claims that their analysis predicts that only 50% of the signatures submitted will be eligible, based on current trends:

True the Vote Analysis of Walker Recall Petition
Only 50% of ~1,500,000 Records Submitted Will Be Eligible, Based on Current Data Trends
Total Signatures Submitted Will Be ~ 150,000 FEWER Than the Touted Million Signature Mark

Yet this number remains unsubstantiated throughout the entire report. Simple math of the numbers provided proves that an 'ineligible rate of 50%' is simply not present.

- According to True the Vote, 55,608 signatures are ineligible³ of 819,233 entered⁴. 6th grade arithmetic reveals that is a rate of 6.78%. No where near 50%.
- If True the Vote sought to claim that "further investigation" signatures⁵ should also be disqualified along with the 'ineligible signatures'⁶, the math once again is simple: $(55,608 + 228,940) / 819,233 = 34.7\%$. Once again, no where near 50% and that includes the completely unlikely notion that every single 'needs further investigation' would result in an invalid signature.⁷

It should be noted that nowhere in True the Vote's documentation do they advocate that those signatures flagged as "need further investigation" should be summarily disqualified. Yet in their executive summary table, they arbitrarily add these "needs further investigation" signatures in with those they are claiming are "ineligible" to come up with their final conclusion that only 534,685 signatures are valid.⁸ This unexplained addition of two unrelated numbers gives the reader the dubious impression that 284,548 are 'challenged' despite only 55,608 actually being challenged under their own designation.

Conclusion:

Thus, by True the Vote's own summary table, the 'invalid rate' for signatures comes no where near reaching 50%, as they have claimed to the press.

³ True the Vote Executive Summary, Line 11

⁴ True the Vote Executive Summary, Line 6

⁵ True the Vote Executive Summary, Line 12

⁶ True the Vote Executive Summary, Line 11

⁷ It should be noted that for nearly every 'needs further investigation' challenged, not a single reason explaining why it needs further review has been offered, nor any proof explaining why such a signature should be called into question. It appears these names were simply selected at random.

⁸ True the Vote Executive Summary, Line 13

III. False Claim- True the Vote Challenged Enough Signatures to Stop The Recall

Number of signatures submitted to GAB: Approximately 1 million
Number of signatures needed to challenge to defeat recall: 459,792

Number of 'hard' challenges⁹ by True the Vote: 55,608
Number of 'soft challenges'¹⁰ "needing further review" by True the Vote: 228,940
Total signatures challenged: 284,548

Thus, even if every challenge, including the ambiguous "needs further review" were accepted, the recall committee has well over 175,000 signatures remaining as a 'buffer.' And this is before any actual review of the challenges for validity has occurred.

Conclusion:

Thus, by True the Vote's own summary table, not enough signatures have been challenged to stop the recall.

⁹ Referred to as 'ineligible signatures' by True the Vote, from Executive Summary, Line 11

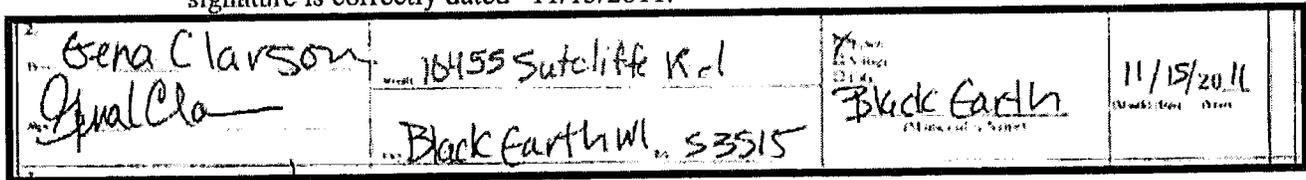
¹⁰ Many in this category are challenged for often ridiculous and legally incorrect reasons, but usually with no reason at all. But they are included in this analysis for argument's sake. From Executive Summary, Line 12

