

Tuesday, March 22, 2011 – 9:30 A.M.
 Risser Justice Center
 Room 150, 120 Martin Luther King, Jr. Blvd.
 Madison, Wisconsin

Open Session*

Wednesday, March 23, 2011 – 9:00 A.M.
 G.A.B. Board Room
 212 East Washington Avenue, Third Floor
 Madison, Wisconsin

Closed Session

*The Board may convene in closed session on Tuesday, March 22 and will return to open session to consider any remaining open session items before returning to closed session. Some open session agenda items may be considered on Wednesday, March 23.

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K. Closed Session

5.05 (6a) and 19.85 (1) (h)	The Board's deliberations on requests for advice under the ethics code, lobbying law, and campaign finance law shall be in closed session.
19.85 (1) (g)	The Board may confer with legal counsel concerning litigation strategy.
19.851	The Board's deliberations concerning investigations of any violation of the ethics code, lobbying law, and campaign finance law shall be in closed session.
19.85 (1) (c)	The Board may consider performance evaluation data of a public employee over which it exercises responsibility.

The Government Accountability Board has scheduled its next meeting for Monday, May 16, 2011 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin, beginning at 9:30 am.

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue, Third Floor
Madison, Wisconsin
January 13, 2011
10 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Selected new Board Officers	1
B. Delegated Authority to Director and General Counsel	2
C. Approved Democracy Trust Fund	2
D. Approved Ballot Access Report	2

Present: Judge Gordon Myse (by telephone), Judge Thomas Barland (by telephone), Judge Gerald Nichol (by telephone), Judge Michael Brennan (by telephone), Judge Thomas Cane (by telephone), and Judge David Deininger

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Shane Falk, Michael Haas, and Reid Magney

A. Call to Order

Chairperson Myse called the meeting to order at 10:01 a.m.

B. Director's Report of Appropriate Meeting Notice

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

C. Selection of Board Officers

The selection of Board Officers was done by lot as required by State law. Judge Deininger drew the name of Judge Barland to be G.A.B. Chair for 2011. Judge Deininger then drew the names of Judge Nichol to be G.A.B. Vice Chair and Judge Myse to be G.A.B. Secretary for 2011. Judge Barland asked Judge Deininger to chair the meeting because he was present in person.

D. Approval of Minutes of Previous Meetings

MOTION: Approve the minutes of the December 14 and December 22, 2011 meetings of the Government Accountability Board. Moved by Judge Nichol, seconded by Judge Barland. Motion carried unanimously.

E. Delegation of Certain Authority to the Director and General Counsel

MOTION: Delegate certain provisions of the Board's authority to the Director and General Counsel as set out on page 17 of the G.A.B. meeting materials of January 13, 2011. Moved by Judge Myse, seconded by Judge Nichol. Motion carried unanimously.

F. Personal Appearances

Attorney Joseph K Kuemmel registered a personal appearance on behalf of Joel Winnig.

H. Report on Impartial Justice Act Applications and Distributions

(This item was taken out of order)

Staff Counsel Michael Haas presented an oral and written report. Two candidates, Justice David Prosser and Joanne Kloppenburg, have qualified for public financing for the February 15, 2011 primary. Candidate Joel Winnig's application raised an issue because his cash contributions exceeded the aggregate limit of \$500 mandated by the Impartial Justice Act. Staff recommends that the Democracy Trust Fund application of candidate Winnig should not be rejected based upon the fact that the campaign received cash contributions in excess of \$500. As noted in the staff recommendation, the cash contributions satisfied the definition of "qualifying contribution," the conciliation language in the Statutes supports the recommendation, and the eligibility of other candidates is not being affected by technical issues related to their certifications. Furthermore, because the cash contributions are within the allowable limit for qualifying contributions, and given the small denominations of each individual contribution, Board staff does not believe it is necessary to require the Winnig campaign to seek out individual contributors and exchange cash contributions for contributions made by check or money order.

Discussion.

MOTION: Approve the Democracy Trust Fund application of candidate Joel Winnig and decline to impose a penalty regarding cash contributions received by the Winnig campaign exceeding \$500. Moved by Judge Myse, seconded by Judge Barland. Motion carried unanimously.

G. Election Administration – Ballot Access Report

Elections Division Administrator Nathaniel E. Robinson and Lead Election Specialist Diane Lowe presented a summary of ballot access issues that arose related to the 2011 Spring Election.

MOTION: Accept ballot access report from staff and grant ballot access to all the candidates except Robert A. Hawley and David W. Keck, who did not file nomination papers. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

I. Director's Report

Kevin J. Kennedy updated the Board regarding legislative activity related to voter photo ID, recent significant staff departures, and briefings for new Legislators and members of the Governor's staff

MOTION: To waive Board member per diem payments for the teleconference meeting in order for the Board to support the State's policy of employees having to take furlough days. Moved by Judge Cane, seconded by Judge Myse. Motion carried unanimously.

Judge Deininger returned the chairing of the meeting to Judge Barland.

Judge Nichol asked about the status of the voter photo ID bill and whether it would be in effect for the April 5, 2011, Spring Election. Discussion of the bill and its impact on election officials.

Judge Myse commented on the retirement of Barbara A. Hansen as director of the Statewide Voter Registration System, and expressed his and the Board's appreciation for her many years of service.

J. Adjourn

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

The Board adjourned at 10:53 a.m.

####

The next meeting of the Government Accountability Board is scheduled for 9:30 a.m. Tuesday, March 22 and 9:00 a.m. on Wednesday, March 23, at the G.A.B. offices, 212 East Washington Avenue, Madison, Wisconsin.

January 13, 2011 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

March 7, 2011

January 13, 2010 Government Accountability Board meeting minutes certified by:

Judge Gordon Myse, Board Secretary

March 22, 2011

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 22-23, 2011 Board Meeting

TO: Members, Government Accountability Board

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

Prepared and Presented by:
Kathryn Mueller
MOVE Act Elections Specialist

SUBJECT: Change in Wisconsin's Partisan Primary Date
Options for Consideration

The Military and Overseas Voter Empowerment (MOVE) Act requires all states to distribute an official ballot that contains federal offices, i.e., President, Vice-President, U. S. Senate and U.S. House of Representatives, to military and overseas voters no less than 45 calendar days prior to the election, if the voter has submitted an absentee ballot request. Wisconsin's September Partisan Primary is scheduled the second Tuesday in September which, combined with current statutory ballot deadlines, makes it impossible to meet the MOVE Act's 45-day requirement. Simply stated, the Wisconsin September Partisan Primary must be moved.

For the 2010 Fall Election Cycle, we requested a waiver from the 45-day transit provision of the MOVE Act, because we have a long demonstrated history of providing ballots to military and overseas votes in a timely manner; though, less than 45 days. Due to the fact that Wisconsin's 2010 election calendar fell short of the federal statutory 45-day minimum transit time as required by the MOVE Act, our State was sued by the U. S. Department of Justice. That lawsuit resulted in a consent decree which ensured that Wisconsin's military and overseas voters had sufficient time to cast ballots for the November 2, 2010 General Election. Moving forward however, we have been advised by the U. S. Justice Department that a permanent structural change to Wisconsin's Election Calendar needs to be effectuated for the 2012 election cycle and beyond. In order to comply with the MOVE Act, a statutory change in the State's September Partisan Primary date and possibly other election dates as well, is required.

The Government Accountability Board's staff began the preparation for moving the primary by creating an election timeline using the current statutory deadlines and then adjusting the timeline to comply with the MOVE Act. Board staff then met with local election officials (municipal and county clerks) to discuss the election timeline and gather their input on options

for a new Partisan Primary date. Staff developed an election timeline using the current statutory election calendar and the input from local election officials.

Staff's main concern when creating options for a new election calendar was ensuring the timeline would allow compliance with the MOVE Act's 45-day ballot requirement. Under the current election schedule, county clerks are often given only a matter of days to attempt to prepare ballots in between the September Partisan Primary and the November General Election. County clerks have indicated that there have been a number of times where the ballots were not prepared in time to meet the current 30-day deadline. Given the U.S. Department of Justice's interest in states' compliance with the MOVE Act, the election timeline needs to make certain that ballots are available for municipal clerks to send 45 days before all federal elections.

Staff and local election officials identified the following election events that have created challenges in the past in the preparation of ballots, and recommended new timelines for these events. These events require a change from the current election timeline to ensure ballots can be prepared and delivered in enough time to comply with the MOVE Act.

Nomination Paper Deadline: Staff needs additional time to review and resolve nomination paper challenges. Currently the Board is to certify the candidate's nomination papers the Tuesday following the Friday that nomination paper challenges are due. Any additional problems experienced during the nomination paper challenge process could result in the postponement of the certification of candidates which delays the ballot printing process. This time frame does not give staff enough time to appropriately resolve challenges.

Ballot Delivery: Currently, ballots are to be delivered to municipal clerks 30 days before the Partisan Primary and the General Election. The MOVE Act requires that ballots are sent to military and overseas electors 45 days before any federal election. Staff and local election officials recommend a 47-day ballot delivery in the new election cycle. The 45th day before any General Election is a Saturday. In addition, some municipal clerks' offices are not open on Fridays. Making Wisconsin's ballot delivery requirement 47 days prior to the election allows municipal clerks the convenience of having official ballots delivered to their offices during established business hours. This allows them to more easily comply with the MOVE Act.

Certification of Candidates: The certification of candidates by the Board is the event that allows county clerks to begin working with printers and programmers to create ballots. The local election officials, especially county clerks, emphasized that the certification of candidates by the Board must be done three weeks before ballots are delivered to municipal clerks. Currently, the Board certifies candidates approximately 35 days before the General Election and county clerks are supposed to have ballots delivered to municipal clerks 30 days before the election. As already mentioned, county clerks have missed the current deadline of 30 days in the past due to this tight time constraint, given issues involving recounts, late certification, ballot printers, ballot vendors, correcting mistakes, proofing, the number of ballots types that need to be prepared, and a number of other factors. County clerks stated that they need the Board to certify candidates sixty-nine (69) days before the election in order to have sufficient time to make sure ballots are prepared and delivered in enough time to comply with the MOVE Act. This proposed change gives county clerks 21 days to prepare ballots.

Recount Timeline: Commonly, recounts are requested after Partisan Primaries. They are requested after other elections but have the most effect on an election cycle when requested for a Partisan Primary. Recounts delay when the Board can certify candidates, further decreasing the short time county clerks have to prepare ballots. The current election timeline has the Board certifying candidates before the recount period has concluded. Staff and local election officials recommend that the certification of candidates be completed after the recount period has concluded.

Local election officials who met with staff made the aforementioned recommendations regarding the election timeline. In addition to the election calendar, the local election officials also made some recommendations regarding the new date of the Partisan Primary. Taking into consideration their county and municipal schedules, the participating election officials recommend that the Partisan Primary be held either the 3rd or 4th Tuesday in July. The attached spreadsheet outlines the next four years using the recommended timeline and scheduling the Partisan Primary on the 3rd Tuesday in July. Also included in the attached spreadsheet is the clerks' recommendation for the Presidential Preference election.

The local election officials' advisory committee discussed the Presidential Preference election which must also meet the 45-day ballot requirement of the MOVE Act. Information from the Republican and Democratic Parties of Wisconsin indicates that Wisconsin's Presidential Preference should be moved to a date after March 1st in order for the convention delegates to be recognized by the national parties. The local election officials discussed moving the Presidential Preference to the Spring Election, moving the Spring Election to the 1st Tuesday in March and moving the Spring Primary to coincide with the prior year's November General Election. These suggested changes are shown on the attached spreadsheet.

Staff is now focusing on moving the Partisan Primary for 2012 and will be taking up the Presidential Preference election at a later time. For the 2012 Presidential Preference, a special federal ballot will be created and sent out 45 days before the election to comply with the MOVE Act. Staff will then work with the Legislature to create a Presidential Preference schedule that complies with the MOVE Act.

Recommendation: Staff has been communicating with members of the Legislature regarding rescheduling election dates. Legislative leaders were sent a list of potential Partisan Primary dates to begin their discussion of changing the Partisan Primary.

Staff is not advocating for a specific date for the new Partisan Primary date, because that is an issue for the Legislature to decide with input from clerks and the public. Staff is, however, asking for the Board to endorse the following guiding principles for legislative consideration that if embraced by the Legislature, will comply with the MOVE Act, and address the election administrative policy concerns and business processes identified by local election officials and staff. In accordance with the details provided in this briefing document and in the attachments, these recommended guiding principles include:

1. The new September Partisan Primary date should be set far enough in advance of the November general election to comply with the MOVE Act's 45-day absentee ballot requirement.
2. The date should accommodate the resolution of likely post-primary recounts.

3. The date should provide ample time for G.A.B. staff to review nomination papers, resolve ballot access challenges and for the Government Accountability Board to certify candidates for ballot preparation.
4. The new Partisan Primary date should allow ample time for ballot preparation (proofing, programming and printing) by county clerks and delivery to 1,850 municipal clerks.

Although staff is not making a recommendation for a specific alternative to the current second Tuesday in September Partisan Primary date, staff recommends that the Partisan Primary not be held the 3rd week in August and cautions that the 2nd week in August may be too close to the General Election to ensure a 45-day ballot preparation.

Wisconsin may also need to explore the feasibility of creating a 45-day ballot requirement for all elections to give all military and overseas electors the same amount of time to receive, mark and return their absentee ballot regardless of the offices on the ballot. Staff will keep the Board apprised of its consideration of that issue.

Proposed Motion: That the Board accept the staff report and endorse the four aforementioned guiding principles for legislative consideration. In addition, that the Board direct staff to continue to work with the Legislature to develop a timetable for moving the September primary consistent with federal requirements, while ensuring sufficient time for the Board and local election officials to certify candidates and prepare and deliver ballots.

Attachments

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Moving the September Partisan Primary Options for Consideration

The federal 2009 Military and Overseas Voter Empowerment (MOVE) Act requires all states to distribute an official ballot that contains federal offices, i.e., President, Vice-President, U. S. Senate and U.S. House of Representatives, to military and overseas voters no less than 45 calendar days prior to a federal election. The current date of the Partisan Primary, combined with the current statutory ballot deadlines, makes it impossible to meet this 45-day requirement. Simply stated, the Wisconsin September Partisan Primary must be moved.

The Government Accountability Board's staff has met and will continue to meet with local election officials (municipal and county clerks) to gather broad input on viable recommendations for consideration by the Governor and Legislature on possible new Partisan Primary dates. This report sets out the initial thoughts and recommendations of local election officials and G.A.B. staff.

Administrative Factors to Consider in Establishing a New Partisan Primary Election Timeline

While the MOVE Act establishes a 45-day transit period, printed ballots must be delivered to municipal clerks at least 47 days before the General Election, because the 45th day is a Saturday and the 46th day is a Friday, when several municipal clerk offices are closed. County clerks must have ballots prepared one day before they are distributed to municipal clerks. The G.A.B. must certify state and federal candidates to county clerks three weeks before the ballots are delivered to municipal clerks. This ensures county clerks have enough time to create, proof, and print the complicated Partisan Primary ballots and to program election equipment. The Board therefore, must certify candidates to county clerks 69 days before the Partisan Primary.

Under current statutes, the nomination paper circulation timeline for the General Election is June 1st to the 2nd Tuesday in July. This creates a time period of 38-44 days to circulate nomination papers depending on the date of the 2nd Tuesday in July. Allowing the G.A.B. 15 days after nomination papers are due to review nomination papers, receive and rule on any challenges, and certify candidates would require that the nomination paper circulation period begin 122-128 days before the Partisan Primary.

This report outlines the timeframes created by alternative 2012 Partisan Primary election dates proposed for consideration. The dates are subject to changes in future even-numbered years. The nomination paper due date in the examples below is 44 days after the circulation date, providing the maximum time period under current statutes. This timeframe can be adjusted. The presented timeline differs from the current election cycle in four ways:

- 1) Extra time is built in after the nomination paper deadline before G.A.B. certifies candidates to ensure time to review and resolve nomination paper challenges.
- 2) Ballots must be delivered 47 days before the General Election instead of 30 days to comply with the MOVE Act.

- 3) The G.A.B. will certify candidates 69 days before the General Election rather than the current time period which allows only approximately 35 days. The additional time is needed to ensure clerks have enough time to create, proof and print ballots:

County Clerks have informed the G.A.B. that the current timeline to create, proof and print ballots often results in missing the current statutory deadline of making ballots available 30 days prior to the election, and that allowing three weeks to prepare ballots would significantly improve their ability to meet the 45-day MOVE Act deadline.

- 4) Unlike the current statutory timeline, the recount time period is completed before the Board certifies candidates to ensure that a recount will not prevent ballots from being printed 45 days before the election.

It should also be noted that for any of the summarized examples, changing the date of the Partisan Primary will also require altering the reporting periods and filing deadlines for campaign finance reports, if the current reporting framework is to be retained.

Examples of Alternative Partisan Primary Dates

1st Tuesday in June *(June 5, 2012)*

Nomination Paper Circulation – February 5, 2012

Nomination Papers are due – March 13, 2012

G.A.B. Certifies Candidates to County Clerks– March 28, 2012

County Clerks Deliver Ballots to Municipal Clerks – April 19, 2012

Nomination Paper Timelines can be adjusted. For example: February 1st – 2nd Tuesday in March

Pros

- School summer vacation has not started yet ensuring more people will be at their Wisconsin residences during the nomination period and on the Primary date
- Provides enough time before November General Election to accommodate potential extension of provisional ballot deadline and to ensure all recounts are completed before ballots need to be printed and delivered
- Allows for consideration of combining the Presidential Preference Primary with the Partisan Primary
- Several other states conduct their primaries on this date

Cons

- The Legislature has floor periods scheduled the 3rd and 4th week of February (8 days) and the 1st and 2nd week of March (8 days), conflicting with the nomination period for legislative candidates
- Most significant change from the current election cycle and expectations of Wisconsin voters and candidates
- Municipal and county clerks will be conducting the Spring Election at the same time as they are preparing ballots for the Partisan Primary
- Earlier nomination period during the Legislative session affects lobbying and campaign finance restrictions
- Partisan Primary held in June creates the longest campaign season, which may be more likely to result in more expensive campaigns and voter fatigue

3rd Tuesday in July *(July 17, 2012)*

Nomination Paper Circulation – March 11, 2012

Nomination Papers are due – April 24, 2012

G.A.B. Certifies Candidates to County Clerks – May 9, 2012

County Clerks Deliver Ballots to Municipal Clerks – May 31, 2012

Nomination Paper Timelines can be adjusted. For example: March 15th – 3rd Tuesday in April

Pros

- Provides enough time before November General Election to accommodate potential extension of provisional ballot deadline and to ensure all recounts are completed before ballots need to be delivered
- Consistent with the recommendation of the clerks' advisory committee to the G.A.B. (3rd or 4th Tuesday in July)

Cons

- Partisan Primary held during a summer vacation month
- Earlier nomination period during the Legislative session affects lobbying and campaign finance restrictions
- Municipal and county clerks will be completing required wrap-up tasks for the Spring Election at the same time as they are preparing ballots for the Partisan Primary
- Partisan Primary held in July creates longer campaign season, which may be more likely to result in more expensive campaigns and voter fatigue

4th Tuesday in July *(July 24, 2012)*

Nomination Paper Circulation – March 18, 2012

Nomination Papers are due – May 1, 2012

G.A.B. Certifies Candidates to County Clerks – May 16, 2012

County Clerks Deliver Ballots to Municipal Clerks – June 7, 2012

Nomination Paper Timelines can be adjusted. For example: April 1st – April 30th

Pros

- Provides enough time before November General Election to accommodate potential extension of provisional ballot deadline and to ensure all recounts are completed before ballots need to be delivered
- Consistent with the recommendation of the clerks' advisory committee recommendation to the G.A.B. (3rd or 4th Tuesday in July)

Cons

- Partisan Primary held during a summer vacation month
- The Legislature has a limited business floor period scheduled from April 24th to May 3rd, conflicting with the nomination period for legislative candidates
- Earlier nomination period during the Legislative session affects lobbying and campaign finance restrictions
- Municipal and county clerks will be completing required wrap-up tasks for the Spring Election at the same time as preparing for ballots for the Partisan Primary

- Partisan Primary held in July creates longer campaign season, which may be more likely to result in more expensive campaigns and voter fatigue

1st Tuesday in August (*August 7, 2012*)

Nomination Paper Circulation – April 1, 2012

Nomination Papers are due – May 15, 2012

G.A.B. Certifies Candidates to County Clerks – May 30, 2012

County Clerks Deliver Ballots to Municipal Clerks – June 21, 2012

Nomination Paper Timelines can be adjusted. For example: April 1st – May 1st

Pros

- Less significant adjustment to routines of Wisconsin voters and candidates
- Less disruption to municipal and county clerks' work in completing required wrap-up tasks for Spring Election.
- Less significant impact on length of campaign season

Cons

- May require MOVE Act waiver of 45-day requirement if a recount requires ballot printing to be delayed
- Partisan Primary held during a summer vacation month
- Partisan Primary held during the time of the State Fair
- The Legislature has a limited business floor period scheduled from April 24th to May 3rd, conflicting with the nomination period for legislative candidates
- Earlier nomination period during the Legislative session affects lobbying and campaign finance restrictions
- Nomination Papers circulated during the end of the Spring Election season may create voter confusion

2nd Tuesday in August (*Tuesday, August 14, 2012*)

Nomination Paper Circulation – April 8, 2012

Nomination Papers are due – May 22, 2012

G.A.B. Certifies Candidates to County Clerks – June 6, 2012

County Clerks Deliver Ballots to Municipal Clerks – June 28, 2012

Nomination Paper Timelines can be adjusted. For example: April 1st – 2nd Tuesday in May

Pros

- Least significant adjustment to expectations and routines of voters and candidates
- Partisan Primary date would not conflict with State Fair in 2012 or 2014, but would in 2016 and 2018, based upon the Fair's current scheduling formula
- Least significant interference with municipal and county clerks completing wrap-up tasks for Spring Election
- Least significant impact on length of campaign season

Cons

- May require MOVE Act waiver if a recount requires ballot printing to be delayed

(Some states with a Partisan Primary on the 3rd Tuesday of August had to apply for a MOVE Act waiver in 2010; the 2nd Tuesday in August may also be too close to the General Election)

- Partisan Primary held during a summer vacation month
- The Legislature has a limited business floor period scheduled from April 24th to May 3rd, and a veto review floor period scheduled for May 22-23, conflicting with the nomination period for legislative candidates
- Earlier nomination period during the Legislative session affects lobbying and campaign finance restrictions
- Nomination Papers circulated during the end of the Spring Election season may create voter confusion

Other MOVE Act Considerations

- Special Election Cycle
(Needs to meet the 45-day ballot availability requirement for federal special elections)
- Presidential Preference
(Needs to meet the 45-day ballot availability requirement)
- Creating a 45-day ballot requirement for all elections
(Federal government and Commission on Uniform Laws are encouraging all states to require 45-day ballot availability requirement for all elections including non-federal elections)

A report with additional analysis will be submitted to the Governor and Legislature after members of the Government Accountability Board consider this matter during its March 22-23, 2011, regular meeting. If you would like to share your comments directly with the G.A.B., you are welcomed to do so during the Public Comment Segment of the Board meeting on Tuesday morning, March 22, 2010, starting at about 9:45 a.m. The meeting will be held in our office located at 212 East Washington Avenue, Third Floor (location may be subject to change).