IV. False Claim- They have found 55,608 ineligible signatures.

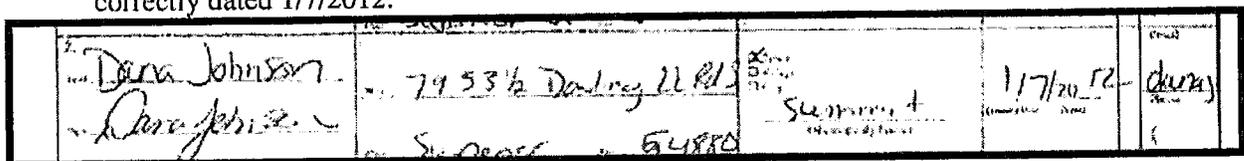
Once one unpacks the actual challenges proffered by True the Vote, it is clear that despite their claims that each signature was entered “2.67 times”¹¹, a facial review of hundreds of thousands of challenged signatures prove that the challenges stipulate inaccurate information regarding what appears on the page.

Challenges regarding missing information when compared to the actual petition page fall flat as the information is clearly present. On these points, there is no room for subtlety or interruptions. The challenges are simply inaccurate and false. The sheer number of these inaccuracies when True the Vote claims each challenge was reviewed nearly 3 times for quality control leads one to suspect that either True the Vote’s claimed quality control methods were not implemented, or factually inaccurate claims were submitted despite their quality control indicating they were false claims. For example:

- True the Vote claims Gena Clarson’s signature doesn’t count because it is dated “2012” instead of 2011 (Pg 5 of Ineligible Report). Review of the actual petition shows her signature is correctly dated “11/15/2011.”¹²



- True the Vote claims Dana Johnson’s signature doesn’t count because it is dated: “1/072012”. (pg 1, Ineligible Report). Review of actual petition shows her signature is correctly dated 1/7/2012.¹³



- True the Vote challenges Thomas Beck as being “Questionable” with no further explanation. (Pg 9751 of Ineligible Report). Review of the actual petition shows that a Thomas Beck¹⁴ lives at that address... Why should his signature not count?

¹¹ “Key Points and Statistics” section of Walker Executive Summary document.

¹² <http://ttvverify.com/petitions/sw001117.png>

¹³ <http://ttvverify.com/petitions/sw000171.png>

¹⁴ White page search reveals a Thomas Beck on Elm St. Petition page: <http://ttvverify.com/petitions/sw112192.png>

| | | | | | | |
|----|----------------|---|-----------------|---|--------|------------|
| 1. | Thomas J. Beck |  | 205 Elm St | <input type="checkbox"/> Town <input type="checkbox"/> Village <input checked="" type="checkbox"/> Precinct | Antigo | 11/03/2011 |
| 2. | | | Antigo WI 54409 | | | |
| | | | 205 Elm St | | | |

There are hundreds of thousands of these types of factual errors committed by True the Vote. The sheer number of errors defies all plausible explanation of occasional accidental errors.

Conclusion:

Thus, by True the Vote's own line-by-line challenges, so many factual errors have occurred as to call into doubt their entire operation.

V. False Claim- Recall Committee Only Submitted 824,589 Signatures, Not 1 Million.

Despite their own data indicating otherwise, True the Vote falsely reported to the media that recall committees submitted less than 820,000 signatures to recall Governor Walker, rather than the approximately 1 million signatures reported to GAB.

According to True the Vote's executive analysis, they only entered 819k signatures¹⁵. Yet they note that from the 152,508 pages available to enter¹⁶, they only entered 138,203 pages¹⁷. That is over 14,305 pages True the Vote admits to not entering, yet then later concludes those pages must contain no signatures and report to the press that only 800k signatures were submitted by recall petitioners to GAB.¹⁸

This failure to enter thousands of pages on their part matches their failure to enter thousands of pages during the Senate verification process. Just as with the Senate petitions, they falsely use their own failure as 'statistical proof' that less signatures were submitted than claimed by the recall committees.¹⁹ For example, True the Vote reported²⁰ that Senator Fitzgerald committee only submitted 14,601 raw signatures before any signatures are challenged. GAB's own internal numbers verified the recall committee's assertion that 20,723 signatures were submitted before any signatures were disqualified. A review of True the Vote's own raw data entry for Senator Fitzgerald confirms of the first 50 pages available for download from GAB's website, 15 of those 50 pages were not data entered by True the Vote yet True the Vote used their lack of entry as 'proof' that fewer signatures were submitted to GAB than reported.²¹

In the case of the Governor's challenge, True the Vote admits they didn't enter 14,305 pages. As they know, this potential accounts for hundreds of thousands of signatures. For example:

| Avg. signatures per page scenario for 14,305 pages | Potential number of signatures not entered by True the Vote |
|--|---|
| 10 | 143,050 |
| 9 | 128,745 |

¹⁵ True the Vote Executive Summary, Line 6

¹⁶ True the Vote Executive Summary, Line 1

¹⁷ True the Vote Executive Summary, Line 2

¹⁸ This false claim reported by WT MJ (<http://www.620wtmj.com/blogs/jeffwagner/139222219.html>) as well as by MagIver institute (<http://twitter.com/#!/MacIverWisc/status/174165396134436866>)

¹⁹ As reported by The Wisconsin Reporter <http://www.wisconsinreporter.com/missing-signatures-review-finds-gap-in-wisconsin-recall-figures>

²⁰ Same Wisconsin Reporter article

²¹ This failure to enter pages by True the Vote was reported by Recall Petitioner Lori Compas to GAB in an email on Feb 12th in which she indicated, in part, "...the first 50-pages of Truth the Vote's file is missing pages 4, 5, 8, 29, 32, 35, 37, 39, 42, 45, 46, 47, 48, 49, and 50, despite the fact that all those pages are posted on the Government Accountability Board's website."

| | |
|---|---------|
| 8 | 114,440 |
| 7 | 100,135 |

These pages alone could account for between 100k to 140k signatures True the Vote admits they have undercounted by. And this doesn't even include the tens of thousands, if not hundreds of thousands, of individual signatures that True the Vote failed to enter on a given page. (e.g., if 10 signatures appear on the page, but they only entered 8, they undercounted the page by 2 signatures). All of these acknowledged data entry errors on their end add up to explaining their undercount of hundreds of thousands of signatures.

Conclusion:

Thus, by True the Vote's own summary table, the recall committees could not possibly have submitted less than 820k signatures, as they have claimed in the press.

RECEIVED

RECEIVED

STATE OF WISCONSIN

BEFORE THE GOVERNMENT ACCOUNTABILITY BOARD

GOVERNMENT
ACCOUNTABILITY BOARD
IN RE PETITION TO RECALL
GOVERNOR SCOTT K. WALKER

GOVERNMENT
ACCOUNTABILITY BOARD

**GOVERNOR WALKER'S REPLY IN SUPPORT OF HIS WRITTEN CHALLENGE TO
THE RECALL PETITION OFFERED FOR FILING ON JANUARY 17, 2012**

On February 27, 2012, Governor Scott K. Walker submitted a filing asking that with respect to the recall petitions, the Government Accountability Board ("GAB"): (1) adhere to the court order in *Friends of Scott Walker, et al. v. Wisconsin GAB et al.*, Case No. 11-CV-4195; and (2) consider any third-party challenges. In response, the Committee to Recall Walker (the "Recall Committee") did not dispute the GAB's obligation to follow the Waukesha order and instead focused on the legality of acknowledging a third-party review. Governor Walker replies as follows.

Two third-party groups publicly stated that there were conducting reviews of the pending recall petitions: Wisconsin GrandSons of Liberty and We the People of the Republic (collectively, "Verify the Recall"). The results of this review are properly before the Board as part of Governor Walker's challenge to the Recall Petition. Furthermore, even if Governor Walker had not incorporated those results into his challenge, nothing precludes GAB from considering such publicly available information as part of its statutory review. Finally, in light of the fact that GAB staff specifically directed members of the public to forward their petition-related concerns to Verify the Recall, it is appropriate that the Board consider Verify the Recall's data as part of its careful examination of the Recall Petition.

A. The third-party challenges were incorporated by Governor Walker.

Governor Walker incorporated by reference the results of Verify the Recall into his prior filing. Consequently, the data developed by Verify the Recall has been removed from the category of “unsolicited information” and is properly before GAB.

The incorporation of this data into the challenge procedure is neither mysterious nor problematic, as evidenced by the fact that the Recall Committee was able to review, analyze and offer rebuttal to Verify the Recall’s initial data.