My staff and I are available to answer your questions and discuss this review. I may be contacted at Kevin.Kennedy@wi.gov, or at (608) 261-8683. Thank you in advance for reviewing this matter and for your feedback.

Ad Hoc Clerk Committee's Recommended Election Calendar

SP Date	SE Date	PP Date	GE Date	Real Date	Event
-76				Thursday, December 01, 2011	SE Nomination paper circulation begins
-42				Tuesday, January 03, 2012	SE Nomination papers due
-38				Wednesday, January 11, 2012	GAB certifies candidates for SP ballot
-38				Saturday, January 14, 2012	SP Referenda due
-22				Monday, January 30, 2012	County has SP ballots prepared
-21				Tuesday, January 31, 2012	SP Ballots delivered to muni clerks
	-46			Friday, February 17, 2012	Special Presidential Preference Ballot Sent Out
0				Tuesday, February 21, 2012	Spring Primary
8				Wednesday, February 29, 2012	County SP canvass due to GAB
11				Saturday, March 03, 2012	SP Recount window closes for state office
14				Tuesday, March 06, 2012	GAB certifies SE candidates
14				Tuesday, March 06, 2012	SE Referenda due to clerk
24				Friday, March 16, 2012	SP Recount must be concluded
	-22			Monday, March 12, 2012	County has SE ballots prepared
	-21			Tuesday, March 13, 2012	SE ballots delivered to muni clerks
	0			Tuesday, April 03, 2012	Spring Election/Pres. Preference
	30			Thursday, May 03, 2012	SE Post election tasks completed
		-128		Sunday, March 11, 2012	GE Nomination paper circulation begins
		-84		Tuesday, April 24, 2012	GE Nomination papers due
		-69		Wednesday, May 09, 2012	GAB certifies candidates for PP ballot
		-69		Wednesday, May 09, 2012	PP Referenda due to clerk
		-48		Wednesday, May 30, 2012	County has PP ballots prepared
		-47		Thursday, May 31, 2012	PP Ballots delivered to muni clerks
		0		Tuesday, July 17, 2012	Partisan Primary
		30		Thursday, August 16, 2012	PP Post election tasks completed
		13		Monday, July 30, 2012	County PP canvass due to GAB
		16		Thursday, August 02, 2012	PP Recount window closes for state office
		29		Wednesday, August 15, 2012	PP recount must concluded
		31	-69	Wednesday, August 29, 2012	GAB GE and SP candidates certified
		31	-69	Wednesday, August 29, 2012	GE and SP Referenda due to clerk
		45	-48	Wednesday, September 19, 2012	County has GE ballots prepared
			-47	Thursday, September 20, 2012	GE Ballots delivered to muni clerks
			-117	Thursday, July 12, 2012	SE Nomination paper circulation begins
			-79	Sunday, August 19, 2012	SE Nomination papers due
			-69	Wednesday, August 29, 2012	GAB certifies candidates for SP ballot
		0		Tuesday, November 06, 2012	General Election/Spring Primary
		30		Thursday, December 06, 2012	GE/SP Post election tasks completed
		13		Monday, November 19, 2012	County GE/SP canvass due to GAB
		16		Thursday, November 22, 2012	GE/SP Recount window closes for state office
		29		Wednesday, December 05, 2012	GE/SP recount must concluded
	-69	31		Friday, December 07, 2012	GAB GE and SP candidates certified
	-47			Thursday, January 17, 2013	County has SE ballots prepared
	-46			Friday, January 18, 2013	SE ballots delivered to muni clerks
	0			Tuesday, March 05, 2013	Spring Election
	30			Thursday, April 04, 2013	SE Post election tasks completed
			-117	Thursday, July 11, 2013	SE Nomination paper circulation begins
			-79	Sunday, August 18, 2013	SE Nomination papers due
			-69	Wednesday, August 28, 2013	GAB certifies candidates for SP ballot
		0		Tuesday, November 05, 2013	Spring Primary
30				Thursday, December 05, 2013	SP Post election tasks completed
13				Monday, November 18, 2013	County SP canvass due to GAB
16				Thursday, November 21, 2013	SP Recount window closes for state office
29				Wednesday, December 04, 2013	SP recount must concluded
31	-69			Friday, December 06, 2013	GAB SP candidates certified
	-47			Thursday, January 16, 2014	County has SE ballots prepared
	-46			Friday, January 17, 2014	SE ballots delivered to muni clerks
	0			Tuesday, March 04, 2014	Spring Election

Ad Hoc Clerk Committee's Recommended Election Calendar

		-121		Sunday, March 16, 2014	GE Nomination paper circulation begins
		-84		Tuesday, April 22, 2014	GE Nomination papers due
		-69		Wednesday, May 07, 2014	GAB certifies candidates for PP ballot
		-69		Wednesday, May 07, 2014	PP Referenda due to clerk
		-48		Wednesday, May 28, 2014	County has PP ballots prepared
		-47		Thursday, May 29, 2014	PP Ballots delivered to muni clerks
		0		Tuesday, July 15, 2014	Partisan Primary
		30		Thursday, August 14, 2014	PP Post election tasks completed
		13		Monday, July 28, 2014	County PP canvass due to GAB
		16		Thursday, July 31, 2014	PP Recount window closes for state office
		29		Wednesday, August 13, 2014	PP recount must concluded
		31	-69	Wednesday, August 27, 2014	GAB GE and SP candidates certified
		31	-69	Wednesday, August 27, 2014	GE and SP Referenda due to clerk
		45	-48	Wednesday, September 17, 2014	County has GE ballots prepared
			-47	Thursday, September 18, 2014	GE Ballots delivered to muni clerks
			-117	Thursday, July 10, 2014	SE Nomination paper circulation begins
			-79	Sunday, August 17, 2014	SE Nomination papers due
			-69	Wednesday, August 27, 2014	GAB certifies candidates for SP ballot
			0	Tuesday, November 04, 2014	General Election/Spring Primary
			30	Thursday, December 04, 2014	GE/SP Post election tasks completed
			13	Monday, November 17, 2014	County GE/SP canvass due to GAB
			16	Thursday, November 20, 2014	GE/SP Recount window closes for state office
			29	Wednesday, December 03, 2014	GE/SP recount must concluded
	-69		31	Wednesday, December 24, 2014	GAB GE and SP candidates certified
	-47			Thursday, January 15, 2015	County has SE ballots prepared
	-46			Friday, January 16, 2015	SE ballots delivered to muni clerks
			0	Tuesday, March 03, 2015	Spring Election

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of March 22-23, 2011

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: Legislative Status Report

Following is a summary of legislative proposals that Board staff is monitoring:

1. Senate Bill 6 and Assembly Bill 7 – Photo ID:

SB6 and AB7 were introduced as identical companion bills which would require electors to show a valid form of photo identification prior to receiving a ballot. SB7 has been amended and is at the final stage before passage in the Senate, but has not been considered in the Assembly. AB7 remains in its original form and has not received a committee hearing. The Assembly's next scheduled floor session is April 5, 2008, and therefore it appears photo ID legislation will not be in effect for the 2011 Spring Election.

Board staff has spent a substantial amount of time analyzing SB6 and working with the Legislature to address practical and administrative issues in implementing the proposed bill. Director Kennedy presented testimony at the day-long committee hearing, including a number of suggested alterations to the bill, as well as a subsequent memorandum recommending changes to the Substitute Amendment considered by the Senate. Some of the recommendations of the Board staff have been incorporated into the bill.

Board staff also provided a fiscal estimate for the bill and a subsequent supplement to the estimate to address questions of the Legislative Fiscal Bureau. The fiscal estimate itemized the Board's estimated initial implementation costs of approximately \$2.1 million, in addition to costs to be borne by municipalities.

A more detailed summary of the major provisions of SB6 and its status is included in the attached memorandum dated February 25, 2011.

2. Senate Bill 17 and Assembly Bill 28: Reporting by nonresident committees:

SB17 and AB28 are companion bills which have been referred to committees but have not received public hearings. The legislation would expand the amount of campaign finance information which is required to be reported by nonresident political committees. Currently such committees are required to report only contributions received by Wisconsin residents and expenditures made which involve Wisconsin elections.

3. Assembly Bill 32: Communications by legislators:

AB32 also has been referred to committee and has not been scheduled for a public hearing. The bill would modify the statute which prohibits legislators who are up for re-election from distributing more than 49 pieces of substantially identical material between June 1st of the election year and the date of the election. The bill would create an exception for communications to constituents during the 45 days following a declaration of emergency if the communication relates to the subject of the emergency

4. Assembly Committee on Election and Campaign Reform Informational Hearing

The Assembly Committee on Election and Campaign Reform plans to conduct an informational hearing on Thursday, March 24, 2011 to gather testimony on a variety of election-related proposals. The hearing is by invitation only. We have been advised nine (9) groups, including the G.A.B., have been invited to present 10 minutes of testimony along with written remarks. Elections Division Administrator Nat Robinson along with Staff Counsel Mike Haas will be represent the G.A.B. at the hearing.

5. Elimination of Election Day Registration:

While not yet introduced as a bill, the possibility of legislation to eliminate Election Day Registration has been mentioned by some legislators. Attached is an informational sheet which outlines the importance of Election Day Registration to the administration of elections in Wisconsin, primarily with regard to the State's exemption from the requirements of the National Voter Registration Act of 1993 (NVRA). Board staff recommends that the Board support the continuation of Election Day Registration and oppose any legislative proposal to eliminate it.

Recommended Motion: The Board recognizes the benefits of Election Day Registration for both voters and election officials in Wisconsin and opposes any legislative proposal to discontinue it.

The Case for Election Day Registration in Wisconsin

Executive Summary

Wisconsin voters have been able to register at the polls for 35 years, and during that time the State has boasted one of the highest voter turnout rates in the United States. Election Day Registration (EDR) has made it easier for Wisconsin electors to exercise their right to vote. While EDR has imposed some additional duties on election workers, and some have argued that it provides opportunities for voter fraud, it has also saved the state untold millions of dollars in administrative costs because EDR allows Wisconsin to be exempt from the National Voter Registration Act of 1993. In the current legislative session, eliminating EDR has been mentioned as part of a larger package of election reforms, including voter photo ID. Eliminating EDR would not provide any meaningful increase in ballot security, and would come at a significant financial cost to taxpayers and a loss of convenience cost to voters.

Background

Wisconsin has had EDR since 1976, when it was passed as part of a comprehensive legislative package making changes to the state's voter registration provisions. EDR was first used in the fall elections of 1976.

The Legislature made the following findings in the legislation establishing EDR:

The legislature finds that the vote is the single most critical act in our democratic system of government; that voter registration was not intended to and should not prevent voting; that registration should simply be a remedy against fraud and its burden should be placed upon administrators, not the electorate. The legislature further finds that it is extremely difficult for workers to find time to visit a registration office that is open only during working hours; that transportation costs to remote locations impede registration; and that the act of personal registration is a major cause of limited electoral participation. Therefore, pursuant to the policy of this state and nation to ensure all people the right to vote, the legislature finds it imperative to expand voter registration procedures. Section 1, Chapter 85, Laws of 1975.

At the time the legislation was passed and until January 1, 2006, Wisconsin law only required voter registration in municipalities with a population of more than 5,000. In 2006 there were approximately 176 municipalities with a population of more than 5,000. About 350 municipalities had voter registration before January 1, 2006. With enactment of the Help America Vote Act of 2002 by the federal government, voter registration became mandatory throughout the state.

Reasons to Retain Election Day Registration

1. Convenience for Wisconsin's Voters.

Election Day Registration provides a valuable service to Wisconsin voters, and is consistent with the legislative policy to reduce the burden on voters to participate in the electoral process.

While the name "Election Day Registration" suggests a purpose of registering new voters on Election Day, the majority of voters using the convenience of EDR do so to update their registration to reflect changes in address or name. This saves voters the burden of finding time to make the name or address change at some point before Election Day. In many other states without EDR, voters are required to do so at least 30 days before Election Day.

Election Day Registration and its underlying policies were a Legislative determination in 1975. In 2011 there is an increasing need to accommodate busier voters, particularly in light of the reduction in the availability of government services. Voters want government to provide services conveniently and in a cost effective manner. EDR accomplishes that goal.

Attached is a table showing the number of EDRs in recent November general elections. Note that a large number of these voters were already registered. They used EDR to update their voter registration to reflect an address change or a name change.

2. EDR increases voter participation.

Election Day Registration enables voters to register to participate in the election process when they are more likely to be paying attention, immediately before and on Election Day.

There have been a number of studies nationally and in Wisconsin that demonstrate EDR increases voter participation. Shortly after Minnesota and Wisconsin established EDR, Richard Smolka, a professor at American University and editor of Election Administration Reports, released a study showing that EDR increased turnout in both states. This was remarkable because even in the 1970's both states were among the leaders in voter participation.

Professor Michael McDonald of George Mason University noted in his analysis of 2008 election voter participation that five of the top six states in voter turnout in 2008 used EDR. A group of political scientists at the University of Wisconsin-Madison have noted in two recent studies that EDR increases voter turnout. *The Impact of Election Day Registration on Voter Turnout and Election Outcomes.* Barry C. Burden, Jacob R. Neihsel, November 2010; *The Effects and Costs of Early Voting, Election Day Registration, and Same Day Registration in the 2008 Elections.* Barry

C. Burden, David T. Canon, Kenneth R. Mayer, Donald P. Moynihan December 2009.

A poll conducted following the November 2008 election by political scientists at several Big 10 universities demonstrated that Wisconsin voters were extremely satisfied with their registration and voting experience. Wisconsin voters were more satisfied than voters in other Big 10 states and the nation. *Wisconsin Voter Experiences in the November 2008 General Election*, Barry C. Burden, November 2008.

3. Voters registering on Election Day provide strong proof of eligibility.

The vast majority of voters who register on Election Day do so using a State driver license or ID card.

Under Wisconsin law, a voter registering on Election Day must provide an identifying document that shows the voter's full name and current address. The list of identifying documents is almost identical to the type of identification set out in the Help America Vote Act of 2002 (HAVA) for first-time voters who register by mail.

This requirement has been in effect since EDR was established. It ensures the voter is eligible to vote at the polling place. Most individuals who register to vote on Election Day provide a current Wisconsin driver license. In 2010, the vast majority of voters (94 percent) using EDR provided a driver license to establish proof of current residence.

With the likely implementation of a photo ID requirement for voting in the near future, the public should have even more confidence that a voter registering at the polling place on Election Day is the person the voter claims to be. Even without photo ID legislation, there is no evidence to suggest that voters registering on Election Day are more likely to attempt to cast an illegal ballot.

A small number of voters wishing to register at the polling place are unable to provide current proof of residence. Wisconsin law enables these voters to complete their registration by having a qualified elector of the same municipality corroborate the information on the voter registration form (name, address, date of birth, identifying number). This is often referred to as "vouching." The number of Election Day registrants using a corroborator to complete their registration is very small. See the attached table. The vast majority of voters who register on Election Day using a corroborator have a Wisconsin driver license, but were unable to use it as proof of residence because the address was not current.

4. EDR exempts Wisconsin from the costs and requirements of the National Voter Registration Act of 1993 (Motor Voter or NVRA)

The NVRA requires states to offer voter registration services to citizens seeking services from the Division of Motor Vehicles and state agencies providing social services to low income residents and individuals with disabilities. Wisconsin is exempt from these costly, inefficient procedures because it permits voters to register at the polling place on Election Day.

Registration

In NVRA states, employees of certain non-election agencies are required to offer customers and clients the opportunity to register, to assist with the completion of registration forms, to transmit completed forms to local election officials, and to keep track of the number of people who declined the offer to register. These mandatory duties are in addition to the required services these employees provide which are more directly related to the missions of their respective state agencies.

This process imposes additional transaction costs on state agencies. It introduces opportunity for errors in completing the voter registration forms. Other state agencies are understandably not familiar with or invested in providing voter registration services, and are focused on the efficient delivery of agency-related services, potentially undermining the need to transmit voter registration forms in a timely manner to the appropriate election official.

When election officials receive voter registration forms from other state agencies, they must determine whether the form is properly completed, which may require follow up with the voter. After registration information is entered into the Statewide Voter Registration System (SVRS), notification must be sent to the voter by first class mail confirming the registration.

All of these actions by state and local officials, as well as the poll workers, have transactional costs related to the time and follow up required to obtain and confirm voter registration information.

Voter List Maintenance

Under the terms of the NVRA, state and local election officials will not be able to remove ineligible and non-participating voters for lengthy periods of time. Wisconsin is exempt from these expensive and restrictive NVRA requirements for voter registration list maintenance. Wisconsin law provides several methods of inactivating voters:

- when election mail is returned undeliverable,
- when election mail is not answered after 30 days, and
- following each General Election voters are inactivated who have not voted in the previous four years.

These efforts help to maintain an accurate and current registration list. If Wisconsin must comply with NVRA, for all suspected changes of a voter's residence, Wisconsin will be required to first mail a letter to the voter and include a postage prepaid return mailing. If the voter returns the mailing and provides an updated address or confirms the existing address, any needed changes in the registration can be made. However, if the voter does not respond to the mailing, Wisconsin could not remove the voter from the registration list until two General Elections have passed (most often over four years.) This would dramatically slow down the maintenance of the statewide registration list and reduce Wisconsin's ability to properly cull the list. Furthermore, the sheer cost of mailings that must include postage prepaid return mailings cannot be accomplished within the current G.A.B. or municipal budgets.

In addition to the legislative policies articulated at the enactment of EDR and its success in promoting voter participation, continuing Wisconsin's exemption to the NVRA registration requirements is a primary reason to continue EDR. It has been the consensus policy of the State through both Republican and Democratic administrations that Wisconsin voters are better served by avoiding the procedural complications and inefficiencies caused by the federal NVRA requirements. That benefit cannot be overemphasized and must be carefully weighed in any consideration of eliminating EDR.

5. EDR limits the number of provisional ballots cast.

Without Election Day Registration, Wisconsin would be required to provide provisional ballots to tens of thousands of voters each election, creating a post-election nightmare for local election officials and creating unnecessary uncertainty about the outcome of elections.

While the NVRA has helped increase voter registration and participation in many states, it also has an administrative downside. The experience of states subject to the NVRA registration requirements demonstrates that many of those registration forms are not properly completed, are not forwarded to election officials, or are not added to the voter registration list.

In states without EDR, a voter who claims to be registered but is not on the poll list must be offered the opportunity to cast a provisional ballot. States subject to NVRA and with similar voting age populations have significantly higher rates of provisional ballots. See the attached table for a comparison of the number of Wisconsin provisional ballots with those of similar states.

In addition to the inequity of a voter's registration not being completed when the individual has satisfied their obligation at the DMV or another state agency, provisional ballots require more work for poll workers at the polling place and for municipal clerks following the election. A voter must complete a form that contains all the information needed to register to vote, duplicating a process the voter may have already completed. The poll workers need to make a separate list of provisional

voters. The voter marks a ballot which is secured in an envelope similar to the absentee ballot certificate envelope. The provisional ballot is secured by the poll workers and transferred to the municipal clerk after the polls close.

Following the election, local election officials are required to investigate every provisional ballot to determine whether the voter was properly registered and should have been allowed to cast a ballot. The municipal clerk must determine if the voter is actually registered. The municipal clerk must notify the voter of the disposition of the provisional ballot. The municipal clerk must arrange for the delivery of all provisional ballots that should be counted to the appropriate boards of canvassers to be included in the official election results, possibly requiring the canvassing board to reconvene and amend its totals and certifications.

Responses to the Case against Election Day Registration

1. EDR encourages voters to procrastinate and avoid their responsibility for exercising the right to vote.

One common criticism of EDR is that voters should take the personal responsibility to complete their registration by a date certain before Election Day, making it easier for election officials to prepare voter lists and determine the number of ballots needed on Election Day. Under this argument, voters who do not take this initiative should not be provided special accommodations at the polling place on Election Day.

Government must be responsive to the taxpayers and voters of Wisconsin, who expect a reasonable level of service. Offering them one-stop service at the polling place meets this reasonable expectation. Voter registration is a paper based process, which presents numerous opportunities for mistakes in completing and processing registration forms. EDR offers the voter an opportunity to correct administrative mistakes made by the voter or election officials. Because of the federal NVRA and HAVA laws, voters who may not have registered must still be offered the opportunity to cast provisional ballots. This will result in public relations problems because provisional ballots create the expectation that a person's provisional vote will be counted, when in many cases it will not.

2. EDR creates more work and costs for the municipal clerk after the election.

Municipal clerks are required to enter voter registration information of Election Day registrants into SVRS within 30 days following the election. Without EDR, this work would be done before Election Day.

While EDR imposes additional requirements on municipal clerks, that consequence appears to be consistent with the Legislature's statement of policy that the burdens of voter registration should be placed on election officials and not the electorate. While eliminating EDR would remove that particular burden post-election, it would be replaced with a much greater burden of dealing with provisional ballots and NVRA compliance.

3. EDR creates additional work at the polling place as well as disorder and confusion for voters.

Another criticism raised against EDR is that permitting citizens to register to vote or update their registration at the polling place adds to the responsibilities of poll workers, and also adds to the number of activities besides voting that is occurring at the polling place. This creates longer lines and distractions for voters who are already registered to vote.

Well-managed polling places have separate lines for voters who are registered and voters who need to register. A separate line for voter registration is no more of a distraction for registered voters than separate lines for driver licenses and license plates at the DMV.

4. EDR facilitates voter fraud.

Another perceived problem with EDR is that it facilitates voter fraud because a person may be able to register and vote at more than one polling place. Double voting would not be identified until after Election Day, when it would be too late to undo any mischief which may have affected the outcome of the election.

Elections are the result of many human interactions and processes, which means there will always be an element of risk, whether because of honest mistakes or attempts to cheat the system. The goal of election administration is to minimize mistakes, and to identify and punish cheaters.

Because polling places are not connected to the Statewide Voter Registration System, there is no way to know whether someone is registering to vote fraudulently on Election Day. However, someone who did register and vote in more than one location using his or her own identification would be identified post-election and referred to a district attorney for prosecution. Since 2006 the SVRS has been able to identify persons who vote in more than one location, and the number of cases has been very, very small. To escape detection, someone would have to register and vote using a false identity. When the state adopts voter photo ID, this will be nearly impossible, because it is highly unlikely someone would go to the trouble and expense of fabricating a false identity just to vote, given the potential penalties compared to the small likelihood that one additional vote would alter the outcome of an election.