Furthermore, given the fact that Verify the Recall believes Wisconsin’s campaign finance laws prohibit it from sharing its data directly with Governor Walker or his campaign committee, there was no other practical way for Governor Walker to incorporate that data within the deadlines established by statute and extended by the Dane County Circuit Court.

B. The GAB rules separately allow consideration of third-party information.

Nevertheless, even if Verify the Recall’s data was not properly before GAB as part of Governor Walker’s challenge, there is no legal impediment to GAB considering that data. The GAB’s own regulations permit every filing officer in the state to “consult . . . [any] other extrinsic evidence to ascertain the correctness and sufficiency of information” included on a recall petition. Wis. Admin. Code § GAB 2.05(3), made applicable to recall petitions by GAB § 2.09(1). Indeed, GAB has recently publicly stated that it is in fact considering certain information provided by third parties. See Patrick Marley and Jason Stein, *Board seeks more time to review Walker recall petitions*, JSOnline, Feb. 29, 2012 (“Magney, the accountability board spokesman, said the agency would review allegations of petition fraud from any citizen or

group ...”).¹ The assertion that GAB is legally barred from considering Verify the Recall’s data unless it is presented as part of Governor Walker’s challenge is simply wrong as a matter of law.

C. The GAB’s “careful examination” may consider third-party information.

Regardless of any submitted objections, Wisconsin Statute §9.10(3)(5) requires that the GAB independently conduct a “careful examination” of the petitions at issue. The GAB has publicly stated that this review will include reference to third-party sources, such as the White Page directory. Consideration of information from Verify the Recall is no different in form or substance.

Moreover, GAB’s prior actions committed the GAB to consider the Verify the Recall data as part of the “careful examination.” Indeed, GAB’s public information officer informed the Board at its February 7, 2012 meeting that GAB staff specifically directed individuals who contacted the GAB (to inform GAB that the individual did not sign the petition) to contact Verify the Recall. In doing so, GAB made Verify the Recall part of this process. Having directed Wisconsin’s citizens to this group for assistance, GAB should not now refuse to review Verify the Recall’s findings.

The Recall Committee correctly notes that the Board discussed the Citizen Verification Process at its February 7, 2012 meeting. In fact, consideration of Verify the Recall’s proposal to provide *direct assistance* to GAB was the primary reason for scheduling the special Board meeting. See Memo from Kevin Kennedy to Board Members re Report on Recall Petition Review Preparations (hereafter, the “Staff Memo”) at 5.² The Staff Memo indicates that Verify the Recall proposed to contract with GAB to provide petition review services and supply related

¹ Available at: <http://www.jsonline.com/news/statepolitics/board-seeks-more-time-to-review-walker-recall-petitions-234cob3-140894053.html> last viewed on March 2, 2012.

² A copy of Mr. Kennedy’s memo is attached hereto as Exhibit A. This undated memo was included in the packet of information that GAB circulated in advance of the Board’s February 7, 2012 special meeting, and the page numbers relate to the pagination provided for the entire packet of information.

review data directly to GAB. *Id.* at 5. Furthermore, Verify the Recall proposed to conduct additional analysis beyond what the recall statute requires the Board to undertake on its own initiative. *Id.* at 6. GAB staff concluded, and the Board ultimately agreed, that the review process does not contemplate this type of direct involvement from an outside party.³

The specific question addressed by the Board in February was “what, if anything, should the Board do with unsolicited information that is presented for consideration in determining the sufficiency of the recall petitions.” Staff Memo at 6. During the Board’s consideration of this question, the focus was on the “unsolicited” nature of such information, and the consensus reached by the Board was that to be considered, such information should be presented in conjunction with an officeholder’s challenge. That is precisely what has happened in this case.

For the foregoing reasons, Governor Walker respectfully requests that as part of its consideration of the sufficiency of the Recall Petition, the Board fully review the data provided by Verify the Recall.

Dated this 5th day of March, 2012, at Madison, Wisconsin.



Steven M. Biskupic
Michael P. Srenock
Michael Best & Friedrich, LLP
Counsel for Governor Scott K. Walker

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³ It is apparent that the Board has not concluded that the statutes prohibit GAB from contracting with independent entities or firms to assist GAB in its petition review, because GAB staff has announced publicly that it has contracted with outside vendors for data analysis and data entry services. Presumably, GAB executive staff and the Board have properly concluded that the overriding issue is the extent to which GAB is able to dictate the procedures used by outside agents and to supervise their work.

State of Wisconsin\Government Accountability Board

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



JUDGE DAVID G. DEININGER
Chair

KEVIN J. KENNEDY
Director and General Counsel

Date: For the March 12, 2012 Meeting
To: Government Accountability Board Members
From: Kevin J. Kennedy, Director and General Counsel
Subject: Report on Recall Petition Fraud Follow-up

This report provides the Board with information on the identification and treatment of possible illegal activities with respect to the circulation, signing and treatment of recall petitions for the Governor, Lt. Governor and the four State Senators. The highly polarized political atmosphere which has engendered the current recall initiatives has also generated a constant buzz of speculation about illegal activity with respect to the recall efforts.

This speculation has ranged from allegations of people signing a petition with a name other than their own, including fictitious characters, with made up addresses; claims of multiple signings by the same individual and threats of destruction of petition pages by opponents of the recall effort. Both proponents and opponents of the recalls have spewed accusations through social media, email, voice mail, talk radio and the media.

On December 1, 2012 the Government Accountability Board (G.A.B.) and the Wisconsin Department of Justice (DOJ) issued a joint press release announcing we were working together with district attorneys around the state to investigate allegations of recall petition fraud and acts of aggression by or against people involved in the recall process. A copy of that release accompanies this memorandum. G.A.B. and DOJ staff conducted a webinar for district attorney's offices on investigating recall-related complaints. Under Wisconsin law, the G.A.B., the DOJ Division of Criminal Investigation (DCI), local law enforcement and district attorneys may investigate alleged election crimes, but prosecution is the responsibility of district attorneys. The Wisconsin Department of Justice will assist district attorneys as needed in appropriate cases.

The G.A.B. and the DOJ set up a joint clearinghouse for recall-related complaints to ensure all complaints are reviewed and assigned to the proper local jurisdiction. Complaints were directed to the G.A.B. Complaints raising the possibility of illegal activity with respect to recall petitions were referred to the appropriate district attorney or law enforcement agency.

In early December an individual went on television to brag about signing a recall petition targeting the Governor 80 times. The individual was referred to the Milwaukee County District Attorney. Our staff has done a search for his name on recall petitions. The name does not show up on any recall petitions offered for filing. Recently, the Racine County District Attorney charged an individual for crimes related to falsifying signatures on several recall petitions. Our staff has a copy of the report. Since the report included admissions about

specific names, petition pages and signature lines, the staff struck those signatures on the affected petitions.

Both the recall petitioners and the Republican Party of Wisconsin set up websites or hotlines to share or gather information about possible illegal activity related to the recalls.

One Wisconsin Now Establishes \$10,000 Reward Fund to Combat Recall Petition Attacks
<http://www.onewisconsinnow.org/images/20111121151758.pdf>

Potential Petition Fraud Reported to Recall Integrity Center
<http://wisgop.org/news/potential-petition-fraud-reported-recall-integrity-center>

Verify the Recall, whose initial stated intention was to help the G.A.B. determine the sufficiency of recall petitions, has announced its intention to post a searchable database that will facilitate individuals determining if their name was wrongly listed on a recall petition.

Verify the Recall to Launch Online, Searchable Database for Recall Signature

The program will provide complete transparency of the recalls, and will empower individual Wisconsinites who chose to not sign a recall petition to contest fraudulent signatures referencing their own names and/or addresses. Legal affidavit forms contesting such signatures will be provided by VTR, completed by contesting individuals, and returned to VTR. VTR will submit the forms to the GAB as an addendum to its formal gubernatorial and State Senator recall signature eligibility reports. Excerpt from press release dated March 2, 2012. Not found on website: <http://verifytherecall.com/>

It is likely that the G.A.B. will receive complaints alleging particular incidents of illegal activity based on the web postings of these groups. The staff believed it was important to take allegations of illegal activity seriously from the outset of the recall process. That is why we have worked with District Attorneys and the Wisconsin Department of Justice to establish protocols for screening and referring complaints. Since most petition specific complaints have not been raised before the completion of the staff review and challenge period, they will not be a factor in determining the ultimate sufficiency of the recall petitions. Given the the large number of signatures over the required thresholds, it is not plausible to believe these complaints would have an impact on the ultimate sufficiency of the recall petitions.