The most common type of voter fraud is voting by convicted felons. Ineligible felons are removed from poll lists prior to the election, but there is a gap between that matching process and Election Day. Poll workers have a list of felons at the polling place to catch anyone trying to register on Election Day. In the event any slip through, they are identified post-election and referred for prosecution.

Election Day Registration Information

Recent General Elections: EDR's and Reason for Registration¹

Election	Total EDRs	AddressChanges	NameChanges	Both Changed	Unknown
2010 GENERAL ELECTION	227417	94397	3246	3129	126645
2008 PRESIDENTIAL AND GENERAL ELECTION	460176	124927	4272	4979	325998
2006 GENERAL ELECTION	413268	85392	2739	2337	322800

Proof of Residence Used for EDR in Recent General Elections

Proof of Residence Type	2010 GENERAL ELECTION	2008 PRESIDENTIAL AND GENERAL ELECTION	2006 GENERAL ELECTION
Airplane Pilots License	10	17	18
Bank Statement	8082	12192	7654
Corroborating Witness	5150	7847	4003
Fee Card for Higher Education Facility	89	224	235
Government Check	1048	1095	166
Library Card	29	83	33
Paycheck	4020	7406	2675
Residential Lease	6708	7936	5520
Student ID Card	9327	9340	6705
Tax Bill	477	715	359
Utility Bill	27542	42383	21972
WI Drivers License or ID Card	131548	310819	269086
Other Document	14618	23116	17556
Nothing Mentioned	18779	37003	77286
Total EDRs	227427	460176	413268

¹ The data is derived from a box on the voter registration form that the elector checks to indicate if they are changing their name or address. This can lead to the following data quality errors:

1. If the voter checks the wrong box, the data may not be correct.
2. Some clerks do not data enter these fields into SVRS at all.
3. The fields may not always be data entered correctly by clerks who do enter them.

Number of EDR's Using Corroborators with DL or Dot ID in Recent General Elections

Election	Total EDRs	Corroborators	DL/DOT ID	SSN	NothingMentioned
2010 GENERAL ELECTION	227433	5150	4035	1070	45
2008 PRESIDENTIAL AND GENERAL ELECTION	460176	7847	5608	2130	109
2006 GENERAL ELECTION	413268	4003	2885	990	128

Number of provisional ballots in WI, MO, TN, MD, and WA in Recent General Elections

State	Year	Total Provisional ballots Cast	Provisional Ballots Counted	Provisional Ballots Rejected	Percentage Rejected
Wisconsin	2006	271	168	103	38%
Missouri	2006	7403	3,284	4,119	55.6%
Tennessee	2006			633	
Maryland	2006	41,485	36,146	5,339	12.9%
Washington	2006	18,825	16,281	2,544	13.5%
Wisconsin	2008	211	94	117	55.4%
Missouri	2008	6,934	1,772	5,162	74.4%
Tennessee	2008	4,392	1,622	2,770	63%
Maryland	2008	51,163	34,012	17,151	33.5%
Washington	2008	54,047	40,786	13,261	24.5%
Wisconsin	2010	64	31	33	51.6%

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 22-23, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by:

Shane W. Falk, Staff Counsel

SUBJECT: Promulgation and Amendment of ch. GAB §1.28(3)(b), Wis. Adm. Code

Introduction and Background:

Pursuant to §5.05(1)(f), Stats., the legislature authorized the Government Accountability Board specific power to promulgate rules under ch. 227, Stats., for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration. Furthermore, the legislature has generally authorized agencies, such as the Government Accountability Board, to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute and ensure the proper administration of the statute. §227.11(2)(a), Stats.

As part of a lawsuit against the Board in the U.S. District Court for the Western District of Wisconsin, and after consulting with its litigation counsel from the Wisconsin Attorney General's office, the Board previously executed a joint stipulation with the plaintiffs, asking the Court to permanently enjoin application and enforcement of the second sentence of ch. GAB §1.28(3)(b), Wis. Adm. Code. On October 13, 2010, the Court issued an Opinion and Order which, among other things, denied the parties' request for that permanent injunction and stayed the case pending the outcome of a separate case in the Wisconsin Supreme Court. In denying the permanent injunction, the District Court noted that "G.A.B. has within its own power the ability to refrain from enforcing, or removing altogether, the offending sentence from a regulation G.A.B. itself created" and emphasized that "removing the language—for example, by G.A.B. issuing an emergency rule—would be far more 'simple and expeditious' than asking a federal court to permanently enjoin enforcement of the offending regulation." *Wisconsin Club for Growth, Inc. v. Myse*, No. 10-CV-427, slip op. at 2 (W.D. Wis. Oct. 13, 2010). The Court further noted that staying the case would give the Board time to resolve some or all of the pending issues through further rulemaking. *Id.*, slip op. at 14.

In addition, the Board, through its litigation counsel, has represented to the Wisconsin Supreme Court that it does not intend to defend the validity of the second sentence of ch. GAB § 1.28(3)(b) and that it would stipulate to the entry of an order by that Court permanently enjoining the application or enforcement of that sentence.

On December 22, 2010, the Board adopted an Emergency Rule Order bringing ch. GAB § 1.28 into conformity with the above stipulation and with the representations that have been made to the Wisconsin Supreme Court. The emergency rule also comported with the suggestions made in the October 13, 2010, Opinion and Order of the U.S. District Court for the Western District of Wisconsin.

The only change that the emergency rule made to the August 1, 2010, rule is the repeal of the second sentence of GAB 1.28(3)(b). All other portions of GAB 1.28 remain unchanged. However, all of the revisions to GAB 1.28 that were effected on August 1, 2010, remain temporarily enjoined pending further order of the Wisconsin Supreme Court. Oral arguments for the litigation against the Board that is pending before the Wisconsin Supreme Court were to be held in March 2011; however, those arguments have been canceled and will be rescheduled to occur in the Fall of 2011. Even with two 60-day extensions of the emergency rule, it will expire prior to oral arguments. Promulgation of a permanent rule mirroring the emergency rule is necessary to maintain the Board's previous commitments made in the course of litigation.

Recommendations:

Staff recommends that the Board authorize requesting two 60-day extensions of the emergency rule ch. GAB 1.28(3)(b).

Staff, following consultation with litigation counsel from the Wisconsin Attorney General's Office, recommends that the Board proceed with promulgation of a permanent rule mirroring the emergency rule and amending ch. GAB §1.28(3)(b), Wis. Adm. Code.

Proposed Motions:

1. **MOTION:** Pursuant to §227.24(2), Wis. Stats., direct staff to request all permitted extensions of Emergency Rule ch. GAB §1.28(3)(b).
2. **MOTION:** Pursuant to §§5.05(1)(f), 227.11(2)(a), and 227.135, Wis. Stats., the Board approves the attached Statement of Scope for the amendment of ch. GAB §1.28(3)(b), Wis. Adm. Code.
3. **MOTION:** The Board approves the attached Notice of Proposed Order Adopting Rule and Notice of Hearing Amending ch. GAB §1.28(3)(b).
4. **MOTION:** The Board directs staff to proceed with promulgation of rule ch. GAB §1.28(3)(b), subject to any new rule-making requirements that may be imposed by enactment of AB 8 (January 2011 Special Session.)

Statement of Scope
Government Accountability Board
The definition of the term “political purpose,” s. GAB 1.28(3)(b)

Subject

Amend s. GAB 1.28(3)(b) relating to the definition of the term “political purpose.”

Objective of the Rule

The present amendment involves only the repeal of the second sentence of s. GAB 1.28(3)(b). All other portions of GAB 1.28 effected on August 1, 2010, including the first sentence of s. GAB 1.28(3)(b), are unchanged.

The first sentence of s. GAB 1.28(3)(b), provides that any communication that “is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate” is a communication “for political purposes” within the meaning of s. 11.01(16), Stats., and hence is subject to all of the campaign finance regulations under ch. 11 of the Wisconsin Statutes that apply to communications for a political purpose — subject, of course, to any additional requirements or limitations contained in particular statutes.

The second sentence of s. GAB 1.28(3)(b) additionally identifies communications which are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. That is, any communications that possess the characteristics enumerated in the second sentence of s. GAB 1.28(3)(b) would automatically be deemed communications for a political purpose and, as a result, would automatically be subject to the applicable campaign finance regulations under ch. 11 of the Wisconsin Statutes.

As a result of litigation challenging the validity of the August 1, 2010, amendments to s. GAB 1.28, the Board has entered into a stipulation to refrain from enforcing the second sentence of s. GAB 1.28(3)(b). The Board, through its litigation counsel, has also represented that it does not intend to defend the validity of that sentence and has sought judicial orders permanently enjoining its application or enforcement. This sentence is removed by this rule.

Policy Analysis

The revised rule will subject to regulation communications that are “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” The revised rule will subject communications meeting this criterion to the applicable campaign finance regulations and requirements of ch. 11, Stats. The scope of regulation will be subject to the United States Supreme Court Decision, *Citizens United vs. FEC* (No. 08-205), permitting the use of corporate and union general treasury funds for independent expenditures.

Statutory Authority

Sections 5.05(1)(f) and 227.11(2)(a), Stats.

Comparison with Federal Regulations

The United States Supreme Court upheld regulation of political communications called “electioneering communications” in its December 10, 2003 decision: *McConnell et al. v. Federal Election Commission, et al.* (No.02-1674), its June 25, 2007 decision of: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, (No.06-969and 970), and pursuant to its January 21, 2010 decision of: *Citizens United vs. FEC* (No. 08-205).

The *McConnell* decision is a review of relatively recent federal legislation – The Bipartisan Campaign Reform Act of 2002 (BCRA) – amending, principally, the Federal Election Campaign Act of 1971 (as amended). A substantial portion of the *McConnell* Court’s decision upholds provisions of BCRA that establish a new form of regulated political communication – “electioneering communications” – and that subject that form of communication to disclosure requirements as well as to other limitations, such as the prohibition of corporate and labor contributions for electioneering communications in BCRA ss. 201, 203. BCRA generally defines an “electioneering communication” as a broadcast, cable, or satellite advertisement that “refers” to a clearly identified federal candidate, is made within 60 days of a general election or 30 days of a primary election and, if for House or Senate elections, is targeted to the relevant electorate.

In addition, the Federal Election Commission (FEC) promulgated regulations further implementing BCRA (generally 11 CFR Parts 100-114) and made revisions incorporating the *WRTL II* decision by the United States Supreme Court (generally 11 CFR Parts 104, 114.) The FEC regulates “electioneering communications.”

Entities Affected by the Rules

Any person, committee, individual or political group that will sponsor communications “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.”

Estimate of Time Needed to Develop the Rules

20 hours.

NOTICE OF PROPOSED ORDER ADOPTING RULE
GOVERNMENT ACCOUNTABILITY BOARD
CR 11-_____

Definition of the term “political purpose,” s. GAB 1.28(3)(b)

The Wisconsin Government Accountability Board proposes an order to adopt a rule to amend s. GAB 1.28(3)(b), Wis. Adm. Code, relating to the definition of the term “political purpose.”

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statute Interpreted: s.11.01(16), Stats.
2. Statutory Authority: ss. 5.05(1)(f) and 227.11(2)(a), Stats.
3. Explanation of agency authority: Under the existing statute, s. 11.01(16), Stats., an act is for “political purposes” when by its nature, intent or manner it directly or indirectly influences or tends to influence voting at an election. Such an act includes support or opposition to a person’s present or future candidacy. Further, s. 11.01(16)(a)1., Stats., provides that acts which are for “political purposes” include “but are not limited to” the making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate.

Under s. 5.05(1), Stats., the Board is expressly vested with responsibility for the administration of all Wisconsin laws relating to elections and election campaigns, specifically including chapters 5 through 12 of the Wisconsin Statutes. Pursuant to that responsibility, s. 5.05(1)(f), Stats., gives the Board express statutory authority to promulgate administrative rules “for the purpose of interpreting or implementing the laws regulating the conduct of elections or elections campaigns or ensuring their proper administration.” Similarly, s. 227.11(2)(a), Stats., grants state agencies—including the Board—the authority to “promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute,” as long as the rule does not “exceed[] the bounds of correct interpretation.” Sections 5.05(1)(f) and 227.11(2)(a), Stats., thus give the Board clear and express authority to promulgate rules that interpret and implement the meaning of all Wisconsin laws that regulate or govern the proper administration of election campaigns in this state, including s. 11.01(16), Stats.

Section GAB 1.28, as promulgated on August 1, 2010, made a number of changes to the Board’s interpretation and implementation of the statutory definition of an act “for political purposes” under s. 11.01(16), Stats. Those changes were fully analyzed and explained in the July 13, 2010, Order of the Government Accountability Board, CR 09-013.

The present amendment involves only the repeal of the second sentence of s. GAB 1.28(3)(b). All other portions of GAB 1.28, including the first sentence of s. GAB 1.28(3)(b), are unchanged. Moreover, all of the revisions to GAB 1.28 that were effected on August 1, 2010, remain temporarily enjoined pending further order of the Wisconsin Supreme Court. The present amendment has no effect on the continued effectiveness of that injunction.

The first sentence of s. GAB 1.28(3)(b), provides that any communication that “is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate” is a communication “for political purposes” within the meaning of s. 11.01(16), Stats., and hence is subject to all of the campaign finance regulations under ch. 11 of the Wisconsin Statutes that apply to communications for a political purpose—subject, of course, to any additional requirements or limitations contained in particular statutes.

The second sentence of s. GAB 1.28(3)(b) additionally identifies communications which are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. That is, any communications that possess the characteristics enumerated in the second sentence of s. GAB 1.28(3)(b) would automatically be deemed communications for a political purpose and, as a result, would automatically be subject to the applicable campaign finance regulations under ch. 11 of the Wisconsin Statutes.

As a result of litigation challenging the validity of the August 1, 2010, amendments to s. GAB 1.28, the Board has entered into a stipulation to refrain from enforcing the second sentence of s. GAB 1.28(3)(b). The Board, through its litigation counsel, has also represented that it does not intend to defend the validity of that sentence and has sought judicial orders permanently enjoining its application or enforcement. This sentence is removed by this rule.

This amendment does not affect the first sentence of s. GAB 1.28(3)(b), under which individuals and organizations that raise or spend money to make communications that are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate, are subject to campaign finance regulation under ch. 11 of the Wisconsin Statutes. As previously noted however, all of the August 1, 2010, amendments to s. GAB 1.28—including the first sentence of s. GAB 1.28(3)(b)—are currently subject to the August 13, 2010, temporary injunction by the Wisconsin Supreme Court.

4. Related statute(s) or rule(s): s. 11.01(16), Stats., and s. GAB 1.28, Wis. Adm. Code.
5. Plain language analysis: The revised rule will subject to regulation communications that are “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” The revised rule will subject communications meeting this criterion to the applicable campaign finance

regulations and requirements of ch. 11, Stats. The scope of regulation will be subject to the United States Supreme Court Decision, *Citizens United vs. FEC* (No. 08-205), permitting the use of corporate and union general treasury funds for independent expenditures.

6. Summary of, and comparison with, existing or proposed federal regulations: The United States Supreme Court upheld regulation of political communications called “electioneering communications” in its December 10, 2003 decision: *McConnell et al. v. Federal Election Commission, et al.* (No.02-1674), its June 25, 2007 decision of: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, (No.06-969and 970), and pursuant to its January 21, 2010 decision of: *Citizens United vs. FEC* (No. 08-205).

The *McConnell* decision is a review of relatively recent federal legislation – The Bipartisan Campaign Reform Act of 2002 (BCRA) – amending, principally, the Federal Election Campaign Act of 1971 (as amended). A substantial portion of the *McConnell* Court’s decision upholds provisions of BCRA that establish a new form of regulated political communication – “electioneering communications” – and that subject that form of communication to disclosure requirements as well as to other limitations, such as the prohibition of corporate and labor contributions for electioneering communications in BCRA ss. 201, 203. BCRA generally defines an “electioneering communication” as a broadcast, cable, or satellite advertisement that “refers” to a clearly identified federal candidate, is made within 60 days of a general election or 30 days of a primary election and, if for House or Senate elections, is targeted to the relevant electorate.

In addition, the Federal Election Commission (FEC) promulgated regulations further implementing BCRA (generally 11 CFR Parts 100-114) and made revisions incorporating the *WRTL II* decision by the United States Supreme Court (generally 11 CFR Parts 104, 114.) The FEC regulates “electioneering communications.”

7. Comparison with rules in adjacent states:

Pursuant to Public Act 96-0832, Illinois revised its “electioneering communication” statute in 2009, effective July 1, 2010, to include the “no reasonable interpretation other than an appeal to vote for or against” test, among other revisions. Subject to some delineated exemptions found in 10 ILCS 5/9-1.14, the statute now defines an “electioneering communication” as any broadcast, cable or satellite communication, including radio, television, or internet communication, that:

- 1) refers to a clearly identified candidate or candidates who will appear on the ballot, a clearly identified political party, or a clearly identified question of public policy that will appear on the ballot,

- 2) is made within 60 days before a general election or 30 days before a primary election,
- 3) is targeted to the relevant electorate, and
- 4) is susceptible to no reasonable interpretation other than an appeal to vote for or against a clearly identified candidate, a political party, or a question of public policy.

As a result of the adoption of Public Act 96-0832, Illinois is undergoing a substantial revision of its administrative code with respect to campaign finance and disclosure rules. (See proposed Illinois Administrative Code, Title 26, Chapter 1, Part 100, Campaign Financing, JCAR260100-101389r01). In the context of excluding “independent expenditures” from the term “contribution,” Section 100.10(b)(3)G., of the proposed rules include both electioneering and express advocacy communications as forms of independent expenditures.

Iowa’s Administrative Code defines “express advocacy” as including a communication that uses any word, term, phrase, or symbol that exhorts an individual to vote for or against a clearly identified candidate or the passage or defeat of a clearly identified ballot issue. (Chapter 351—4.53(1), Iowa Administrative Code.)

Michigan statutes define a “contribution” as anything of monetary value made for the purpose of influencing the nomination or election of a candidate or the qualification, passage or defeat of a ballot question. (s. 169.204(1), Mich. Stats.) “Expenditure” is defined as a payment of anything of monetary value in assistance of or opposition to the nomination or election of a candidate or the qualification, passage or defeat of a ballot question. (s. 169.206(1), Mich. Stats.) Michigan does not have any additional rules defining political purposes.

Minnesota statutes define a “campaign expenditure” or “expenditure” as the purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question. (s. 10A.01, Subd. 9, Minn. Stats.) “Independent expenditure” is defined as an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is not coordinated with any candidate or any candidate’s principal campaign committee or agent. (s. 10A.01, Subd. 18, Minn. Stats.) Minnesota does not have any additional rules defining political purposes.

8. Summary of factual data and analytical methodologies: The factual data and analytical methodologies underlying the adoption of the August 1, 2010 amendments to s. GAB 1.28 have been described in the July 13, 2010, Order of the Government Accountability Board, CR 09-013. The adoption of the present amendment to s. GAB 1.28(3)(b) is predicated on the same data and methodologies and also on developments related to several court cases challenging the validity of the August 1, 2010 amendments to s. GAB 1.28.

These developments were discussed by the Board in a closed session meeting with its litigation counsel on December 14, 2010. These developments are also being discussed in an open session, public meeting of the Board on December 22, 2010.

9. Analysis and supporting documentation used to determine effect on small businesses: The rule will have no effect on small business, nor any economic impact.
10. Effect on small business: The creation of this rule does not affect business.
11. Agency contact person: Shane W. Falk, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984; Phone 266-2094; Shane.Falk@wisconsin.gov
12. Place where comments are to be submitted and deadline for submission: Government Accountability Board, Attn: Shane W. Falk, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984, no later than _____, 2011.

FISCAL ESTIMATE: The creation of this rule has minimal fiscal effect. There may be additional registrants filing reports with the Board and potentially additional enforcement actions that may require staff action. The extent of this potential fiscal impact is undetermined.

INITIAL REGULATORY FLEXIBILITY ANALYSIS: The creation of this rule does not affect the normal operations of business.

TEXT OF PROPOSED RULE:

SECTION 1. GAB 1.28(3)(b) is amended to read:

(b) The communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. ~~A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election and ending on the date of that election and that includes a reference to or depiction of a clearly identified candidate and:~~

- ~~1. Refers to the personal qualities, character, or fitness of that candidate;~~
- ~~2. Supports or condemns that candidate's position or stance on issues; or~~
- ~~3. Supports or condemns that candidate's public record.~~

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2) (intro.), Stats.

Dated this 22nd day of March, 2011.

Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

NOTICE OF PROPOSED ORDER ADOPTING RULE
GOVERNMENT ACCOUNTABILITY BOARD
CR 11-_____

Definition of the term “political purpose,” s. GAB 1.28(3)(b)

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05(1)(f), 227.11(2)(a), and 227.16, Stats., and interpreting s. 11.01(16), Stats., the Government Accountability Board will hold a public hearing to consider adoption of a permanent rule to amend s. GAB §1.28(3)(b), Wis. Adm. Code, relating to the definition of the term “political purpose.”

Hearing Information

The public hearing will be held at the time and location shown below.

Date and Time

_____ at _____

Location

Government Accountability Board Office
212 E. Washington Avenue, 3rd Floor
Madison, Wisconsin 53703

This public hearing site is accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact the person listed below.

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statute Interpreted: s.11.01(16), Stats.
2. Statutory Authority: ss. 5.05(1)(f) and 227.11(2)(a), Stats.
3. Explanation of agency authority: Under the existing statute, s. 11.01(16), Stats., an act is for “political purposes” when by its nature, intent or manner it directly or indirectly influences or tends to influence voting at an election. Such an act includes support or opposition to a person’s present or future candidacy. Further, s. 11.01(16)(a)1., Stats., provides that acts which are for “political purposes” include “but are not limited to” the making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate.

Under s. 5.05(1), Stats., the Board is expressly vested with responsibility for the administration of all Wisconsin laws relating to elections and election campaigns, specifically including chapters 5 through 12 of the Wisconsin Statutes. Pursuant to that responsibility, s. 5.05(1)(f), Stats., gives the Board express statutory authority to promulgate administrative rules “for the purpose of interpreting or implementing the laws regulating the conduct of elections or elections campaigns or ensuring their proper administration.” Similarly, s. 227.11(2)(a), Stats., grants state agencies—including the Board—the authority to “promulgate rules interpreting the provisions of any statute enforced or administered by it, if the

agency considers it necessary to effectuate the purpose of the statute,” as long as the rule does not “exceed[] the bounds of correct interpretation.” Sections 5.05(1)(f) and 227.11(2)(a), Stats., thus give the Board clear and express authority to promulgate rules that interpret and implement the meaning of all Wisconsin laws that regulate or govern the proper administration of election campaigns in this state, including s. 11.01(16), Stats.