However, they do merit evaluation and possible investigation. Staff recommends the Board direct staff to evaluate all submissions raising issues of illegality with respect to the recalls and present those matters it believes raise a reasonable suspicion of illegal activity to the Board for consideration. The evaluation should focus on the strength of the evidence submitted, including whether it is in verified form. In addition the evaluation should focus on whether information suggests a pattern of illegal activity or isolated incidents. Any staff reports will be presented in closed session to conform to the confidentiality provisions governing investigations. Wis. Stats. §5.05.

Pursuant to the statutory provisions enacted by the Legislature neither the staff nor the Board may comment on or share information related to any matter under investigation by the agency other than as provided by law. Wis. Stats. §5.05 (5s). Information may only be released publicly upon a finding of no reasonable suspicion or no probable cause that a violation of law has occurred as well as any referral for prosecution. The penalty for release of unauthorized information is a fine of up to \$10,000 and/or imprisonment for 9 months. Wis. Stats. §§12.13 (5), 12.60 (1)(bm)

Proposed Motion:

The Government Accountability Board directs its staff to evaluate all submissions raising issues of illegality with respect to the recalls and present those matters it believes raise a reasonable suspicion of illegal activity to the Board for consideration pursuant to Wis. Stats. §5.05.

State of Wisconsin\Government Accountability Board

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



JUDGE DAVID G. DEININGER
Chair

KEVIN J. KENNEDY
Director and General Counsel

Date: For the March 12, 2012 Meeting

To: Government Accountability Board Members

From: Kevin J. Kennedy, Director and General Counsel

Subject: Request for Extension of Time to Determine Sufficiency of Recall Petitions

The Government Accountability Board staff believes the Board should request an additional two-week extension to complete its review of the sufficiency of the recall petitions filed with the agency. A request for extension requires establishing good cause. Wis Stats. §9.10 (3)(b). Staff believes there are two bases for establishing good cause to grant the extension. The first is the staff needs additional time to complete its careful examination of the recall petitions. The second is the need to schedule all 6 possible elections on the same timetable while avoiding conflicts with other election events and official holidays. The Department of Justice has arranged for a hearing on a possible motion for an extension on Wednesday, March 14, 2012.

Workload

The staff has completed first and second review of the four Senate recall petitions. Staff has entered all of the review information into a data base along with the challenges filed on behalf of the officeholders. In addition, data entry of all petition signer names has been completed by Data Shop and duplicate checks have been completed. The staff has presented a series of recommendations to the Board for consideration at the March 12, 2012 meeting which may enable the Board to determine sufficiency of the recall petitions.

If the Board accepts the staff recommendations, it can find the recall petitions sufficient and direct staff to order recall elections for each of the four Senators. If the Board directs further review of the challenges submitted on behalf of the officeholders, the agency will need additional time to complete that review. It is not clear how much additional time will be required.

The staff has completed first and second review of the Governor's recall petition. Staff has entered all of the review information into a data base. In addition, data entry of all petition signer names has been completed by Data Shop and duplicate checks have been started. We expect to have made significant progress on completing the duplicate checks by the time of the March 12, 2012 Board Meeting. The staff has presented a series of recommendations to the Board for consideration at the March 12, 2012 meeting. Staff does not anticipate the Board will be in a position to determine sufficiency of the Governor's recall petition at this meeting.

The staff has completed first and second review of the Lt. Governor's recall petition. Staff has entered all of the review information into a data base. In addition data entry of all petition

signer names has been about 75% completed by Data Shop and agency staff. Duplicate checks have not been started. We expect to complete data entry of the names of petition signers and the duplicate checks by the time of the March 30, 2012 Board Meeting. The staff will present a series of recommendations to the Board for consideration at a future meeting which may enable the Board to determine sufficiency of the Lt. Governor's recall petition.

In order to complete our review of the full set of petitions we need to complete the data entry of all petition signer names for the Lt. Governor's recall petition and conduct our check for possible duplicates. This cannot be finished by March 19, 2012 as required in the court order. We have reallocated staff resources and expect to finish by the time of the March 30, 2012 meeting. However, it is possible that we would need additional time.