Section GAB 1.28, as promulgated on August 1, 2010, made a number of changes to the Board’s interpretation and implementation of the statutory definition of an act “for political purposes” under s. 11.01(16), Stats. Those changes were fully analyzed and explained in the July 13, 2010, Order of the Government Accountability Board, CR 09-013.

The present amendment involves only the repeal of the second sentence of s. GAB 1.28(3)(b). All other portions of GAB 1.28, including the first sentence of s. GAB 1.28(3)(b), are unchanged. Moreover, all of the revisions to GAB 1.28 that were effected on August 1, 2010, remain temporarily enjoined pending further order of the Wisconsin Supreme Court. The present amendment has no effect on the continued effectiveness of that injunction.

The first sentence of s. GAB 1.28(3)(b), provides that any communication that “is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate” is a communication “for political purposes” within the meaning of s. 11.01(16), Stats., and hence is subject to all of the campaign finance regulations under ch. 11 of the Wisconsin Statutes that apply to communications for a political purpose—subject, of course, to any additional requirements or limitations contained in particular statutes.

The second sentence of s. GAB 1.28(3)(b) additionally identifies communications which are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. That is, any communications that possess the characteristics enumerated in the second sentence of s. GAB 1.28(3)(b) would automatically be deemed communications for a political purpose and, as a result, would automatically be subject to the applicable campaign finance regulations under ch. 11 of the Wisconsin Statutes.

As a result of litigation challenging the validity of the August 1, 2010, amendments to s. GAB 1.28, the Board has entered into a stipulation to refrain from enforcing the second sentence of s. GAB 1.28(3)(b). The Board, through its litigation counsel, has also represented that it does not intend to defend the validity of that sentence and has sought judicial orders permanently enjoining its application or enforcement. This sentence is removed by this rule.

This amendment does not affect the first sentence of s. GAB 1.28(3)(b), under which individuals and organizations that raise or spend money to make communications that are susceptible of no reasonable interpretation other than as

an appeal to vote for or against a specific candidate, are subject to campaign finance regulation under ch. 11 of the Wisconsin Statutes. As previously noted however, all of the August 1, 2010, amendments to s. GAB 1.28—including the first sentence of s. GAB 1.28(3)(b)—are currently subject to the August 13, 2010, temporary injunction by the Wisconsin Supreme Court.

4. Related statute(s) or rule(s): s. 11.01(16), Stats., and s. GAB 1.28, Wis. Adm. Code.
5. Plain language analysis: The revised rule will subject to regulation communications that are “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” The revised rule will subject communications meeting this criterion to the applicable campaign finance regulations and requirements of ch. 11, Stats. The scope of regulation will be subject to the United States Supreme Court Decision, *Citizens United vs. FEC* (No. 08-205), permitting the use of corporate and union general treasury funds for independent expenditures.
6. Summary of, and comparison with, existing or proposed federal regulations: The United States Supreme Court upheld regulation of political communications called “electioneering communications” in its December 10, 2003 decision: *McConnell et al. v. Federal Election Commission, et al.* (No.02-1674), its June 25, 2007 decision of: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, (No.06-969and 970), and pursuant to its January 21, 2010 decision of: *Citizens United vs. FEC* (No. 08-205).

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In addition, the Federal Election Commission (FEC) promulgated regulations further implementing BCRA (generally 11 CFR Parts 100-114) and made revisions incorporating the *WRTL II* decision by the United States Supreme Court (generally 11 CFR Parts 104, 114.) The FEC regulates “electioneering communications.”

7. Comparison with rules in adjacent states:

Pursuant to Public Act 96-0832, Illinois revised its “electioneering communication” statute in 2009, effective July 1, 2010, to include the “no reasonable interpretation other than an appeal to vote for or against” test, among other revisions. Subject to some delineated exemptions found in 10 ILCS 5/9-1.14, the statute now defines an “electioneering communication” as any broadcast, cable or satellite communication, including radio, television, or internet communication, that:

- 1) refers to a clearly identified candidate or candidates who will appear on the ballot, a clearly identified political party, or a clearly identified question of public policy that will appear on the ballot,
- 2) is made within 60 days before a general election or 30 days before a primary election,
- 3) is targeted to the relevant electorate, and
- 4) is susceptible to no reasonable interpretation other than an appeal to vote for or against a clearly identified candidate, a political party, or a question of public policy.

As a result of the adoption of Public Act 96-0832, Illinois is undergoing a substantial revision of its administrative code with respect to campaign finance and disclosure rules. (See proposed Illinois Administrative Code, Title 26, Chapter 1, Part 100, Campaign Financing, JCAR260100-101389r01). In the context of excluding “independent expenditures” from the term “contribution,” Section 100.10(b)(3)G., of the proposed rules include both electioneering and express advocacy communications as forms of independent expenditures.

Iowa’s Administrative Code defines “express advocacy” as including a communication that uses any word, term, phrase, or symbol that exhorts an individual to vote for or against a clearly identified candidate or the passage or defeat of a clearly identified ballot issue. (Chapter 351—4.53(1), Iowa Administrative Code.)

Michigan statutes define a “contribution” as anything of monetary value made for the purpose of influencing the nomination or election of a candidate or the qualification, passage or defeat of a ballot question. (s. 169.204(1), Mich. Stats.) “Expenditure” is defined as a payment of anything of monetary value in assistance of or opposition to the nomination or election of a candidate or the qualification, passage or defeat of a ballot question. (s. 169.206(1), Mich. Stats.) Michigan does not have any additional rules defining political purposes.

Minnesota statutes define a “campaign expenditure” or “expenditure” as the purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question. (s.

10A.01, Subd. 9, Minn. Stats.) “Independent expenditure” is defined as an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is not coordinated with any candidate or any candidate’s principal campaign committee or agent. (s. 10A.01, Subd. 18, Minn. Stats.) Minnesota does not have any additional rules defining political purposes.

8. Summary of factual data and analytical methodologies: The factual data and analytical methodologies underlying the adoption of the August 1, 2010 amendments to s. GAB 1.28 have been described in the July 13, 2010, Order of the Government Accountability Board, CR 09-013. The adoption of the present amendment to s. GAB 1.28(3)(b) is predicated on the same data and methodologies and also on developments related to several court cases challenging the validity of the August 1, 2010 amendments to s. GAB 1.28. These developments were discussed by the Board in a closed session meeting with its litigation counsel on December 14, 2010. These developments are also being discussed in an open session, public meeting of the Board on December 22, 2010.
9. Analysis and supporting documentation used to determine effect on small businesses: The rule will have no effect on small business, nor any economic impact.
10. Effect on small business: The creation of this rule does not affect business.
11. Agency contact person: Shane W. Falk, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984; Phone 266-2094; Shane.Falk@wisconsin.gov
12. Place where comments are to be submitted and deadline for submission: Government Accountability Board, Attn: Shane W. Falk, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984, no later than _____, 2011.

FISCAL ESTIMATE: The creation of this rule has minimal fiscal effect. There may be additional registrants filing reports with the Board and potentially additional enforcement actions that may require staff action. The extent of this potential fiscal impact is undetermined.

INITIAL REGULATORY FLEXIBILITY ANALYSIS: The creation of this rule does not affect the normal operations of business.

TEXT OF PROPOSED RULE:

SECTION 1. GAB 1.28(3)(b) is amended to read:

(b) The communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. ~~A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election and ending on the date of that election and that includes a reference to or depiction of a clearly identified candidate and:~~

- ~~1. Refers to the personal qualities, character, or fitness of that candidate;~~
- ~~2. Supports or condemns that candidate's position or stance on issues; or~~
- ~~3. Supports or condemns that candidate's public record.~~

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2) (intro.), Stats.

Dated this 22nd day of March, 2011.

Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 22-23, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by:

Shane W. Falk, Staff Counsel

SUBJECT: Status Report on Pending Administrative Rule-Making

This Status Report is for informational purposes only and no immediate action is requested. Following this introduction and the legislative summary of companion bills AD8/SD8 (January 2011 Special Session) is a brief status of pending rule-making resulting from past actions of the Government Accountability Board. All administrative rules identified in this summary reference permanent rule-making. Please note that there are several additional rules not addressed in this status report that the Board has affirmed, but for which the staff has identified the need for additional review and revision. The staff will present recommendations at subsequent meetings regarding those involved rules.

ASSEMBLY BILL 8 and SENATE BILL 8, January 2011 Special Session: Admin. Rules

These companion bills relate to: the authority of a state agency to promulgate rules interpreting the provisions of a statute enforced or administered by the agency and to implement or enforce any standard, requirement, or threshold as a term or condition of a license issued by the state agency; gubernatorial approval of proposed administrative rules; economic impact analyses of proposed rules and emergency rules; and venue in a declaratory judgment action seeking judicial review of the validity of an administrative rule and in an action in which the sole defendant is the state.

The Assembly and Senate have primarily acted on the Assembly version of this bill. It passed the Assembly and was messaged to the Senate, where the Senate adopted one additional amendment. The Senate messaged it back to the Assembly, where it was referred to the February 24, 2011 calendar for final concurrence by the Assembly before messaging the bill to the Governor for signing. No action appears to have been taken on February 24, 2011. It appears that the Assembly must still vote to concur in the Senate version of the bill. Several germane amendments were offered in the Senate to exclude constitutional offices and

independent agencies (G.A.B. included) from the gubernatorial approval provisions of the bill. These amendments were tabled and not included in the final version of the bill.

If adopted into law, this legislation will significantly impact the Board's administrative rule-making efforts summarized herein. Many of the Board's administrative rule-making efforts may be slowed significantly, if written approvals by the Governor are not granted and received quickly. In addition, the limitations on rule-making authority may affect the ability to adopt certain rules. Substantial additional staff effort may be necessary to comply with economic impact analysis requirements for rules that the Governor permits to move forward.

The following is a fairly detailed summary of significant impacts and changes of the legislation:

I. Regarding Rule-Making Authority:

- A. A statutory or non-statutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond that which is expressly conferred on the agency by the Legislature.
- B. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond that which is expressly conferred on the agency by the Legislature.
- C. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the statutory provision.

II. Regarding Governor Approval of Statements of Scope:

- A. An agency must present the statement of scope to the governor and the policy-making body of the agency for approval. The agency may not send the statement to the LRB for publication until the governor issues a written notice of approval of the statement. No state employee or official may perform any activity in connection with the drafting of a proposed rule (except to prepare the statement of scope) until the governor and the policy-making body for the agency has approved the statement. Note: There is no timeline provided for the Governor's review and the bill specifically repeals the automatic approval after 30 days or 10 days after publication in the admin register, whichever is later.
- B. If the governor approves a statement of scope, the agency shall send the statement to the LRB for publication in the admin register.

III. Regarding Economic Impact Analyses of Proposed Rule

- A. An agency shall prepare an economic impact analysis for a proposed rule before submitting the proposed rule to the legislative council staff. Note: Current law only requires the economic impact analysis if the secretary of administration directs the agency to do one and only before the proposed rule is presented to the Legislature, which is much later than the proposed bill.

- B. An economic impact analysis of a proposed rule shall contain information on the economic effect on specific businesses, business sectors, public utility ratepayers, and the state's economy as a whole. The agency shall solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the proposed rule.
- C. The economic impact report shall include all of the following: (Note: The bill repeals and replaces comments from the Dept. of Commerce, which is consistent with the Governor's plan to eliminate that agency.)
1. An analysis and quantification of the policy problem that the rule intends to address, including comparisons with approaches used by the feds, Illinois, Iowa, Michigan, and Minnesota to address that policy problem and if the agency chooses a different approach, a statement as to why.
 2. An analysis and detailed quantification of the economic impact of the rule, including the implementation and compliance costs that are reasonably expected to be incurred by or passed along to the businesses and individuals that may be affected by the rule.
 3. An analysis of the actual and quantifiable benefits of the rule, including an assessment of how effective the rule will be in addressing the policy problem the rule intends to address.
 4. An analysis of alternatives to the rule, including the alternative of not promulgating the rule.
 5. A determination made in consultation with the businesses and individuals that may be affected by the rule as to whether the rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.
- D. On the same day that the agency submits the economic impact analysis to the legislative council staff, the agency shall also submit that analysis to the DOA, the governor, and to the chief clerks of each house of the Legislature, who shall distribute the analysis to the presiding officers of their respective houses, to the chairpersons of the appropriate standing committees of their respective houses and to the co-chairpersons of the joint committee for review of administrative rules. The agency shall revise this analysis if the rule is revised.
- E. If the economic impact analysis regarding the rule indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred or passed along to businesses or individuals as a result of the rule, the DOA shall review the rule and issue a report. The agency may not submit the rule to the Legislature for review until the agency receives the DOA report.

IV. Regarding Governor Approval of Final Draft of Rules:

After a proposed rule is in final draft form, the agency shall submit the rule to the Governor for approval. The Governor, in his or her discretion, may approve, modify, or reject the proposed rule. The agency may not submit the proposed rule to the Legislature for review or file the rule with the LRB for publication unless the Governor has approved the proposed rule in writing. Note: The new procedures involving the Governor's review would be a significant change to the rulemaking process, particularly given the independent agency status and nonpartisan structure of the G.A.B. The bill would require any new rule to obtain the Governor's approval of the Statement of

Scope, as well as the text of the rule both before it is presented to the Legislature AND after the Legislature approves it.

- V. Regarding Governor Approval of Emergency Rules and Statements of Scope for Emergency Rules:
- A. An agency shall prepare a statement of scope of the proposed emergency rule and obtain approval of the Governor in the same process as for a permanent rule. The statement of scope is sent to the LRB for publication in the administrative register at the same time that the proposed emergency rule is published (as used here, “publish” means in the newspaper.)
 - B. An agency shall submit the proposed emergency rule in final draft form to the Governor for approval in the same fashion as approval for a permanent rule and may not file the emergency rule (here, “file” means submission to the LRB for publication in the administrative register) until so approved in writing by the Governor. Note: We can technically publish an emergency rule in the paper with only the Governor’s approval of the statement of scope, which seems to make it effective; however, the Governor must approve the filing of the rule with the LRB, which is required to perfect the effectiveness of the rule. In practice, this is a veto power by the Governor on an emergency rule, as an agency would not in practice publish an emergency rule in the paper unless it could simultaneously file the emergency rule with the LRB to finalize the effective date.
 - C. Before filing an emergency rule with the LRB, the agency shall prepare an economic impact analysis for the emergency rule in the same manner as a permanent rule and submit it to the DOA, governor, and to the chief clerks of each house of the Legislature, who shall distribute the analysis to the presiding officers of their respective houses, to the chairpersons of the appropriate standing committees of their respective houses, and to the co-chairpersons of the joint committee for review of administrative rules. The same \$20,000,000 impact threshold is imposed for mandating a DOA report and the agency may not file the rule with LRB until it receives a copy of the DOA report and approval from the Secretary of the DOA.
- VI. Regarding Judicial Review of the Validity of a Rule:
- Jurisdiction resides in the circuit court for the county where the party asserting the invalidity of the rule resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for Dane County.
- VII. Effective Dates of Bill (generally, an Act is effective the day after the date of publication of the Act):
- A. Venue: first applies to actions commenced on the effective date of the venue subsection.
 - B. Rule-Making Authority: first applies to a proposed administrative rule submitted to the Legislative Council staff on the effective date of this subsection of the bill.
 - C. Economic Impact Analyses: first applies to a proposed administrative rule submitted to the Legislative Council staff on the effective date of this subsection of the bill.
 - D. Gubernatorial Approval: first applies to a proposed rule or emergency rule whose statement of scope is presented to the Governor for approval on the effective date of this subsection of the bill.

STATUS REPORT ON PENDING ADMINISTRATIVE RULE-MAKING

Revise 1.10

Relating to: Registration by Nonresident Committees and Groups

Status: Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to revise title of 1.10. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.15

Relating to: Filing Reports of Late Campaign Activity (Postmarked Reports)

Status: Board original action on March 30, 2009. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to remove two references to postmarked reports. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.20

Relating to: Treatment and Reporting of In-Kind Contributions

Status: Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to remove a reference to an old form, Schedule 3-C, that is no longer necessary due to the implementation of CFIS. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Create 1.21

Relating to: Treatment of Joint Account Contributions

Status: Board original action on June 9, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to create a rule addressing treatment of contributions from joint accounts. Will return to Board with draft rule. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.26

Relating to: Return of Contribution

Status: Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to correct grammatical error. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.28

Relating to: Scope of Regulated Activity

Status: Before the Board for initial action at March 22-23, 2011 meeting. Emergency Rule 1.28 was adopted by the Board at the December 22, 2010 meeting and published on January 7, 2011. A public hearing occurred on Emergency Rule 1.28 on February 16, 2011, with only Attorney O'Neil reasserting the same written comments the Board received at its December 22, 2010 meeting. Litigation is pending and the Wisconsin Supreme Court continues an injunction of the permanent Rule 1.28 that was effective on August 1, 2010, expanding the definition of political purpose. Upon advice of counsel the Board adopted an Emergency Rule 1.28 to remove the second sentence of Rule 1.28(3)(b).

The Supreme Court was originally scheduled to hear oral arguments on the litigation in March 2011 with an expected decision prior to the expiration of the Emergency Rule 1.28; however, the Supreme Court canceled oral arguments and they will not be rescheduled to occur until after September 2011. Since the Emergency Rule 1.28 will expire prior to oral arguments, even if two 60 day extensions are granted, counsel advised staff that the Board should proceed with permanent rule-making. This permanent rule-making will potentially be subject to AB 8 (January 2011 Special Session) if adopted and enacted, which may require staff to bring the rule back to the Board again to proceed under the new law.

Revise 1.43

Relating to: Referendum-related activities by committees; candidate-related activities by groups.

Status: Board original action on May 5, 2008. Scope statement drafted for August 10, 2009 meeting and then can begin rule-making process to remove 1.43(2)(a) as the law no longer requires listing all candidates supported and s. 11.05(4), Stats., allows one registration statement. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.85 and 1.855

Relating to: Conduit Registration and Reporting Requirements; Contributions from Conduit Accounts

Status: Board original action on October 6, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to harmonize certain portions of these rules with current law and new CFIS system. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Create 1.90

Relating to: MCFL Corporation Registration and Reporting Requirements

Status: Board original action August 27, 2008. Scope statement approved by the Board at the December 17, 2009 meeting. Draft rule was approved by the Board at the March 23-24, 2010 meeting. The Statement of Scope must be submitted to the Legislative Reference Bureau for publication to begin the rule-making process. Will likely have to hold public hearing, so following submittal to Legislative Council will hold public hearing and then submittal to legislature before publication.

Create 1.91

Relating to: Organizations Making Independent Disbursements

Status: Board original action May 10, 2010. At the March 23-24, 2010 Board meeting, the Board considered the ramifications of the U.S. Supreme Court decision, *Citizens United v. FEC*. The Board adopted an interim policy regarding corporate independent expenditures. Staff was directed to draft an emergency rule which was adopted by the Board at the May 10, 2010 meeting. In addition, the Board directed staff to promulgate permanent rules to address independent expenditures in the context of *Citizens United*.

Emergency rule was published and effective May 20, 2010, but will expire on October 16, 2010. Staff has requested an extension so that the emergency rule is in effect throughout the Fall Election and on August 24, 2010, the Joint Committee for the Review of Administrative Rules granted the 60 day extension, which continues the emergency rule until December 15, 2010. Staff has requested an additional 60 day extension from the Joint Committee for the Review of Administrative Rules. This is the last extension was granted and the rule expired on February 15, 2011.

Staff published the scope statement on the permanent rule and on July 7, 2010 also submitted the proposed permanent rule to Legislative Council for review. The Legislative Council Report was received by staff on August 3, 2010. The public hearing on both the emergency and permanent rules was held on August 30, 2010. Staff filed a Legislative Report and the Senate standing committee's 30 day review period expired on February 14, 2011. The Assembly standing committee's 30 day review period was set to expire on February 25, 2011; however, on the committee requested a meeting which automatically extended its review period an additional 30 days. To date, staff has not been contacted to schedule a meeting with the committee. The Assembly standing committee's review will now expire on March 28, 2011. If it takes no action or approves the rule, it may be published in the Administrative Register and will be effective the first day of the month after publication.

Revise Chapter 3

Relating to: Voter Registration, HAVA Checks

Status: Board original action August 27, 2008. Must draft scope statement and then begin rule-making process to make further revisions to Chapter 3 regarding voter registration and HAVA checks. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 3.01(6) and 12.01(2)

Relating to: Election Cycle Period for SRD and Municipal Clerk Training

Status: Board original action August 30, 2010. Scope Statement was approved by the Board at the August 30, 2010 meeting and must be published with the Legislative Reference Bureau. Thereafter may begin rule-making process to change the election cycle for special registration deputy and municipal clerk training so that the cycle begins on January 1 of an even-numbered year and continues through December 31 of the following odd-numbered year. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to the legislature (unless someone petitions for a hearing.)

Repeal and Recreate Chapter 4

Relating to: Election Observers

Status: Board original action on August 27, 2008. Final draft of Chapter 4 approved March 30, 2009 based upon comments from emergency rule proceedings. Board reviewed the rule and took renewed action on September 13, 2010. Emergency Rule was published on September 24, 2010. Scope statement published and was approved by the Board at its October 11, 2010 meeting. The final version of Chapter 4 was submitted to Legislative Council for review and its report was due back to the G.A.B. on November 24, 2010, but is expected prior to the Board's next meeting on December 13, 2010. A public hearing is scheduled for December 13, 2010 at the Board's meeting. Thereafter, the rule will be submitted to the Legislature before publication.

Repeal and Recreation of Chapter 5

Relating to: Security of Ballots and Electronic Voting Systems

Status: Board original action on May 5, 2008. Legislative Council review complete. Public Hearing held November 11, 2008 and some additions may be necessary. The Legislative Report for Chapter 5 will be submitted after the Board considers an additional provision to the chapter at the October 5, 2009 and now November 9, 2009 meetings. These additions resulted from public comments. Additions approved by the Board at the November 9, 2009 meeting. Legislative Report will be submitted and upon return, publication.

Revise 6.02

Relating to: Registration Statement Sufficiency.

Status: Board original action on March 30, 2009. Scope statement submitted for publication. Draft rule approved by the Board at the December 17, 2009 meeting and then can continue rule-making process to clarify sufficiency standards. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 6.03

Relating to: Assistance by Government Accountability Board Staff

Status: Board original action on March 30, 2009. Scope statement and draft rule approved by the Board at the December 17, 2009 meeting. This will officially begin the rule-making process to update statutory citations with new statutes post 2007 Act 1. Likely will complete with a statutory procedure that will not require a public hearing before submittal to legislature.

Revise 6.04

Relating to: Filing Documents by FAX or Electronic Means

Status: Board original action on March 30, 2009. Scope statement submitted for publication. Draft rule approved by the Board at the December 17, 2009. Must submit to the Legislative Council for review to continue rule-making process to clarify electronic filing requirements. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 6.05

Relating to: Filing Campaign Finance Reports in Electronic Format

Status: Board original action on March 30, 2009. Scope statement published. Legislative Council Report back June 25, 2009. Need to make revisions suggested by Legislative Council and publish Notice of Hearing. Thereafter, submittal to legislature.

Revise Chapter 7

Relating to: Approval of Electronic Voting Equipment

Status: Board original action on May 5, 2008. Division Administrator Robinson establishing a committee to make recommendations. Must draft scope statement and then begin rule-making process. Will require public hearing, so following submittal to Legislative Council will have public hearing before submittal to legislature.

Revise 9.03

Relating to: Voting Procedures for Challenged Electors

Status: Board original action on May 5, 2008. Scope statement and draft rule approved by the Board at the December 17, 2009 meeting. Must draft Statement of Scope to begin the rule-making process to remove a reference to lever voting machines. Likely will complete with statutory procedure that will not require a public hearing before submittal to legislature.

Revise 12.01(2) See 3.01(6) above.

Creation of Chapter 13

Relating to: Training Election Officials

Status: Board original action on January 28, 2008. Rule in draft form and ready for submittal to Legislative Council for review. Board approved draft rule at the August 10, 2009 meeting, so must now submit to Legislative Council for review. Thereafter, if not doing 30 day notice rule-making, will need public hearing and then submittal to legislature before publication.

Repeal 21.01, 21.04 and Revise 20.01

Relating to: 21.01—filing of all written communications and documents intended for former Ethics Board

21.04—transcripts of proceedings before former Ethics Board

20.01—procedures for complaints before former Elections Board

Status: Board original action on January 28, 2008. Legislative Council review complete. No public hearing necessary as processing as 30 day notice rule-making and no petition for public hearing was filed. These rules are ready for completion of legislative report and submittal to legislature. Thereafter, publication.

Creation of Chapter 22

Relating to: Settlement of Certain Campaign Finance, Ethics, and Lobbying Violations

Status: Board original action on June 9, 2008. Final draft of Chapter 22 approved March 30, 2009. Submitted to Legislative Council and report has been returned. Revisions made and Notice of Public Hearing published. Public Hearing held July 28, 2009 and reviewed by Board at the August 10, 2009 meeting. Legislative Report will be submitted and upon return, publication.

Creation of Chapter 26

Relating to: Contract Sunshine

Status: Board original action at the July 21-22, 2010 meeting, at which the Board approved the scope statement. Staff published the scope statement. Proposed rule approved by the Board at the August 30, 2010 Board meeting. On September 10, 2010, staff distributed the rule to all agencies for preview and comment. Staff will also submit it to Legislative Council for review. Likely will proceed with a public hearing upon return of the rule from Legislative Council.

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JUDGE GORDON MYSE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 22-23, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by Elections Division Staff. Presented by:
Nathaniel E. Robinson
Elections Division Administrator

SUBJECT: Elections Division Update

Election Administration Update

Introduction

Since the Government Accountability Board's January 13, 2011, meeting, the Elections Division has focused on the following tasks:

1. February 15, 2011 Spring Primary

The 2011 Spring Primary was conducted on February 15. As required, staff assisted county and municipal clerks in preparing for the primary by working extended hours. Staff were available on Friday, February 11, Monday, February 14, and Tuesday, February 15 beginning at 6:30 a.m. Staff were available on Friday until 6:00 p.m., on Monday until 8:00 p.m., and on Tuesday, until 10:00 p.m.

County Canvasses began arriving via the Canvass Reporting System on Friday, February 18th. All canvasses were received electronically by the deadline of February 22nd. Original canvasses were received as follows:

- One (1) canvass was received on February 16;
- One (1) on February 17;
- Forty five (45) on February 18;
- Seventeen (17) on February 21;
- Four (4) on February 22;
- One (1) on February 23;
- One (1) on February 24;
- One (1) on February 25;
- One (1) on March 7. (Clerk mailed to incorrect P.O. Box address.)

Judge Deininger signed the canvass certifying the election on Monday, February 28th, one day before the statutory deadline of March 1, 2011. Certificates of Nomination were sent to the county clerks the same day.

No petitions for recount were filed for state offices.

2. April 5, 2011 Spring Election and Special Partisan Primary

On February 22, 2011, Governor Walker called special elections to fill vacancies in the offices of Representative to the Assembly, Districts 60, 83 and 94. There are seven counties affected by the special elections; La Crosse, Monroe, Ozaukee, Racine, Walworth, Washington, and Waukesha. The special elections will be held on May 3, 2011.

Candidates Registered:

Nine candidates (7 Rep., 2 Dem.) registered for Assembly District 60.

Three candidates (1 Rep., 2 Dem.) registered for Assembly 83.

Eight candidates (5 Rep., 2 Dem. and 1 Ind.) registered for Assembly District 94.

Candidates Achieving Ballot Placement:

Nine candidates (7 Rep., 2 Dem.) qualified for the 60th Assembly District race.

Two candidates (1 Rep., 1 Dem.) qualified for the 83rd Assembly District race.

Seven candidates (5 Rep., 2 Dem.) qualified for the 94th Assembly District race.

Primaries are required in the 60th and 94th Assembly Districts. The primaries will be conducted on Tuesday, April 5, 2011, in conjunction with the Spring Election.

Conducting a partisan primary in conjunction with a nonpartisan election has presented several challenges:

A. Ballots

Ballots were designed to accommodate nonpartisan offices and partisan offices. Since the vote for the special primary is a vote for one office, and a voter can only vote in one party for one candidate, staff determined that a party preference section was not necessary. The instruction to voters was amended to emphasize that only one vote is allowed:

“You may only vote **ONCE** in this Partisan Primary. If you vote in more than one party or for more than one candidate, **NO VOTES WILL BE COUNTED!**”

Each party header also reminds the voter that only one vote may be cast:

_____ **PARTY**

“If you vote in this section, you may not vote in any other party section, or for independent candidates.”

Dominion Voting Systems program optical scan equipment and touch screens from a single database. The touch screen equipment cannot properly execute a partisan primary without a party preference. Therefore, Dominion optical scan ballots will also contain a party preference section.

B. Absentee Ballots

Ballots are required to be available for absentee voting at the Spring Election no later than March 15th. Candidates for judicial office were certified on February 28th. Nomination papers of candidates for the special primaries however, were not due until March 8th. The deadline for challenges to nomination papers was Friday, March 11th. This is the earliest candidates can be certified to the primary ballot. Clerks in counties affected by the partisan primaries have been instructed to proceed with printing ballots for the municipalities that are not involved in the primaries. County clerks have set ballots for municipalities that have a primary and receive approval from G.A.B. staff as to format. Upon certification of candidates, clerks may provide the names to ballot printers. Ballot printers have provided the clerks with ballots in electronic format to be issued to voters requesting absentee ballots until official ballots are printed and delivered.

C. Canvass Reporting System (CRS)

The February 15, 2011 Spring Primary marked the third time in which County Clerks used the G.A.B. Canvass Reporting System (CRS). This system is an online application by which the county clerks provide election results electronically. Once again the system functioned admirably, greatly reducing the time previously required to edit, load and proof the canvass.

All 72 counties used the CRS to report the official election results for the February 15, 2011 Spring Primary. Based upon feedback from County Clerks, some improvements were made to the CRS before the Primary. Improvements were made to several reports and other system processes. At the request of clerks, staff are working with the Department of Administration/Division of Enterprise Technology (DET) to make additional improvements to the system. Most of the updates however, are scheduled to be installed after the Spring Election Cycle.

D. Reporting Units

Staff examined proposed reporting unit plans from the seven counties to ensure that each reporting unit contained only wards in the Assembly District requiring the primary. Several plans had to be adjusted.

E. Type B Notice

Staff produced a "Type B Notice of Spring Election and Partisan Primary and Sample Ballots" for clerks in the counties affected by the special elections.

3. May 3, 2011 Special Election for Partisan Office

Ballots for the special election have been designed and will be sent to county clerks shortly. Upon certification of the results of the special primary, clerks will insert the names of the primary winners and forward to their ballot printers. The G.A.B. is required to certify special primary results no later than May 14th. However, ballots are required to be available for absentee voting no later than May 12th. The county clerks have been instructed to submit their primary canvasses as soon as possible, so that staff can certify winners expediently. Staff are brainstorming to develop a plan to attempt to certify the primary canvass expediently. Upon certification of candidates, clerks may provide the names to ballot printers. Ballot printers will provide the clerks with ballots in electronic format to be issued to voters requesting absentee ballots until official ballots are printed and delivered. This is the same process used to meet the absentee ballot deadline for the special primary.

4. Extended Operating Hours to Support Clerk Partners and Voter Customers

Since 2008, before, during and immediately after each election, staff have offered extended services and technical support to our valued clerk customers and to the public, and we will continue to do so for the April 5, 2011 Spring Election. Staff's extended operating hours will start Friday, April 1, 2011 (excluding Saturday and Sunday) and concluded on Wednesday, April 6, 2011 as follows:

- Friday, April 1, 2011: 6:30 a.m. until 6:00 p.m.
- Monday, April 4, 2011: 6:30 a.m. until 6:00 p.m.
- **Tuesday, April 5, 2011: 6:30 a.m. until 10:00 p.m.**
- Wednesday, April 6, 2011: 6:30 a.m. until 6:00 p.m.

During the extended hours of operations, staff maintains an Election Activity Log of all calls relating to elections issues. A preliminary review of this data for the February 15, 2011 Spring Election is being analyzed and the details will be posted on the G.A.B. website.

5. MOVE Act: Status of Wisconsin's Compliance with Federal Court Consent Decree

The Government Accountability Board staff has completed its compliance with the Federal court Consent Decree regarding absentee voting by military and overseas voters. A final report was submitted January 14, 2011. The final report included information about military and overseas absentee electors from municipalities across the state. G.A.B. Staff were able to work with municipal clerks to ensure all their election data was entered into the Statewide Voter Registration System (SVRS) and the Wisconsin Election Data Collection System (WEDCS), which formed the basis of the statistics required for the final report to the US-DOJ.

Currently G.A.B. Staff is initiating the steps required to move the Partisan Primary from September to another date that will allow for compliance with the MOVE Act's 45 day ballot preparation deadline. The Special Election cycle and Presidential Preference election will also have to be updated to meet MOVE Act requirements. Staff met with a group of county and municipal clerks to receive input on the election time line and a recommendation on a new Partisan Primary date. The Legislature was also presented with an examination of potential Partisan Primary dates for them to review and provide feedback. The Board will also be presented with a report containing G.A.B. staff, clerk and legislative input for consideration.

6. 2010-2011 Four-Year Voter Record Maintenance

The Government Accountability Board will be conducting the Four-Year Voter Record Maintenance for the 2010 General Election. The process for 2010-2011 will differ slightly from the process in 2008-2009. For the 2010-2011 Four-Year Voter Record Maintenance, G.A.B. will be responsible for printing and mailing the Notices of Suspension of Registration. Unlike 2008, the return address on the 2010 mailing will not be the G.A.B. office but instead will be the office of the respective municipal clerk. Municipalities will receive and process the returned Four-Year Voter Record Maintenance mailings and Applications for Continuation for Registration. The 2010 General Election will be the last election where G.A.B. will conduct the Four-Year Voter Record Maintenance. For General Elections going forward, G.A.B. will continue to support clerks in identifying voters who qualify for the four-year record maintenance, but clerks will be responsible for sending the Notices of Suspension of Registration and making updates to the voter records in their municipality.

7. Accessibility

The G.A.B. staff is implementing the next phase of the Polling Place Accessibility Survey project, which is the creation of an online database containing accessibility information for polling places statewide. An elections accessibility specialist was hired in January to oversee G.A.B. accessibility efforts.

A team of temporary workers are taking polling place accessibility data from over 2,700 paper surveys and entering it into a custom-designed database. The data was collected in 2009 from Wisconsin's county and municipal clerks. Data entry will be completed in March and will enable staff to produce targeted reports on barriers for voters with disabilities. There are many advantages of the new online format. It will enable county and municipal clerks to conduct future accessibility surveys online and update their records as improvements are made to their polling locations. It will enable staff to pinpoint existing barriers to voters with disabilities and track assistance provided through grants. On Election Day, April 5, a small staff team will resume on-site compliance surveys, with site visits based on targeted reports showing areas of most concern, with the greatest need.

Training

Please refer to the Attachment titled, "Training Summary."

Other Noteworthy Initiatives:

1. Voter Data Interface

Clerks continue to use SVRS to run HAVA Checks to validate against Department of Transportation (DOT) and Social Security Administration (SSA) records, and confirm matches with Department of Corrections (DOC) felon information and Department of Health Services (DHS) death data, as part of on-going HAVA compliance.

Clerks process HAVA Checks and confirm matches on a continuous basis during the course of their daily election administration tasks. This process has been followed since the Interfaces became functional in SVRS on August 6, 2008.

Since the last Elections Division update to the Board at the December 13, 2010 meeting, clerks processed approximately 34,757 HAVA Checks with DOT/SSA on voter applications in SVRS. The number of HAVA Checks remains high due to Election Day Registrations being processed from the November 2, 2010 General Election and the February 15, 2011 Primary.

2. Retroactive HAVA Checks Status

A Final Report on the Retroactive HAVA Check Project was presented to the Board at the March 23, 2010 meeting. Staff has continued to provide updates to the Board on the Retroactive HAVA Check non-matches at recent Board meetings.

As previously reported, on October 7, Board staff mailed 30-Day Notice letters on behalf of the clerks in the rest of the municipalities that have voters whose Retroactive HAVA Check DMV Ping Letter was returned as undeliverable. Over 8,000 letters were returned as undeliverable, and in accordance with the state statutes, their voter records were marked as inactive. Board staff will also inactivate any voters who received a letter, but did not respond. Now that all Election Day Registrations and voter participation for the November General Election has been recorded in SVRS, staff can move forward with the inactivations of the voters who did not respond, and have not reregistered at a new address.

Board staff met with technical and program area representatives from the Department of Transportation (DOT) on January 19, 2011 to discuss enhanced data sharing to help resolve the HAVA Check non-matches that remain from the Retroactive HAVA Check Project, as well as

the HAVA Checks that municipal clerks run on a regular basis. Board staff have requested access to DOT's Public Abstract Resource System (PARS). This system will allow staff to look up non-matches to see how their information appears in the motor vehicle database. Board staff and DOT technical staff are also working on a bulk comparison where DOT would provide additional information regarding records that do not match. The bulk data will be bundled into categories to facilitate analysis and correction of the non-matches in groups rather than one at a time.

3. Voter Registration Statistics

As of Tuesday, March 8, 2011, there were a total of 4,583,935 voter records stored in SVRS. Of this number, 3,484,362 were active voters; 839,191 were inactive; and 260,382 were cancelled voters.

Note: An active voter is one whose name will appear on the poll list. An inactive voter is one who may become active again, e.g. convicted felon or someone who has not voted in four years. A cancelled voter is one who will not become active again, e.g. deceased person.

The number of records in SVRS has slightly increased since the last report due to the daily work of clerk users and Board staff. Between December 13, 2011, and March 8, 2011 there have been 9,435 merges completed in SVRS.

4. G.A.B. Help Desk

The G.A.B. Help Desk is supporting over 1,700 active SVRS users. The Help Desk staff assisted with processing the canvass, data requests and testing SVRS improvements. Help Desk staff is continuing to improve and maintain the two training environments that are being utilized in the field.

The majority of inquiries to the G.A.B. Help Desk during December, January and February were from clerks requesting assistance with setting-up the February 15, 2011 Spring Primary Election, issuing absentee ballots, printing absentee labels and running reports. On Election Day, there were considerably fewer calls than usual even for a Spring Primary. Calls for this period also consisted of clerks requesting assistance entering data into the G.A.B. Canvass Reporting System and the Wisconsin Election Data Collection System (WEDCS), assistance reconciling election data, entering Election Day Registrations (EDR) and running reports. Help Desk staff assisted with configuring and installing SVRS on many new clerk computers due to the number of new WEDCS, Canvass Reporting and data entry users assisting clerks with EDR entry.

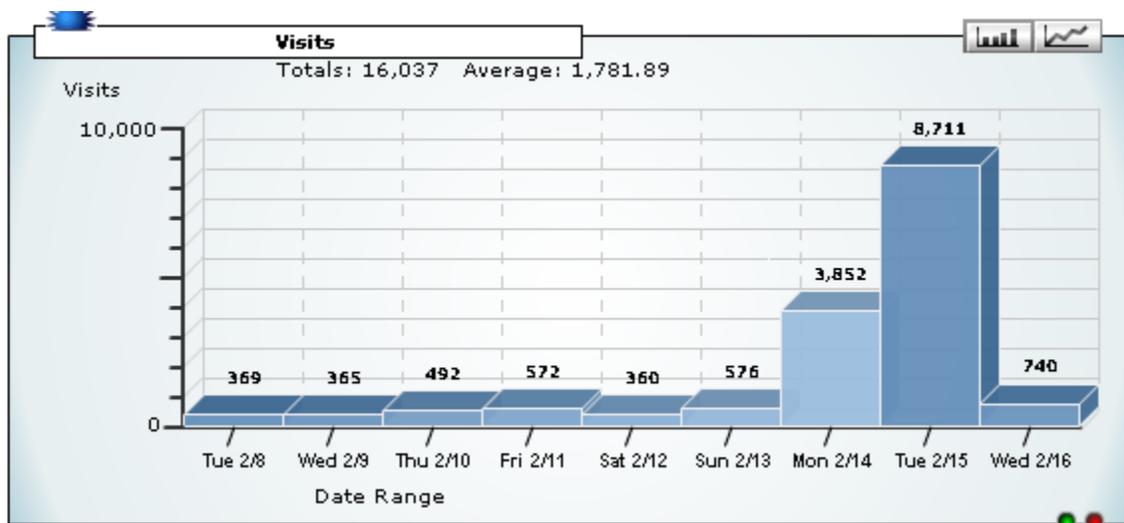
G.A.B. Help Desk Call Volume (261-2028)	
December 2010	862
January 2011	869
February 2011	1,290
March (as of March 11, 2011)	186
Total Calls for Period	3,207

To alleviate distractions from the Reception Desk during the February Primary Election, calls from the Front Desk's main number and the 800 number were transferred to the Help Desk. The Help Desk operated on extended hours from Friday, February 11, 2011, through Wednesday, February 16, 2011.

The number of inquiries to the G.A.B. main (reception) business telephone is below.

G.A.B. Reception Desk Call Volume (266-8005)	
December 2010	1,058
January 2011	1,799
February 2011	1,294
March (as of March 11, 2011)	901
Total Calls for Period	5,052

The graph below illustrates voter activity accessing the GAB Voter Public Access (VPA) website for the week of the February Primary. Statistics indicate unique visitors to the site.



5. Enhanced Mail-In Voter Registration

Staff continues development of the new Enhanced Mail-In Voter Registration process, which uses the Voter Public Access website and SVRS to facilitate voter registration. This is a web-based portal where voters can fill in voter registration information, and then print off and mail in a completed voter registration form. The data is saved in SVRS, so when the clerk receives the mailed in form, they can simply review and approve the pending voter application in SVRS rather than having to data enter the information on the form.

The new system was demonstrated to local election officials at three different locations across Wisconsin in early March to gather feedback on the new system. During the week of February 28, 2011, focus groups were held in Eau Claire, Green Bay and Madison to maximize participation from our local election partners.

The system will also be demonstrated to community, students, political, and other interested public groups on March 17, 2011 to gather their feedback. The input gathered at these focus groups will be used to finalize the system. Once final, the system will be demonstrated to the Wisconsin Election Assistance Council and to the Government Accountability Board. The new system is projected to be available to the public immediately after the May Special Election.

6. SVRS Core Activities

A. Software Upgrade(s)

A new version of the Canvass Reporting System was installed on February 14, 2011. This new version made several updates requested by clerks to improve the canvassing process. A new version of the Wisconsin Election Data Collection System (WEDCS) was installed on March 6, 2011. The new version includes new validations that can be put on specific fields to assist in data entry (for example, if a clerk reports 150 ballots issued, they will need to enter a number smaller than that for the number of ballots returned, or undeliverable).

The next version of SVRS (version 7.2) is planned to be installed in early May and will include the updates for the new Enhanced Mail-In Voter Registration process.

B. System Outages

There were no unscheduled service interruptions that impacted users' access to SVRS since the last Board meeting.

C. Data Requests

The Board staff regularly receives requests from customers interested in purchasing electronic voter lists. SVRS has the capability and capacity to generate electronic voter lists statewide, for any county or municipality in the state, or by any election district, from congressional districts to school districts. The voter lists also include all elections that a voter has participated in, going back to 2006 when the system was deployed.

Due to the Spring election events, Board staff received a very high number of data requests since the last report. The following statistics demonstrate the activity in this area from the last Board report through March 7, 2011:

- One hundred forty-three (143) inquiries were received requesting information on purchasing electronic voter lists from the SVRS system.
- Ninety-eight (98) electronic voter lists were purchased.
- No paper voter lists were purchased.
- \$60,876.25 was received for the 98 electronic voter lists requested.

30-60 Day Forecast

1. Continue to assist Municipal Clerks, candidates and public to prepare for the 2011 Spring Election Cycle.
2. Perform the statutorily required 4-year Voter Record Maintenance process
4. Continue development of G.A.B.'s Enhanced Mail-In Voter Registration Initiative.
5. Continue collaboration with the Department of Transportation (DOT) to resolve the HAVA Check non-matches that remain from the Retroactive HAVA Check Project, as well as the HAVA Checks that municipal clerks run on a regular basis.

Action Items

None.

ATTACHMENT #1

GAB Election Division's Training Initiatives
12/15/2010 – 3/22/2011

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
SVRS "Initial" Application and Election Management	Instruction in core SVRS functions – how to navigate the system, how to add voters, how to set up elections and print poll books.	16 hours	New users of the SVRS application software.	6	60
SVRS "Advanced" Election Management	Instruction for those who have taken "initial" SVRS training and need refresher training or want to work with more advanced features of SVRS.	3 types of classes: Election Management; Absentee Process; HAVA Interfaces, Reports, Labels & Mailings; 4 hours each	Experienced users of the SVRS application software.	24	200
Voter Registration	Basic training in adding voter registration applications, searching for voters, updated voters.	3 hours	Municipal and county clerks, staff and temp workers who provide election support only.	The WBETS site is available to train temporary workers.	85
Municipal Clerk	2005 Wisconsin Act 451 requires that all municipal clerks attend a state-sponsored training program at least once every 2 years.	3 hours	All Municipal clerks are required to take the training; other staff may attend.	6	100

ATTACHMENT #1

GAB Election Division's Training Initiatives
12/15/2010 – 3/22/2011

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Chief Inspector	Instruction for new Chief Inspectors before they can serve as an election official for a municipality during an election.	3 hours	Election workers for a municipality.	30	700
WisLine	Series of 10 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	80 minute conference call, hosted by the UW Extension, conducted by Elections Division staff.	Clerks and chief inspectors; campaign treasurers and candidates.	January 19, 2011: Municipal Elections/Clerk's Duties; February 2, 2011: Training for Election Day Officials/Special Topics	Average 200 per program broadcast; tapes are also ordered post-broadcast
WBETS	Web Based Election Training System. Still under development. Reference materials were made available to the clerks in February; voter registration training made available to clerks 3/24/2008.	Varies	County and municipal clerks and their staff.	Phase 1 of eLearning training plan close to completion; Phase 2 under discussion.	Site is available for clerks to train temp workers in data entry; reliers are also able to access the site upon request.