The need to complete our careful examination of the petitions is the primary justification for the request for an additional extension. Unlike the officeholders' request for additional time we can point to actual steps in our review process and benchmarks necessary to complete the statutory requirement of a careful examination of the petitions.

Election Timing

When we filed our petition in Dane County Circuit Court for an extension of time to review the recall petitions, we advised the court we believed it was essential to hold all recall elections on the same timetable if multiple petitions were found sufficient. As we approach what appears to be a certification of sufficiency on all six petitions we need to carefully evaluate the timing of recall elections. Unlike in 2011, there were no other scheduled election events that needed to be accommodated when ordering the nine senate recall elections. In addition because the recalls were in nine different areas of the state, there was very little overlap among counties.

In this case we have two possible statewide recall elections and four possible Senate recall elections. A preliminary survey conducted by staff last November indicates that a single statewide recall event will cost counties and municipalities at least \$9 million. If there is a primary in a one of the statewide recalls that will cost an additional \$9 million. A recall event in one of the Senate districts will cost approximately \$1 million. The Senate recall costs can be significantly reduced if held in conjunction with a statewide recall event.

When developing a proposed recall election schedule it is important to recognize that we have no control over the impact of any litigation challenging our determination of sufficiency. The court hearing the challenge may choose to stay the effect of our order while considering the sufficiency issue. Wis. Stats. §9.10 (3)(bm).

In addition to the significant cost issues that merit a consolidated set of recall election events, there are timing issues that need to be considered. Because our action is close to the completion of the April 3rd Spring Election and Presidential Preference Vote, county and municipal clerks need time to wrap up the Spring Election before they can begin preparing for a recall election. A description of required post-election activity is set forth below.

Post-Election Duties

While votes are cast and tabulated on Election Day, absentee ballots received up to 4 pm on the Friday following the election must be included in the final tally. In addition any voter issued a

provisional ballot has until 4 pm on the Friday following the election to submit the information required to enable the provisional ballot to be counted. Wis. Stats. §§6.97 (3)(b); 7.515 (3).

Municipal and county clerks need to conduct a canvass of the April 3rd election. The municipal canvass may not be held until after all outstanding absentee ballots have been received, provisional ballots remedied or 4 pm on the Friday following the election whichever is later. Wis. Stats. §§7.53(1)(a), (2)(d). The county canvass cannot be completed until all municipal returns are received or the Tuesday following the election whichever is later. Wis. Stats. §7.60(3).

There may be a recount of any of the several hundred state, county, municipal and school district offices that will appear on the April 3rd ballot. The last day for a municipal canvass would not be until April 9th, a losing candidate would have until April 12th to petition for a recount. A recount would start by April 13th at 9 a.m. for municipal offices. This will delay the final canvass in those jurisdictions.

Municipal clerks need to enter the voter registration information of individuals who registered at the polling place on Election Day into the Statewide Voter Registration System (SVRS) so the voters will appear on a poll list for any election held following the Spring Election. Local election officials have 30 days to complete this work. Wis. Stats. §6.33 (5)(a), 7.15 (4).

Clerks are also required to provide certain notices to specified absentee voters who did not return a ballot. Wis. Stats. §6.86 (2)(b), (2m)(a). The notice affects whether the voter would receive a ballot in a subsequent election.

Local election officials may not clear the memory devices on electronic voting equipment until 21 days following an election. Wis. Stats. §7.23 (1)(g). If there is a recount the information must be preserved until after the deadline for any appeal of the recount to court and exhaustion of any litigation. Clerks may not begin programming for the next election until the devices are cleared.

All of these duties may overlap with election preparation requirements for a recall election. A description of those duties is set out below.

Recall Election Preparation Duties

If a recall election is ordered by the G.A.B., candidates have until the second Tuesday following the order to qualify for the ballot. The G.A.B. must certify the list of candidates qualifying for the ballot to county clerks no later than the Tuesday of the third week following its order setting the election.

Once county clerks receive the certification of recall candidates from the G.A.B., they need to immediately prepare ballots for absentee voting and arrange for programming of voting equipment. Absentee ballots must be in the hands of municipal clerks 22 days before the election.