ATTACHMENT #1

GAB Election Division's Training Initiatives
12/15/2010 – 3/22/2011

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
HAVA Interfaces	<p>Instruction in the user of the interface functionality in SVRS to check death records, felon records, DOT records and duplicate records against voter records as part of HAVA compliance requirements.</p> <ul style="list-style-type: none"> • Board staff gave election administration and SVRS presentations to county clerks at WCCA Convention in Madison. • Board staff working on migration of several training programs to online and DVD formats. 	2 hours	All clerks (staff as determined by clerk).	Pilot of web-based training presented to the Standards Committee on May 14, 2008. Lessons available online June 2, 2008.	Eventually 2000+
Other					

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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: March 22-23, 2011

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Legal Counsel
Wisconsin Government Accountability Board

Prepared by: Jonathan Becker, Administrator
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Program Activity

Campaign Finance Program

Richard Bohringer, Nate Judnic and Dennis Morvak, Campaign Finance Auditors

2011 January Continuing Reports

Materials for the 2011 January Continuing report were sent to all candidates, PACs, parties, conduits, sponsoring organizations, and independent expenditure registrants. This report covers their activity through December 31, 2010 and was due by January 31, 2011. 1,390 committees were required to file a campaign finance report. As of March 15, we have received 1,305 campaign finance reports. Of those reports received, 1,216 reports were filed electronically and 89 reports were received from paper filers.

There are 85 committees that have not filed campaign finance reports yet for the January Continuing 2011 report period. The non-filers include 30 candidates, 11 political parties, 12 PACs, 10 corporations, and 5 conduits. Staff has made efforts to follow up with all committees that did not timely file.

Campaign finance auditors worked extended hours, including weekend hours, during the days leading up to and immediately following the January 31 filing deadline in order to be as accessible for filers as possible. Staff continues to work with those candidates, PACs, parties, conduits and corporations on filing campaign finance information using the Campaign Finance Information System.

Annual Filing Fees

Any non-candidate committee with expenses over \$2,500 is required to pay a \$100 filing fee. This fee was due on or before January 31, 2011. As of March 15, 2011, the G.A.B. has collected \$39,200 in filing fees. If this fee is not paid timely, the committee is required to pay a total of \$300 for filing fees, and up to a \$500 forfeiture.

Spring Pre-Primary and Pre-Election Reports

Materials for the Spring Pre-Primary filing were sent to those candidates participating in the Spring Primary election. 171 pre-primary reports were filed with the G.A.B.; 34 of those reports were filed by candidates. All candidates required to file a Spring Pre-Primary report have filed. This report covers campaign finance activity from January 1 through January 31, 2011 and was due on or before February 7, 2011.

Materials for the Spring Pre-Election filing were sent out to those candidates participating in the Spring election. This report covers campaign finance activity from February 1 through March 21, 2011 and is due on or before March 28, 2011.

Lobbying Update

Tracey Porter, Ethics and Accountability Specialist

Statement of Lobbying Activities and Expenditures Reports

Lobbying principal organizations and lobbyists registered and licensed in the 2009-2010 legislative session completed and filed their fourth six month Statement of Lobbying Activities and Expenditures reports covering lobbying activity and expenditures from July through December, 2010. These reports were due on or before January 31, 2011. The program received 99% reporting compliance with this filing. Staff continues to process matters that are the subject of lobbying communications reported by principal organizations as required by Chapter 13, *Wisconsin Statutes*.

Lobbying Registration and Reporting Information

Government Accountability Board staff continues to process 2011-2012 lobbying registrations, licenses and authorizations. Processing performance and revenue statistics related to this session’s registration is provided in the table below.

2011-2012 Legislative Session: Lobbying Registration by the Numbers (Data Current as of March 15, 2011)			
	Number	Cost	Revenue Generated
Organizations Registered	643	\$375	\$241,125
Lobbyists Licenses Issued (Single)	536	\$350	\$187,600
Lobbyists Licenses Issued (Multiple)	112	\$650	\$72,800
Lobbyists Authorizations Issued	1313	\$125	\$164,125

Financial Disclosure Update

Cindy Kreckow, Ethics and Lobbying Support Specialist

Statements of Economic Interests – Judicial Candidates for Spring Election and Assembly Candidates for Special Election

Government Accountability Board staff has processed Statements of Economic Interests for candidates running in the spring election, to include 4 Supreme Court Candidates, 2 appellate court candidates, 60 circuit court candidates and 121 municipal judge candidates. Also processed are the statements for the special election candidates for the vacant 60th, 83rd and 90th District Assembly seats.

Statements of Economic Interests – Annual Filing

In addition to the statements mailed to incumbent Supreme Court, appellate court, circuit court, and municipal judge candidates, Government Accountability Board staff sent an additional 2,000 + pre-printed Statements of Economic Interests to state public officials required to file a statement with the Board under Chapter 19, *Wisconsin Statutes*. Statements are mailed over the course of eight weeks, beginning January 24, 2011.

Statements of Economic Interests are due on or before May 2, 2011. Staff will continue to process incoming statements throughout March and April and will follow up with those officials who have yet to file to ensure they are aware of the statutory deadline.

Staff will also be sending out quarterly financial disclosure statements to State Investment Board members on March 31. These statements are to be completed and returned to the G.A.B. no later than May 2, 2011.

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 22 and 23, 2011, Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by: Kevin J. Kennedy, Director and General Counsel
Sharrie Hauge, Chief Administrative Officer
Reid Magney, Public Information Officer

SUBJECT: Administrative Activities

Agency Operations

Introduction

The primary administrative focus for this reporting period has been working with outside auditors on the Contract Sunshine and G.A.B. disbursements and purchasing card compliance reviews, requesting funding from the Joint Committee on Finance through the 13.10 review process, recruiting staff, communicating with agency customers, and making presentations.

Noteworthy Activities

1. Federal Performance Audit Update

In early January staff completed addressing federal performance audit questions by Mr. Arnie Garza, Assistant Inspector General for audits. We are awaiting his audit report and Notice of Findings and Recommendations (NFRs). After we receive the NFRs the G.A.B. will address the findings and work through the resolution process with the US-EAC.

2. Contract Sunshine Program Update

We continue to make steady progress regarding the Contract Sunshine quarterly certifications. The January Certification was due on January 18, 2011. Though there were some late responding agencies, due to a change in agency administrators, to date only nine agencies are currently considered out of compliance with Contract Sunshine reporting. This is a major improvement from the previous certification period, when 23 agencies were considered out of compliance. We also have one agency currently using our automated upload feature and two more that are actively working with the Government Accountability Board staff to resolve technical issues that are preventing them from using the feature. The next certification period for Contract Sunshine will cover activity beginning January 1, 2011 and ending on March 31, 2011. Notice of the upcoming certification will be sent to agencies on March 21, to ensure that agencies are prepared for certification. We will begin accepting certifications on April 1 and agencies will have until April 15 to turn in certifications before they are considered late.

The Legislative Audit Bureau (LAB) continues to work on the performance audit of the Contract Sunshine program. After several months of collecting information from the Government Accountability Board as well as other state agencies, the LAB has completed the main investigatory phase of their audit. The LAB has now moved onto reviewing the information in order to compile their final report. LAB staff continues to contact GAB staff with clarifying questions. We have not been given a firm timetable as to when the report will be completed, or when it will be published.

3. State Controller's Office – Disbursements and Purchasing Card Compliance Review

On February 7, 2011, an Entrance Conference was held between G.A.B. financial staff and the State Controller's Office (SCO) to begin their disbursements and purchasing card compliance review of the Government Accountability Board.

The SCO routinely conducts an examination of internal controls over disbursements, the purchasing card program and encumbrance carryover processes. Additionally, they examine compliance with applicable statutes, rules and regulations as they relate to procurements and disbursements. The agency's last review was conducted in 2004.

In preparation for the audit, staff provided the SCO auditor with a current organizational chart and written procedures and flowcharts as they relate to disbursements and the purchasing card transactions process. Per the auditors' request, we provided samples of disbursements, including purchase orders and purchasing card transactions for the period: July 1, 2009 – October 31, 2010.

The SCO auditor is currently analyzing all documentation provided and working with G.A.B. financial staff through the review process. After the review process has been completed, the auditor will prepare a draft of the audit report for discussion amongst G.A.B. staff and SCO staff, prior to releasing the final report.

4. Legislative Joint Committee on Finance (JCF) 13.10 Funding Requests

On March 10, 2011 staff submitted four separate Section 13.10 requests to the Legislative Joint Committee on Finance for inclusion at its next 13.10 meeting.

1. That the Joint Committee on Finance place our \$16.515 request for increased expenditure authority on the agenda. We are requesting **\$94,720** for FY-11 in our program revenue appropriation [s.20.511(1)(im)] supplies and services line to enable the agency to complete its current information technology (IT) project to upgrade our lobbying database and website.
2. That the Joint Committee on Finance transfer **\$40,800** from the Committee's supplemental appropriation [s.20.865(4)(a)] to the agency's GPR general operations appropriation to enable the agency to acquire the necessary resources to review, analyze and determine the sufficiency of up to 16 legislative recall petitions that may be offered for filing between April 25, 2011 and May 31, 2011.
3. Pursuant to §13.101(4), Wis. Stats., the Government Accountability Board requests the Joint Committee on Finance release **\$7,000** to the agency's GPR Election-related cost reimbursement appropriation [§20.511 (1)(b)] to reimburse municipalities for extended polling hours for the April 5, 2011 and May 3, 2011 elections. Because of across the board budget reductions this biennium we have a shortfall in this appropriation.
4. That the Joint Committee on Finance transfer GPR expenditure authority totaling **\$67,637** for FY 2010-11 from the agency's GPR general operations [§20.511 (1)(a)] to the GPR election

administration transfer account [§20.511 (1)(d)] and then to the SEG election administration fund [§20.511 (1)(t)] in order to qualify for HAVA Section 251 payments, which has a 5% state match requirement. This will enable G.A.B. to secure an additional \$1,285,090 in 2010 federal HAVA requirements payments.

If our request is not approved, it is likely the State will not be able to secure this funding which has been earmarked for Wisconsin elections. There are proposals at the federal level to pull back any state payments that have not been released by the U.S. EAC to manage the current federal deficit.

5. Staffing

Currently, we are recruiting for an Office Operations Associate position to support the HAVA program staff. We are also recruiting for an Accountant position that will be responsible for developing, monitoring and maintaining all accounting and financial records for HAVA federal funds and all other federal funds the agency receives in accordance with state and federal requirements governing federal fund sources and grants.

6. Communications Report

Since the December 13, 2010, Board meeting, the Public Information Officer has engaged in the following communications activities in furtherance of the Board's mission:

- The PIO responded to numerous media and public inquiries about proposed voter photo ID legislation, and helped draft testimony for the Legislature and develop the agency's fiscal estimate with regard to the public education campaign. The PIO set up many print and electronic news media interviews for Mr. Kennedy and Mr. Robinson, and also gave interviews when they were not available. The PIO created a photo ID portal page on the website (<http://gab.wi.gov/elections-voting/photo-id>) with information about voter photo ID, including agency testimony and background materials. The page includes a public comment form, which has generated approximately 50 comments.
- The PIO responded to numerous media and public inquiries about the recall process. The PIO set up many print and electronic news media interviews for Mr. Kennedy, and also gave interviews when he was not available.
- The PIO created a recall portal page on the website (<http://gab.wi.gov/elections-voting/recall>) with information about which officials are eligible for recall, links to information about individual recall efforts, and recall manuals. Website traffic has been very high during this period, with the recall page on some days receiving three times more page views than the entire website receives on normal day.
- The PIO responded to numerous media and public inquiries about the Spring Primary and Spring Election, as well as the Special Election ordered by the Governor for May 3, 2011.
- The PIO has also been working with the Ethics & Accountability Division Administrator to find a new web host for the Division's Eye on Lobbying and Campaign Finance Information System websites. The Division plans to engage a web hosting company in Wisconsin that will provide better services at a lower cost.
- The PIO has also worked on a variety of other projects including responding to concerns from Legislators on a variety of topics and communicating with our clerk partners.

7. Meetings and Presentations

During the time since the last Board meeting, Director Kennedy has been participating in a series of meetings and working with agency staff on several projects. The primary focus of the staff meetings has been to address legislative issues including the activities at the Capitol in the past month. The agency has been inundated with inquiries on the propriety of actions by both sides of the budget repair bill. Currently the focus is on recall issues.

The Director has had several meetings and discussions with legislators and legislative staff members on election reform proposals. This has also included discussion with the Legislative Council staff, Legislative Reference Bureau drafting attorneys and analysts with the Legislative Fiscal Bureau.

The media has made a number of inquiries on legislative initiatives as well as the rules, and costs associated with recall. This has led to extended interviews with print journalists and a number of television and radio appearances.

There have been a number of retirement celebrations beginning with an open house and reception for our own Barbara Hansen in recognition of her 21 years of service to the State of Wisconsin in the field of elections and campaign finance. Barbara has already been asked by her municipal clerk to serve as a poll worker at the April 5, 2011 spring election.

Two clerks who served on our SVRS steering committee have recently retired. Carol Alexander, the Beloit City Clerk, and Bob Ohlsen, the Dane County Clerk, have made invaluable contributions to the former Elections Board as well as the G.A.B. with their service on advisory committees. The Director was asked to speak at both their retirement programs. In addition to sharing the appreciation of the Board and its staff for their professional contributions, we were able to in the case of Barbara, Carol and Bob present commendations from Governor Doyle and Governor Walker. Saturday, March 5, 2011 was officially proclaimed Robert "Bob" Ohlsen day in Wisconsin by Governor Walker.

On December 29, 2010, the Director and Division Administrator Jon Becker conducted an Ethics training session for the staff of then governor-elect Walker. Director Kennedy, Jon Becker and Nat Robinson made a presentation on behalf of the agency to newly elected legislators as part of their orientation program on January 6, 2011. The program was organized by the Legislative Council. On Saturday, January 15, 2011 the Director along with Division Administrators Becker and Robinson conducted an agency overview and ethics orientation for members of the Governor's cabinet that was part of an executive retreat.

Director Kennedy and Division Administrator Robinson attended the National Association of State Election Directors (NASSED) winter meeting in Washington D.C., February 9-12, 2011. They both also participated in a working group on next steps with the MOVE Act organized by the Federal Voting Assistance Program of the Department of Defense the day before the NASSED conference. On the morning of February 10, 2011 they attended the 5th annual Overseas Voting Foundation Summit. Director Kennedy led panels on the state of campaign finance after *Citizens United* and election litigation for the NASSED meeting.

On February 16-18, 2011, Director Kennedy attended an Election Center workshop, *Elections in Crisis*. He also participated in a Professional Education Program board meeting while at the workshop. The Election Center is a non-partisan organization dedicated to training election officials.

On March 1, 2011, the Director provided County Clerks with a summary of pending legislation as part of their winter meeting in Madison. On March 3, 2011, Director Kennedy and Staff Counsel Mike Haas provided an agency overview for new District Attorneys as part of their orientation. The program was organized by the Department of Justice.

On March 10, 2011 Division Administrator Robinson along with Director Kennedy and key staff met with Dr. Wallace Brucker from Eau Claire to discuss ways to improve the delivery of ballots to military and overseas voters. Dr. Alec Yasinsac, a nationally recognized computer security analyst, participated by telephone in the meeting.

On February 23, 2011, Chief Justice Shirley Abrahamson, selected the new members of the Government Accountability Candidate Committee. As required by law, the Chief Justice selected the Committee members by drawing the names of Court of Appeals Judges from each of the four appellate districts in the presence of all members of the State Supreme Court. Court of Appeals Judges Kitty Brennan (District 1), Richard Brown (District 2), Greg Peterson (District 3) and Brian Blanchard (District 4) will serve two-year terms that began March 1, 2011.

The Committee will meet on Tuesday, April 5, 2011 to select at least two nominees to fill the vacancy created by the expiration of Judge Gordon Myse's term on May 1, 2011. The nominees are presented to the Governor whose selection is subject to confirmation by a two-thirds vote of the State Senate. Judge Myse has announced he will not apply for reappointment.

Looking Ahead

The staff will continue to prepare for the review of an unprecedented number of recall petitions as well as administering the April 5, 2011 spring election. The next few weeks may require the staff to administer matching grants for the Supreme Court contest.

The Board's next meeting is by teleconference on Monday May 16, 2011 beginning at 9:30 a.m. CDT. The Board will receive reports on the status of various recall initiatives. The Board may be required to resolve some recall-related issues including challenges. Board members should review their calendars, in the event additional meetings are required.

Action Items

None.

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 22-23, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by:

Shane W. Falk, Staff Counsel
David Buerger, Elections Specialist

SUBJECT: Recall Status, Guidance, and Administrative Processes

Introduction:

The current recall situation is unprecedented anywhere in the nation. Never have so many state legislators, of both parties, been subject to recall at the same time. A recent Milwaukee Journal Sentinel article stated that “[Scholars] could cite only three times in American history when more than one state legislator has been recalled at roughly the same time over the same issue: two in Idaho in 1971... two in Michigan in 1983.. and two Republicans in California months apart in 1995.” Craig Gilbert, *Recall Drives Could Make History*, Milwaukee Journal Sentinel, March 6, 2011 at <http://www.jsonline.com/news/statepolitics/117501513.html>.

Since the Wisconsin Constitution was amended in 1926 to allow recall for state officials, only 4 state legislators have ever been successfully subjected to an actual recall election. While there have been numerous recall elections held in Wisconsin at the local level, most notably the Milwaukee County Executive and 7 Milwaukee County Supervisors recalled in 2002 during the pension scandal, the scale of even a single State Legislative recall is much more substantial. The scale of 16 State Senate recalls is even more extraordinary, especially considering the multiple recall committees that have registered against several of the officeholders, which at the time of writing this Memorandum expands the recall efforts to 22. Depending upon the specific State Senator, each recall petitioner must obtain between 11,817 and 20,973 valid signatures to force a recall election.

To illustrate the extraordinary nature of the current recall situation in Wisconsin, one need only look to the national historical record of recall efforts for State-level officers that resulted in an actual recall election. A recent Journal Sentinel article noted that in all of American history, only 20 State level officers have ever been subject to a recall election. Craig Gilbert, *State Recall Movement Stands Alone in U.S. History*, Milwaukee Journal Sentinel, March 12, 2011 at

<http://www.jsonline.com/blogs/news/117804138.html>. Due to the limited time period and significant signature requirements to force a recall election, it may be likely that several of the current 22 recall efforts will fail; however, Mr. Gilbert pointed out that if only 3 or 4 succeed, this recall situation still will be entirely without national precedent.

It is within this historical and unprecedented context that the Board staff has begun to provide advice and guidance to persons interested in recall efforts, registered recall committees, and incumbents who are the targets of recall efforts. Staff is also preparing to administratively process the recall petitions and any elections. This Memorandum is divided into four sections and recommends that the Board affirm certain staff guidance, policy decisions, and administrative processes.

I. Recall Status Report:

As of March 16, 2011, 22 separate recall committees have registered to circulate petitions against 16 State Senators, all of whom have been in office at least one year and are eligible for recall by statute. In addition, another 4 separate recall committees initially attempted to register to circulate recall petitions (against a total of 8 Senators); however, Board staff rejected these 4 registrations—3 were rejected because they did not identify a petitioner from within the Senate district of the officeholder for which recall was sought and 1 was rejected because the registration identified a petitioner that lived outside the Senate district for which recall was sought.

Detailed information regarding the 22 registered recall committees may be found on the Board's website at <http://gab.wi.gov/elections-voting/recall>. This situation is very fluid as additional recall committees continue to register and several of the registered recall committees have received notices of insufficiencies that need to be remedied or risk a lapse and invalidation of registration. The number of signatures each petitioner must have certified as sufficient by Board staff to force a recall election varies from 11,817 to 20,973 signatures depending upon the specific Senator. These signature figures are based upon a calculation of 25% of the electors that voted for Governor on November 2, 2010 in each Senate district, and the signatures must be collected and filed within 60 days of the recall committee's registration with the G.A.B. Board staff can expect to receive recall petitions for review and determination of sufficiency at any time, but no later than between April 25, 2011 and May 16, 2011 based upon the recall committees' registration dates.

A brief breakdown of the offices against whom recall registrations were filed and the number of recall committees registered follows:

District	Senator	# Comm.	# Insufficient and Date Due
SD 2	Robert Cowles	1	
SD 4	Lena Taylor	1	1 - Statement of Intent Due 3/18
SD 6	Spencer Coggs	1	
SD 8	Alberta Darling	1	
SD 10	Sheila Harsdorf	1	
SD 12	Jim Holperin	1	
SD 14	Luther Olsen	1	

SD 16	Mark Miller	3	1 - Paper GAB 1 and Stmt Int. 3/18
SD 18	Randy Hopper	1	
SD 20	Glenn Grothman	1	
SD 22	Robert Wirch	2	
SD 24	Julie Lassa	2	2 - Paper GAB 1 and Stmt. Int. 3/18, 3/31
SD 26	Fred Risser	1	
SD 28	Mary Lazich	1	
SD 30	Dave Hansen	3	1 - Paper GAB 1 and Stmt. Int. 3/18
SD 32	Dan Kapanke	1	

II. Circulation Guidance

Board staff has received several inquiries regarding recall registration or circulation. Staff provided guidance to the requesters based upon statutes, administrative rules, and past policies. The subject of these inquiries will be identified and summarized herein, followed by recommendations and proposed motions. In general, Board staff recommends that the Board affirm the staff policy or guidance identified in this Memorandum.

A. Recall Registration: Electronically via CFIS

Recommendation:

The Board should affirm staff's opinion that an electronic Campaign Finance Information System (CFIS) website registration is received, filed and effective as of the date the GAB 1 is generated by CFIS. A follow up paper copy of the GAB 1 and statement of intent to recall assures that the electronic CFIS registration was not false. A recall committee substantially complies with the registration requirements of §11.05, Wis. Stats., and the recall registration requirements of §9.10(2)(d), Wis. Stats., at the time the electronic GAB 1 is completed and generated in CFIS. The date the GAB 1 is received, filed, and effective in CFIS triggers the 60-day recall petition circulation period. If a registrant fails to provide the paper copy of the GAB 1 or statement of intent to recall an officer within 15 days of a staff request, the recall registration statement lapses and is ineffective. In such a circumstance, the recall committee must file a new GAB 1 triggering a new 60-day recall petition circulation period and all signatures collected prior to the new GAB 1 filing date are invalid for purposes of that petitioner.

Background:

With the implementation of the CFIS, Board staff adopted a policy whereby the electronic CFIS campaign finance registration statements were deemed received and filed as of the date the GAB 1 (Campaign Registration Statement) was generated by CFIS, which is identified on the GAB 1 produced by the software. The electronic CFIS registration is sufficient for purposes of the registration requirements of §11.05, Wis. Stats. However, to provide some assurance that the electronic registration was not computer generated or otherwise frivolous, the Board's policy requires receipt of a paper copy of the GAB 1 via mail. Until the paper copy of the GAB 1 is received by Board staff, the electronic CFIS registration statement is held as pending. Once the paper copy is received, the electronic CFIS registration statement is

made fully active and appears for public inspection on the CFIS website. The date of registration remains the date that the registrant completed the electronic registration in CFIS, regardless of when the paper copy arrives at the Board office. However, pursuant to the requirements of substantial compliance with registration as defined in GAB §6.02(2), Wis. Adm. Code, if the paper copy of the GAB 1 is not received within 15 days of Board staff notice to the registrant, the electronic CFIS registration lapses and is not effective.

This approach was adopted as a variation of the application of GAB §6.04, Wis. Adm. Code, involving filing of documents by facsimile process. Persons filing a GAB 1 electronically via CFIS are permitted to campaign, as well as raise and spend funds immediately upon completion of the electronic CFIS registration; however, if the registrant fails to provide a paper copy of the GAB 1 within 15 days of notice from Board staff, the registration lapses and is not effective. This policy has been in place for the past two years since the CFIS implementation in January 2009.

Application to Recall Committee Registrations:

Pursuant to §9.10(2)(d), Wis. Stats., 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., with the filing officer for whom the petition is filed. The petitioner shall also append 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 reason for the recall. Furthermore, 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.

As the campaign registration statement (GAB 1) form has evolved and especially as it appears in electronic form in CFIS, all required information prescribed by §11.05, Wis. Stats., is requested and it includes substantially all the requirements for a statement indicating a registrant's intent to circulate a recall petition. Essentially, the only information that the GAB 1 form does not request that is required by statute is the reason for recalling a local official. There is no G.A.B. prescribed form for the statement of intent for recall; however, a sample or recommended statement of intent is included in the appendices for the two G.A.B. recall manuals.

In light of the Board's general policy regarding electronic CFIS campaign registration statements and the evolved GAB 1 form, staff has opined that the electronic CFIS campaign registration filing constitutes substantial compliance with the registration requirements of §11.05, Wis. Stats., and the recall registration requirements of §9.10(2)(d), Wis. Stats. Pursuant to the staff's general policy and GAB §6.02(2), Wis. Adm. Code, recall committee registration statements filed electronically on CFIS are complete for purposes of §9.10(2)(d), Wis. Stats., thus triggering the 60-day circulation period. Under this policy, if a recall committee does not provide a paper copy of the electronic CFIS campaign registration statement and a statement of intent to recall official within 15 days of notice from staff, the recall committee registration lapses and is not effective, thus invalidating the signatures collected between the time of electronic CFIS registration and the lapse, at least with respect to that petitioner. If this occurs, the petitioner would need to file a new GAB 1 and begin a new

recall petition circulation period, offering to file only those signatures after the new registration.

Proposed Motion:

MOTION: Adopt staff's statutory and policy interpretation as outlined above regarding the effective date for recall registration statements electronically filed on CFIS and the consequences for failure to provide a paper copy of the registration statement and statement of intent within 15 days of staff's request.

B. Serial Recall Registrations with Different Petitioners

Recommendation:

The Board should affirm staff's opinion that the qualified elector petitioner is specific to each recall registration and mandatory pursuant to §9.10(1) and (2)(d), Wis. Stats., and where a registered recall committee later files a subsequent recall registration with new and different qualified elector petitioners, the first and subsequent recall registrations are treated as separate and distinct recall registrations with separate 60-day circulation periods.

Background:

Board staff has identified situations where a recall effort organizer has initially filed a recall registration statement with a specific petitioner who is a qualified elector, but later the same recall effort organizer filed a subsequent recall registration statement with a new and different qualified elector petitioner. In some instances, these serial recall registrations by the same recall effort organizer can occur several weeks apart. Board staff is concerned that since the recall effort organizer is authorized to begin circulation of a recall petition upon filing the first valid recall registration statement, the recall effort organizer may later only perfect a subsequent recall registration statement with different qualified elector petitioners and offer a petition for filing containing signatures predating the later recall registration statement. In practice, such a circumstance could frustrate the specific statutory 60-day recall circulation period prescribed by §9.10(2)(d), Wis. Stats., and provide an unfair advantage to the recall effort organizer in that he or she would receive a longer period to circulate the recall petition.

Staff has opined that §9.10(1), Wis. Stats., requires that the recall petitioner is a qualified elector from the district of the officer sought to be recalled. Furthermore, §9.10(2)(d), Wis. Stats., requires this qualified elector petitioner to file a registration statement under §11.05(1) or (2), Wis. Stats. Finally, §9.10(2)(d), Wis. Stats., also requires the same qualified elector petitioner to provide a statement of intent to circulate a recall, identifying the officer for whom recall is sought. The qualified elector petitioner is specific to each recall registration statement and a mandatory requirement. If a recall effort organizer later files a subsequent recall registration statement with new a qualified elector petitioners who is different from a prior recall registration statement, the two recall registrations are treated as separate and distinct, each having its own statutory 60-day recall circulation period running from the dates of each separate recall registration. Only in the instance where a recall registration statement is simply amended to add more qualified elector petitioners or delete some while retaining at least one identical petitioner from a prior filing, will the subsequent recall registration be treated as an amendment to the first one. In all other circumstances, recall registration statements with

distinctly different qualified elector petitioners shall be treated as separate and distinct recall registrations.

The practical effect of this application of §9.10, Wis. Stats., is to enforce the 60-day recall circulation period per recall registration and per qualified elector petitioner. Therefore, if a recall effort organizer files one recall registration statement identifying a petitioner and then later files another recall registration statement with a new and different petitioner, none of the signatures collected prior to the second registration will be valid for that new and different petitioner's recall petition.

Proposed Motion:

MOTION: A qualified elector petitioner is specific to a recall registration and mandatory pursuant to §9.10(1) and (2)(d), Wis. Stats., and where a registered recall committee later files a subsequent recall registration with new and different qualified elector petitioners, the first and subsequent recall registrations are treated as separate and distinct recall registrations with separate 60 day circulation periods.

C. Circulation of Recall Petitions—Public Employees and Public Buildings

Recommendation:

The Board should affirm staff's written opinions found in the March 3, 2011 Memorandum from Kevin J. Kennedy entitled "Circulation of recall petitions" (Exhibit A) and adopt the Memorandum as a formal campaign finance and ethics opinion of the Board.

Background:

Board staff received numerous requests regarding the legality of public employees signing recall petitions, the circulation of recall petitions by public employees, and the use of public buildings to circulate recall petitions, as well as whether violations of any laws associated with the foregoing would invalidate recall petition signatures.

In providing guidance, staff relied upon application of relevant statutes, administrative rules, First Amendment case law, and past policy practices of the Board with respect to circulation of nomination papers.

Following this Memorandum is a March 3, 2011 Memorandum from Kevin J. Kennedy entitled "Circulation of recall petitions," which provides more detailed written staff opinions regarding these matters.

Proposed Motion:

MOTION: Adopt the March 3, 2011 Memorandum from Kevin J. Kennedy entitled "Circulation of recall petitions" as a formal campaign finance and ethics opinion of the Board.

D. Meaning of “Offered for Filing” and Requirement for Complete Dates

Recommendation:

The Board should affirm staff’s written opinions found in the March 11, 2011 Memorandum from Kevin J. Kennedy entitled “Meaning of “Offer to File” Recall Petition; Complete Dates Required for Each Individual Recall Petition Signature” (Exhibit B) and adopt the Memorandum as a formal elections opinion of the Board.

Background:

Board staff received numerous complaints regarding unauthorized filing of recall petition signature sheets by persons not representing a registered recall committee and concerns that individual petition sheets submitted to the Board by circulators may not be returned so that they could be incorporated into the recall committee’s formal offer of the petition for filing. In addition, Board staff received multiple requests to clarify the language from §9.10(2)(e), Wis. Stats., that appears more specific and contrary to provisions of §2.05, Wis. Adm. Code, as the administrative code applies to dates for signatures on nomination papers.

In providing guidance, staff relied upon application of the specific statutory provisions of §9.10(2)(d) and (e), Wis. Stats., rules of statutory construction, case law, application of GAB §2.05, Wis. Adm. Code, and past policy practices of the Board.

Following this Memorandum is a March 11, 2011 Memorandum from Kevin J. Kennedy entitled “Meaning of “Offer to File” Recall Petition; Complete Dates Required for Each Individual Recall Petition Signature,” which provides more detailed written staff opinions regarding these matters.

Proposed Motion:

MOTION: Adopt the March 11, 2011 Memorandum from Kevin J. Kennedy entitled “Meaning of “Offer to File” Recall Petition; Complete Dates Required for Each Individual Recall Petition Signature” as a formal elections opinion of the Board.

III. Campaign Finance and Ethics Guidance

A. Recall Expense Funds: Contribution Limits and Residual Recall Funds

Recommendation:

The Board should affirm staff’s written opinions found in the March 15, 2011 Memorandum from Kevin J. Kennedy entitled “Recall Expense Funds: Contribution Limits and Residual Recall Funds” (Exhibit C) and adopt the Memorandum as a formal campaign finance opinion of the Board.

Background:

Board staff received numerous inquiries regarding the proper application of the exemption from contribution limits when using the contributions for incurred recall expenses and the allowable uses of residual recall funds after all recall expenses are satisfied, a recall election has been ordered, and all challenges are complete.

In providing guidance, staff relied upon the language of §11.26, Wis. Stats., and past policy practices of the Board.

Following this Memorandum is a March 15, 2011 Memorandum from Kevin J. Kennedy entitled "Recall Expense Funds: Contribution Limits and Residual Recall Funds," which provides more detailed written staff opinions regarding these matters.

Proposed Motion:

MOTION: Adopt the March 15, 2011 Memorandum from Kevin J. Kennedy entitled "Recall Expense Funds: Contribution Limits and Residual Recall Funds" as a formal campaign finance opinion of the Board.

B. Frequently Asked Questions: Recalls-Ethics/Use of Government Resources

Recommendation:

The Board should affirm staff's written ethics and use of government resources guidance found in the February 24, 2011 Memorandum from Kevin J. Kennedy entitled "Frequently Asked Questions: Recalls-Ethics/Use of Government Resources." (Exhibit D)

Background:

Board staff received some initial inquiries from state officials regarding the ethics implications of a recall petition circulation period and recall election period. In addition, questions arose regarding state officials' use of government resources during the same periods. State officials were comfortable with the concept of ethics implications of campaigning, but not necessarily the application of those principles to the two separate periods of a recall—the recall petition circulation period and the recall election period.

From past experience which has also been the staff's experience for these recalls, staff realized that guidance on these matters in the form of frequently asked questions was appropriate because state officials asked very specific questions about particular activities that they may do or are prohibited from doing during a recall effort. In providing guidance, staff attempted to create a FAQ that was practical and useful to state officials in practice. Staff actually provided specific direction in response to many frequently asked questions.

Following this Memorandum is a February 24, 2011 Memorandum from Kevin J. Kennedy entitled "Frequently Asked Questions: Recalls-Ethics/Use of Government Resources," which provides the detailed frequently asked questions and responses with respect to state officials' ethics requirements and use of government resources in the context of a recall effort.

Proposed Motion:

MOTION: Affirm staff's written ethics and use of government resources guidance found in the February 24, 2011 Memorandum from Kevin J. Kennedy entitled "Frequently Asked Questions: Recalls-Ethics/Use of Government Resources."

IV. Administrative Processes

In light of the unprecedented nature of these recall efforts, Board staff has prepared several administrative procedures and policies to assist with an orderly administration of the recall petition process. This section of this Memorandum is for informational purposes only and action by the Board is only required if the Board has concerns about policies Board staff seeks to implement. The following will itemize some procedures staff has used or will use to assist with managing this extraordinary process.

A. Board Receipt and Processing of Recall Petitions

Board staff has drafted and will implement a policy to provide direction and standards for receipt and processing of recall petitions. The policy is entitled "Procedures for Processing Recall Petitions" (Exhibit E) and follows this Memorandum. This policy addresses the procedures that will be used when the recall petitions are offered for filing with the G.A.B.

In addition, Board staff has begun receiving individual recall petition sheets that are mailed or delivered to the Board in most cases by a circulator-signer, meaning that the person that signed the petition sheet was also the circulator. In some instances, there is only one signature on the recall petition sheet, or several family members; however, no organized recall committee has offered the petition for filing. The "Procedures for Processing Recall Petitions" includes procedures to address receipt of these unauthorized individual recall petition sheets. In addition to the policy, Board staff has prepared a form letter to return to the sender along with the original petition sheet. This letter follows this Memorandum and the document entitled "Procedures for Processing Recall Petitions." (Exhibit F)

B. Forms

Board staff has developed various forms and form letters to implement the "Procedures for Processing Recall Petitions" in a uniform manner. These forms are identified as follows and can be found following this Memorandum.

1. Recall Petition Receipt (Exhibit G)
2. Notice to Recall Committee (Exhibit H)
3. Notice to Officeholder (Exhibit I)
4. Recall Timelines/Projections (Exhibit J)
5. Recall Petition Sufficiency (Exhibit K)
6. Recall Petition Verification (Exhibit L)

C. Determination of Sufficiency of Recall Petitions

Board staff has drafted guidance to staff regarding practical implementation of the “Procedures for Processing Recall Petitions” and specifically determining whether individual signatures should be counted as valid. The guidance is entitled “Determination of Sufficiency of Recall Petitions” (Exhibit M) and follows this Memorandum.

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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: March 3, 2011
TO: Interested parties
FROM: Kevin J. Kennedy
SUBJECT: Circulation of recall petitions

You have asked a number of questions about the circulation of recall petitions. The statutes the Government Accountability Board administers address only some of your questions. Those applicable statutes are ss.9.10 (2), 11.36, 19.45, and 19.59, stats. But we will attempt to provide some guidance on all of your questions. This memorandum reflects the thinking of the Board's staff and is not a formal opinion of the Board.

Asking government employees to sign a recall petition. Section 11.36, stats., prohibits any person from soliciting a political service from a state employee while the employee is engaged in official duties. Section 11.36, stats., prohibits soliciting a political service of a local government employee during established hours of employment or while the employee is engaged in official duties. This means that no one should ask a government employee to sign a recall petition during the employee's work hours.

Government employees circulating recall petitions. Section 19.45, stats., prohibits *state public officials* from using their office for a private or unlawful benefit. Circulating a recall petition is not government business – it is a private endeavor. A state public official, such as a legislative aide, who is engaged in such activity while being paid on state time, would run afoul of the Ethics Code's prohibition. Section 19.59, stats. applies similar restrictions to *local public officials*. However, the vast majority of state and local employees are not defined as public officials and are not subject to the statutory ethics codes.

We have reviewed ER-MRS ch. 24, the code of ethics for state employees who do not qualify as state public officials, and have not found any provision that addresses state employees circulating recall petitions, nomination papers, or the like on state time. I am unaware of any statutes that prohibit a local government employee from circulating a recall petition while the employee is at work. Such activities may be regulated by personnel policies and work rules, or a local ethics code, but are not prohibited by the civil or criminal statutes governing campaigns or elections or by the ethics code for local public officials found in section 19.59, stats. In our view, it would seem appropriate to restrict any activity by an employee that disrupts the workplace or permits an employee to take advantage of his or her position to obtain signatures. Also, as a matter of general principle, public employees should not be engaged in private endeavors while on work time, including circulating recall petitions. But any disciplinary consequences would be up to the employing authority; it is not an issue of enforcement under the statutory code of ethics for local public officials.

Use of government buildings. We have searched for, but have not found, any statute governing the appropriate or prohibited uses of government buildings. Creating rules for the use of government buildings is up to the governmental authority that owns the building, subject to First Amendment considerations. State-owned buildings are under the authority of the Department of Administration. The rules promulgated by DOA do not address prohibited political activities in state buildings, although the rules do

restrict commercial activities and charitable solicitations. Adm 2.05, Wis Admin Code. Buildings owned by a local government unit would be under the authority of such local unit.

The issue of restricting public activities on public property is a complex issue that has been the subject of many court cases. Unlike the general rule that the owner of private property has the right and authority to control any expressive activity occurring on that property, a different rule has been recognized for publicly owned property. The United States Supreme Court has said that the permissibility of a restriction on speech on public property depends on the classification of the property in question. "The existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differently depending on the character of the property at issue." *Perry Ed. Assn. v. Perry Local Educators Assn.* 460 U.S. 37, 45. The U.S. Supreme Court in *Perry*, recognized three types of publicly owned forums and articulated the standards for regulation in each forum:

1. At one end of the spectrum are streets and parks which have 'immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' . . . In places which by long tradition or government fiat have been devoted to assembly and debate, the rights of the State to limit expressive activity are sharply circumscribed. In these quintessential public forums, the government may not prohibit all communicative activity. For the state to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. . . . The State may also enforce regulations of the time, place and manner of expression which are content neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. (at pp.45-46)
2. A second category consists of public property which the state has opened for use by the public as a place for expressive activity. The constitution forbids a State to enforce certain exclusions from a forum generally open to the public even if it was not required to create the forum in the first place. Although a state is not required to indefinitely retain the open character of the facility, as long as it does so it is bound by the same standards as apply in a traditional public forum. Reasonable time, place and manner regulations are permissible, and a content-based prohibition must be narrowly drawn to effectuate a compelling state interest. (at pp.46-47).
3. Public property which is not by tradition or designation a forum for public communication is governed by different standards. We have recognized that the First Amendment does not guarantee access to property simply because it is owned or controlled by the government. . . . In addition to time, place and manner regulations, the State may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because the public officials oppose the speaker's view. (at pp.47-48)

Each governmental authority, and not the Board, is entrusted with making appropriate decisions, but the authority must be guided by these constitutional principles. With the caveat that a court, and not the Board, would be the arbiter of specific facts and circumstances, these principles suggest the following considerations:

- Government authorities may not unduly restrict building areas traditionally open to the public, such as the public areas in the State Capitol or entry ways to government buildings, without a compelling public interest..
- The government has broader authority to restrict entry to, and use of, private offices.

- The government has broader authority to restrict entry to, and use of, classrooms.
- Use restriction should not be content based – that is, it may not be based on the substance of the communication.

Ultimately, DOA, school districts, and local governments, must establish rules for its own buildings.

Validity of signatures on recall petitions. The sufficiency of a signature on a recall petition is governed by s.9.10 (2), stats. That statute does not invalidate a recall petition signature collected in violation of any time or place restrictions for public buildings or public employees imposed by statute or rule. A signature is invalid if it is not complete, s.9.20 (2)(e); the signer is not a qualified elector of the jurisdiction represented by the officer subject to recall, s.9.20 (2)(e); the signature is dated outside the circulation period, s.9.20 (2)(e); or the signature was obtained under false pretenses, s.9.20 (2)(e) and (2)(m).

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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.



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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: March 15, 2011
TO: All Interested Persons and Committees Involved With Recall Efforts
FROM: Kevin J. Kennedy
Director and General Counsel
Government Accountability Board
SUBJECT: Recall Expense Funds: Contribution Limits and Residual Funds

Government Accountability Board staff have received numerous inquiries regarding the limited statutory exemption from contribution limits for recall expenses and how to dispose of residual recall funds upon the termination of a recall circulation effort, determination of insufficiency of a recall petition, or order for recall election and end of challenges and defenses of the order. Each of these three actions can terminate the period to incur recall expenses for which the limited statutory exemption from contribution limits applies. This Memorandum provides further clarification in response to these inquiries and concerns.

I. Limited Statutory Exemption from Contribution Limits for Recall Expenses:

Limitations on contributions are prescribed by §11.26, Wis. Stats., which establishes specific dollar amount or percentage limitations including but not limited to the following:

- Individual contributions (§11.26(1), Wis. Stats.)
- Committee contributions other than from a political party or legislative campaign committee (§11.26(2), Wis. Stats.)
- Calendar year individual aggregate contributions of \$10,000 to all candidates for state or local office, as well as individuals and committees, legislative campaign committees and political parties, whether local or state (§11.26(4), Wis. Stats.)
- Contributions received by political parties (§11.26(8), Wis. Stats.)
- Contributions to candidates from committees, legislative campaign committees, and political parties (§.11.26(9), Wis. Stats.)

However, pursuant to §11.26(13m)(b), Wis. Stats., contributions are not subject to these limitations when utilized for the purpose of payment of legal fees and other expenses incurred in connection with the circulation, offer to file or filing, or with the response to the circulation, offer to file or filing, of a petition to recall an officer prior to the time a recall primary or election is ordered, or after that time if incurred in contesting or defending the order.

Once a recall committee files a registration statement (GAB-1), the exemption from the §11.26, Wis. Stats., contribution limits applies. The exemption from contribution limits only apply up to the total

amount of legal fees and all other expenses incurred in connection with the circulation of a recall petition and challenge or defense of an order for a recall election. Incurring such recall legal fees and other expenses that may be paid from contributions that are exempt from limitations are permitted only until the latest of any of the following:

- The date the recall committee terminates its registration, if such termination occurs prior to the petition having been offered for filing.
- The date the recall petition is determined insufficient or the time period to offer the petition for filing expires.
- The date the recall election is ordered.
- The date any contest or defense of the order for recall election concludes.

Limitations on contributions prescribed by §11.26, Wis. Stats., always apply to all contributions that exceed the amount of incurred legal fees and other expenses of the recall petition circulation and challenge or defense of the order for a recall election.

For purposes of this Memorandum, the latest date as described above shall be identified as the “conversion date,” meaning the date the residual recall funds (those that exceed incurred recall expenses) convert to contributions subject to limitations prescribed by §11.26, Wis. Stats. Upon reaching the conversion date and assuming all incurred recall expenses are satisfied, the limitations on contributions prescribed by §11.26, Wis. Stats., apply to the residual recall funds. However, if incurred recall expenses remain unsatisfied at the conversion date, individuals, committees, legislative campaign committees and political parties may continue to receive contributions exempt from §11.26, Wis. Stats., limitations until sufficient contributions are received to satisfy the recall expenses.