Any recall election schedule has to be set with an eye to these post-election requirements and recall election preparation duties. Recall elections must be scheduled on a Tuesday, unless that

day is a holiday. Wis. Stats. §9.10 (3)(b). This creates a possible conflict with the Memorial Day holiday on May 28, 2012.

Memorial Day Issues

If a recall election event is scheduled for Tuesday, May 29, 2012, municipal clerks will have almost insurmountable difficulties setting up polling places, recruiting poll workers and preparing for the election event. Municipal staff may not be available over the holiday weekend due to personal commitments. Municipal employees may have to be paid overtime or premium pay for work on a holiday weekend. Buildings where polling places are located may not be accessible, even if municipal staff are available to work over the holiday weekend.

Many municipal clerks are printing poll lists, sorting absentee ballots, stocking supply boxes, organizing signs and posters and arranging for the delivery and set up of voting equipment on the weekend and the day before the election. This makes conducting an election on the day following Memorial Day a logistical nightmare, a financial boondoggle and a practical impossibility. We need to avoid this possibility.

Dates for Possible Recall Events

If a recall election or elections were ordered on March 19, 2012, the recall election would be held on the Tuesday of the 6th week following certification. Wis. Stats. §9.10 (3)(b). That date is May 1, 2012. If a recall primary is required, May 1, 2012 would be the date of the primary and the election would be held four weeks later. That date is May 29, 2012, the day following Memorial Day. Wis. Stats. §9.10 (3)(f).

If a recall election or elections were ordered the week of March 26, 2012, the recall election would be held on May 8, 2012. The Board has tentatively set a meeting date of March 30, 2012 to address a final determination of sufficiency. If a recall primary is required, May 8, 2012 would be the date of the primary and the election would be held four weeks later. That date is June 5, 2012.

If a recall election or elections were ordered the week of April 2, 2012, the recall election would be held on May 15, 2012. The Board has tentatively set a meeting date of April 3, 2012 to address a final determination of sufficiency. If a recall primary is required, May 15, 2012 would be the date of the primary and the election would be held four weeks later. That date is June 12, 2012.

If a recall election or elections were ordered the week of April 9, 2012, the recall election would be held on May 22, 2012. The Board has not set a meeting date for this time period to address a final determination of sufficiency. If a recall primary is required, May 22, 2012 would be the date of the primary and the election would be held four weeks later. That date is June 19, 2012. Because of the statutory schedule for conducting a canvass of the election results, the canvass could not be held until the day following Memorial Day, May 29, 2012.

If a recall election or elections were ordered the week of April 16, 2012, the recall election would be held on May 29, 2012, the day following Memorial Day. The Board has not set a meeting date for this time period to address a final determination of sufficiency. If a recall

primary is required, May 29, 2012, the day following Memorial Day, would be the date of the primary and the election would be held four weeks later. That date is June 26, 2012.

Under the current timetable established by the court, G.A.B. needs to make a final determination of sufficiency no later than March 19, 2012. The agency cannot meet this deadline. As described in the Workload section of this memorandum, the staff cannot complete their work until at least March 30, 2012. The workload described is based on what is required by statute and the order of Judge Davis issued on January 5, 2012.

Given the cost issues related to conducting as many two statewide recalls and four Senate recalls, the Board needs to advocate for all recall events to be scheduled on the same date. Given the possible conflicts with an election event occurring near Memorial Day, the Board needs to advocate for a deadline to complete its work no later than April 6, 2012.

Looking at the logistics described above, the only feasible times for certifying recall elections are the weeks of March 26 and April 2, 2012. In discussions with county clerks on March 6, 2012 at their conference, the overwhelming majority preferred an election schedule of May 15/June 12. This provided the most flexibility for addressing post Spring Election requirements without the issues related to an election event too close to Memorial Day. We have solicited feedback from municipal clerks as well. The responses were not available at the time of the preparation of this memorandum.

The staff is putting in extraordinary hours to complete its work by March 30, 2012. We will be able to provide a more accurate estimate of our remaining workload at the March 12, 2012 meeting.

Proposed Motion:

The Government Accountability Board directs its staff to work with the Department of Justice to file a motion requesting an extension to complete its careful examination of the recall petitions to determine sufficiency and order any required recall election from March 19, 2012 to April 6, 2012.