Pursuant to §11.01(16), an act is for “political purposes” when it is done for the purpose of influencing the recall from or retention in office of an individual holding a state or local office. Since contributions for recall legal fees and other expenses are for a political purpose, the remainder of Ch. 11, Wis. Stats., applies, excluding limitations on contributions as set forth above. This exemption from limitations on contributions does not extend to prohibited contributors or other practices as prescribed in Ch. 11, Wis. Stats. For example, corporations or associations organized under Ch. 185 or 193, Wis. Stats., are prohibited from making contributions. See §11.28, Wis. Stats. As another example, making contributions other than from funds or property belonging to the contributor or furnishing funds or property to another person for the purposes of making a contribution in other than the person’s own name are prohibited. See §11.24(1), Wis. Stats. As yet another example, making a disbursement or incurring an obligation with moneys solicited for political purposes for a purpose which is other than political is prohibited, except as authorized by law. See §11.25(2)(a) and (b), Wis. Stats.

In addition, §13.625(1)(c), Wis. Stats., prohibits lobbyist contributions to candidates in a special election and candidates in a General Election (except in the year of a candidate’s election between June 1 through and the day of the General Election). Lobbyists are prohibited from making contributions to partisan elected officials or candidates, even if for recall expenses; however, lobbyists are not prohibited from making contributions to legislative campaign committees, political parties, individuals, recall committees, or other committees, but excluding candidate or personal campaign committees.

II. Residual Recall Funds at the Conversion Date

An act is for “political purposes” when it is done for the purpose of influencing the recall from or retention in office of an individual holding a state or local office, therefore a monetary or in-kind recall donation to an individual, committee, legislative campaign committee, political party or an organization

making independent disbursements (§1.91 organization), constitutes a “contribution.” See §11.01(6)(a) and (16), Wis. Stats. Since contributions used for recall expenses are not subject to limitations prescribed by §11.26, Wis. Stats., individuals, committees, legislative campaign committees, and political parties must keep detailed records and their campaign finance reports must include separate designations for recall contributions and recall expenses.

At the conversion date, recall contributions may exceed recall legal fees and other recall expenses, leaving residual recall funds. Individuals, committees, legislative campaign committees, and political parties have three ways to treat these residual recall funds. Pursuant to §11.06(4)(b), Wis. Stats., individuals, committees, legislative campaign committees, and political parties possessing residual recall funds shall have 15 days from the conversion date to make a determination to accept residual recall funds for campaign use, donate them to a charity or the common school fund, or return the residual recall funds contributions to the original contributors. The action of accepting, donating or returning the residual recall funds must be completed within 15 days from the conversion date.

If residual recall funds are converted for campaign use, the residual recall funds from each donor are subject to the limitations on contributions as prescribed by §11.26, Wis. Stats. Residual recall funds from individuals that are accepted for campaign use apply toward the individual’s \$10,000 aggregate calendar year limitation found in §11.26(4), Wis. Stats. If residual recall funds are converted to campaign use, it is a best practice to notify the original contributor so that it may be taken into account by the contributor when making other contributions during that calendar year. Any contribution from a donor in excess of the permitted limitations on contributions prescribed by §11.26, Wis. Stats., shall be treated as an “excess contribution” and must be donated to a charity or the common school fund, or returned to the original contributor within 15 days of the conversion date. Failure to do so will result in acceptance of an excess contribution and treated as a violation of the limitations on contributions for which the civil and criminal penalties in §§11.60 and 11.61, Wis. Stats., apply.

Upon acceptance of a contribution, individuals, committees, legislative campaign committees, and political parties may designate a portion of a contribution for campaign use (up to the limitations prescribed by §11.26, Wis. Stats.) and the remaining as recall funds. This may provide easier accounting of residual recall funds once recall expenses are satisfied. However, individuals, committees, legislative campaign committees, and political parties may also initially designate contributions as recall funds and later re-designate a portion of residual recall funds for campaign use during the determination period in the 15 days following the conversion date, but only up to the limitations prescribed by §11.26, Wis. Stats. If re-designating residual recall funds to campaign funds, original recall fund contributions shall be treated on a first-in-first out basis for determining which funds may be converted or disposed of.

No individual, committee, legislative campaign committee, or political party may contribute residual recall funds, not first accepted for campaign use, to any other individual, committee, legislative campaign committee, political party, or organization making independent disbursements, even if for another recall effort. Such a donation constitutes a contribution because it is for a “political purpose,” i.e., for the purpose of influencing the recall from or retention in office of an individual holding a state or local office. See §11.01(6)(a) and (16), Wis. Stats. Such a contribution does not qualify for the exemption on limitations on contributions found in §11.26(13m), Wis. Stats., because a “contribution” is not a “legal fee” or “other expense” incurred in connection with the circulation, offer to file or filing, or with the response to circulation, offer to file or filing, of a petition to recall an officer prior to the time a recall primary or election is ordered, or after that time if incurred in contesting or defending the order.

State of Wisconsin \ Government Accountability Board



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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: February 24, 2011

TO: The Honorable Members, Wisconsin State Senate

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

SUBJECT: Frequently Asked Questions: Recalls-Ethics/Use of Government Resources

1. **Question:** If the public or press are talking about potential recalls or asking for comments in response to a political action committee's statements regarding a potential recall, may a legislative employee or the officeholder respond from the office using State resources?

Answer: Staff and the officeholder may talk about a potential recall, respond to public or press statements, and even respond to a political action committee's statements regarding a potential recall from a government office using State resources, but only until a recall committee registration is filed, triggering the time period for circulation of the recall petition. Once a recall committee registration is filed, use of government resources is restricted similar to those restrictions applying to campaigns.

2. **Question:** What are general ethics and use of government resources rules to follow regarding recall efforts once a recall registration statement has been filed?

Answer: A legislative employee is absolutely free to defend the officeholder's record and talk about his or her accomplishments, but should not comment specifically about the recall itself or the people organizing the recall. In general, the the same restrictions that apply to a regular campaign apply to a recall effort.

3. **Question:** If a constituent calls and wants to know how he/she goes about signing the recall petition, what should/can a legislative employee tell them?

Answer: Callers should be informed they will need to contact the organizers of the recall. If asked, the caller may be given the name of the organizing group.

- 4. **Question:** If a constituent hears about the recall and calls to offer their support, what should/can you tell them?

Answer: You can tell the caller that you appreciate his or her support. If they want more specifics about how they can be helpful, you can direct them to the campaign and provide the campaign's phone number.

- 5. **Question:** If a constituent calls asking questions about the recall, such as why is this happening, what's the process, what does the officeholder think about it, etc., what should/can you tell them?

Answer: If asked about the process, you can talk about it, just as you could talk about the election process in general (60-days to collect signatures, review by G.A.B., then special election, etc.). If asked why this is happening, you can say *the organizers have said it's because of the officeholder's actions.*

If asked what the officeholder thinks about it, you can say the officeholder thinks he or she has done a good job representing the district, positions and votes he or she has taken, etc., but you cannot talk specifically about the recall itself or the people organizing it.

- 6. **Question:** If the media calls for the officeholder's reaction, or regarding anything about the recall, what should/can you tell them?

Answer: Staff can take messages from the media and pass them along to the officeholder. If the officeholder knows the call is regarding the recall, he or she should use his or her personal or campaign cell phone to return the call. If he or she is already on the phone with a reporter about a different issue and the reporter shifts to the recall topic, or the reporter has placed the call to the officeholder, he or she can answer the question.

- 7. **Question:** The officeholder has a blog on an official state web site. When bloggers start talking about the recall, what should/can you tell them?

Answer: You can only talk about the officeholder's record and position on policy issues on your "official State" web site. You cannot talk about the recall on the "official State" web site, even if/when others bring it up.

- 8. **Question:** Can you issue news releases out of the office regarding the recall?

Answer: You cannot issue press releases from your government office about the recall. You can, however, forward news clips regarding the recall, if it is the practice in your office to forward clips on anything that mentions the officeholder.

- 9. **Question:** Does the Sec. 11.33, Wis. Stats., prohibition of using public funds for the cost of materials or distribution of 50 or more pieces of substantially identical material apply in a recall situation?

Answer: Yes the restriction applies once the G.A.B. sets the recall election timetable. Once the recall petition has been offered for filing, certified as sufficient, and a recall election has been ordered, an officeholder may not use public funds for the cost of materials or distribution of 50 or more pieces of substantially identical material after the first day for circulating nomination papers for the recall election.



PROCEDURES FOR PROCESSING RECALL PETITIONS

MARCH 11, 2010

GOVERNMENT ACCOUNTABILITY BOARD

When Recall Petitions Arrive In-Person

1. Request the name of the recall committee.
 - a. Verify the recall committee is registered
 - i. Open H:\RECALL\Recalls 2011\2011 Recall Summary.xls. Click on the "Recall Status" worksheet. Check for the name provided.
 - ii. If the recall committee is **registered**:
 1. Record the name of the recall committee on the Recall Petition Receipt.
 2. Enter today's date on the worksheet in the column labeled "Petition Filed" in the row for that recall committee.
 3. Record today's date on the Recall Petition Receipt.
 4. Proceed to Step #2
 - iii. If the recall committee is **not registered**:
 1. Print a copy of "Form Letter to Return Individual Petition Sheets" found at H:\RECALL\Recalls 2011\Recall Procedures\Form Letter to Return Individual Petition Sheets.
 - a. Date stamp the letter and write "Not Registered" at the top.
 - b. Request the name and address of the person delivering the petition.
 - i. Write that at the top of the letter.
 - c. Make a copy of the letter and petition.
 - i. Stamp "COPY" on the top of each.
 - d. Staple the copies together.
 2. Return the originals to the person delivering the petition.
 3. Inform the person that their recall petition cannot be accepted and refer them to the letter.
 - a. If the person has questions, refer them to Shane or David.
 4. Route the copy of the letter with the attached copy of the petition to Shane for filing.
2. Ask the person to verify the recall committee's contact information.
 - a. Click on the "Recall Contacts" tab of the worksheet.
 - b. Verify:
 - i. Delivery Person/Contact Person
 1. If the delivery person is not the same as the contact person, contact Shane or David to confirm they are an authorized agent of the recall committee.

2. Record name of the delivery person at "Delivered By".
 - ii. Email
 - iii. Phone
 - iv. Mailing Address
 - c. Copy the verified information onto the Recall Petition Receipt.
3. Record the following information from Excel onto the Recall Petition Receipt:
 - a. GAB ID # of Recall Committee
 - b. Name of officeholder
 - c. District
 - d. GAB-1 Filing Date
 - e. Statement of Intent to Recall Filing Date
4. Ask the person the approximate number of pages/signatures they are filing.
 - a. Record this on the Recall Petition Receipt.
 - b. Verify that the petition pages are numbered and in numerical order.
 - i. If pages are not numbered, request that the person number them consecutively beginning with 1.
 - ii. If pages are not in order, request that the person put them in order.
5. Ask the delivery person to review the receipt and sign at "Recall Agent".
 - a. Sign at "Agency Staff" line.
 - b. Date Stamp the Recall Petition Receipt.
 - c. Copy the Recall Petition Receipt and stamp "COPY" at the top.
6. Give the person delivering the papers the following:
 - a. The copy of the Recall Petition Receipt
 - b. The Notice to Recall Committee
 - c. Determination of Sufficiency of Recall Petitions
7. Mail the "Notice to Officeholder", enclose the following:
 - a. A copy of the Recall Petition Receipt.
 - b. Determination of Sufficiency of Recall Petitions
8. Put all materials received in a box and tape the Recall Petition Receipt to the short side of the box.
9. Deliver the box to the Recall Review Team.

When Recall Petitions Arrive in the Mail

1. Verify the recall committee is registered
 - a. Open H:\RECALL\Recalls 2011\2011 Recall Summary.xls.
 - b. Click on the "Recall Status" worksheet.
 - c. Check for the committee name provided. Verify the recall committee information

- i. If the committee info is not provided or does not match, contact Shane or David to call the recall committee and conduct a further inquiry.
 - d. If the recall committee is **registered**:
 - i. Record the name of the recall committee on the Recall Petition Receipt.
 - ii. Enter today's date on the worksheet in the column labeled "Petition Filed" in the row for that recall committee.
 - iii. Record today's date on the Recall Petition Receipt.
 - iv. Proceed to Step #2
 - e. If the recall committee is **not registered or cannot be identified**:
 - i. Print a copy of "Form Letter to Return Individual Petition Sheets" found at H:\RECALL\Recalls 2011\Recall Procedures\Form Letter to Return Individual Petition Sheets.
 - 1. Date stamp the letter and write "Not Registered" at the top.
 - 2. Make a copy of the letter and petition.
 - a. Stamp "COPY" on the top of each.
 - 3. Staple the copies together with the original envelope.
 - ii. Place the original petition in an envelope along with the letter.
 - 1. Address the envelope with the return address from the original envelope.
 - a. If there is no return address, use the address of the circulator on the petition page.
 - 2. Mail the envelope.
 - iii. Route the copy of the letter, copy of the petition, and original envelope to Shane for filing.
2. Complete the Recall Petition Receipt
 - a. Click on the "Recall Contacts" tab of the worksheet.
 - b. Copy the following information onto the Recall Petition Receipt:
 - i. GAB ID # of Recall Committee
 - ii. Mailing Address
 - iii. Contact Person
 - iv. Email
 - v. Phone
 - vi. Name of officeholder
 - vii. District
 - viii. GAB-1 Filing Date
 - ix. Statement of Intent to Recall Filing Date
 - x. Approximate Number of Pages
 - xi. Approximate Number of Signatures
3. Enter "Mail" under "Delivered By"
4. Verify that the petition pages are numbered.
 - a. If pages are not numbered, number them consecutively beginning with 1.

5. Copy the Recall Petition Receipt and initial and date stamp both copies.
6. Mail the "Notice to Recall Committee", enclose the following:
 - a. One copy of the Recall Petition Receipt
 - b. Determination of Sufficiency of Recall Petitions
7. Mail the "Notice to Officeholder", enclose the following:
 - a. A copy of the Recall Petition Receipt.
 - b. Determination of Sufficiency of Recall Petitions
8. Put all materials received in a box and tape the Recall Petition Receipt to the short side of the box.
9. Deliver the box to the Recall Review Team.

Recall First Review Team

1. Scan the petition pages.
 - a. Choose the "Send to Location" to be: H:\Recall\Recalls 2011\Scans
 - b. Only scan approximately 100 pages at time.
 - c. Repeat as necessary until all sheets are scanned.
2. Place the completed petition's box at the "To be Reviewed" table.
3. Take a petition box from the "To be Reviewed" table.
 - a. There can be ONLY 1 petition box at each table.
 - b. Reviewers may sit at the same table or spread between 2+ tables.
4. To review the petition pages refer to "Determination of Sufficiency of Recall Petitions"
 - a. Do NOT guess on sufficiency, check with your team lead if you have any questions.
5. Put petition pages in stacks by the number of valid signatures (all 10's together, all 9's, etc.)
6. Calculate the total for each stack and complete the tally sheet.
7. Secure each stack with a rubber band or binder clip.
8. Place the stacks back in the box.
9. Place the box on the "First Review Completed" table

Recall Second Review Team

1. Take a box of petitions from the "First Review Completed" table
 - a. Sign the box out by placing your (legible) name on the form at the table
2. Verify the numbers on the tally sheet
3. Brief review of each page for completeness
 - a. Refer to "Determination of Sufficiency of Recall Petitions"
4. Complete the "Recall Petition Sufficiency" form.
5. Complete the "Recall Petition Verification" form.
 - a. Make two copies of this completed form.
6. Mail the "2nd Notice to Officeholder"
 - a. Include a copy of the Recall Petition Verification.
7. Mail the "2nd Letter to Recall Committee"
 - a. Include a copy of the Recall Petition Verification.
8. Place completed box on the "Done" table.

State of Wisconsin\Government Accountability Board

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Madison, WI 53707-7984
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<http://gab.wi.gov>



JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel



To Whom it May Concern:

Re: Recall Petition Sheet(s)

Dear Concerned Citizen:

The Government Accountability Board is in receipt of the enclosed recall petition sheet(s). The Board cannot accept the enclosed and is returning the original recall petition sheet(s) to you for proper filing. No recall 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., with the filing officer with whom the petition is filed. See §9.10(2)(d), Wis. Stats. Please comply with the specific requirements of §9.10, Wis. Stats., if you wish to have the enclosed considered by the Board.

For proper filing, the enclosed must be presented to the properly registered recall committee organizing the recall for the officer against whom the enclosed recall petition sheet(s) apply. Only a properly registered recall committee may submit a recall petition to the appropriate filing officer and officially offer it for filing.

Please visit the Campaign Finance Information System (CFIS) website, if you do not have the necessary contact information for the properly registered recall committee to whom you must provide the enclosed. Contact information for properly registered recall committees may be found at <http://cfis.wi.gov/>. Once at the CFIS home page, select "View Registrants" from the menu on the left side of the page. Read the warning and click on "Continue." Use the drop down menu arrow for "Registrant Type," select "Recall," and then click on "Search." This should provide you with a list of all properly registered recall committees. Simply locate the one that you desire and click on it, which will provide you with the recall committee's registration statement and contact information.

Thank you for contacting the Government Accountability Board. If you have further questions, you may contact us at 608-266-8005.

Sincerely,

GOVERNMENT ACCOUNTABILITY BOARD

Wisconsin Government Accountability Board
Recall Petition Receipt



WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD
212 EAST WASHINGTON AVENUE, 3RD FLOOR
P.O. BOX 7984
MADISON, WI 53707-7984
(608) 261-2028

Recall Committee ID # _____

(Recall Committee Name)

(address 1)

(address 2)

_____, _____, _____
(city) (state) (zip)

(contact)

(email)

(phone)

Officeholder Information

(name of officeholder)

(district)

Recall Document Submission

Date Filed Campaign Registration Statement (GAB-1): _____

Date Filed Statement of Intent to Recall: _____

Date Filed Petition: _____ Delivered by: _____

Approx. Number of Pages: _____ Approx. Number of Signatures: _____

Signatures

Recall Agent: _____

Agency Staff: _____

State of Wisconsin\Government Accountability Board

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Fax (608) 267-0500
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<http://gab.wi.gov>



JUDGE THOMAS H.

KEVIN J. KENNEDY
Director and General Counsel

EXHIBIT

H

Via U.S. Mail and Email

March 17, 2011

«Committee_Name»
WGAB #«WGAB_ID»
«Recall_Street_Address»
«Recall_City_State_ZIP»

Re: «Committee_Name»
WGAB #«WGAB_ID»

Dear «Recall_Contact_Person»:

This correspondence and enclosure is to notify you that the Government Accountability Board received your signed recall petition on «Petition_Filed» and we have now begun our review process. Please find enclosed a copy of the Recall Petition Receipt.

The G.A.B. has 31 days from «Petition_Filed» to examine the petition and make a determination as to its sufficiency, subject to a Court order extending the examination period. Our review process is a facial review that assumes the validity of the information provided. For details, please see the enclosed "Determination of Sufficiency of Recall Petitions".

Please Note: The officeholder may file a written challenge with the G.A.B. specifying any alleged insufficiency of the petition within 10 days of «Petition_Filed». If this falls on a weekend or holiday, the deadline is the next business day. You will be notified if a challenge is filed and will have 5 business days after the challenge is filed to file a written rebuttal. The challenger will then have 2 business days after your rebuttal to file a written reply to any new matters raised in the rebuttal.

If you have not already, please identify a point of contact, including mailing address, email address, and telephone number, so that we may be able to reach you in the future. If you have any questions, please feel free to call me at (608) 267-0951 or email me at David.Buerger@wisconsin.gov.

GOVERNMENT ACCOUNTABILITY BOARD

David Buerger
Elections Specialist
Enclosures

State of Wisconsin\Government Accountability Board

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



JUDGE THOMAS H

KEVIN J. KENNEDY
Director and General Counsel



Via Email and U.S. Mail

March 17, 2011

State Senator «Officeholder»
«District»«Superscript» Senate District
«Sen_Street_Address»
«Sen_City_State_ZIP»

RE: «Committee_Name»
WGAB ID #«WGAB_ID»

Dear Senator «Officeholder»:

This correspondence and enclosure is to notify you that the «Committee_Name» filed their signed recall petition with the Government Accountability Board on «Petition_Filed» and we have now begun our review process. Please find enclosed a copy of the Recall Petition Receipt issued by our staff to the «Committee_Name».

The G.A.B. has 31 days from «Petition_Filed» to examine the petition and make a determination as to its sufficiency, subject to a Court order extending the examination period. Our review process is a facial review that assumes the validity of the information provided. For details, please see the enclosed "Determination of Sufficiency of Recall Petitions".

Please Note: As the officeholder, you may file a written challenge with the G.A.B. specifying any alleged insufficiency of the petition within 10 days of «Petition_Filed». If this falls on a weekend or holiday, the deadline will be the next business day. The petitioner will have 5 days after your challenge is filed to file a written rebuttal. As the challenger, within 2 days after the petitioner files a rebuttal, you may file a written reply to any new matter raised in the rebuttal.

If you have not already, please identify a point of contact, including mailing address, email address, and telephone number, so that we may be able to reach you in the future. If you have any questions, please feel free to call me at (608) 267-0951 or email me at David.Buerger@wisconsin.gov.

GOVERNMENT ACCOUNTABILITY BOARD

David Buerger
Elections Specialist
Enclosures



2011 Recall Timeline

Filed GAB-1 as Recall Committee _____

1st year of Officeholder's term expires _____

60 day petition circulation expires on _____

Recall Petition filed-Pgs __ - ____ _____

Recall Petition filed-Pgs __ - ____ _____

Recall Petition filed-Pgs __ - ____ _____

Challenge Period deadline _____

Response deadline _____

Reply deadline _____

Court ordered extension issued: _____

Challenge Period deadline _____

Response deadline _____

Reply deadline _____

14 days to determine sufficiency
(after reply) _____

Nomination Paper Deadline _____

Recall Election would be called for _____

If Primary on _____, Recall Election _____

Minimum # of signatures required on petition = _____

Wisconsin Government Accountability Board
Recall Petition Sufficiency Form



Recall Committee Information

Committee ID # _____

(Recall Committee Name)

(address 1)

(address 2)

_____, _____, _____
(city) (state) (zip)

(phone)

(email)

Officeholder Information

(name of officeholder)

(office)

Recall Document Submission

Date Filed Campaign Registration Statement (GAB-1): _____

Date Filed Petition: _____

Approx. Number of Pages: _____ Approx. Number of Signatures: _____

Petition Received From: _____ Phone: _____

Staff Receiving Petition: _____

Sufficiency Determination

Sufficiency Determined by: _____

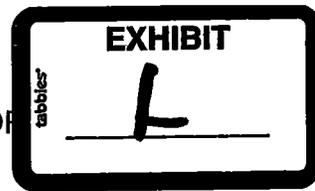
Number of Valid Signatures: _____

If number of signatures is insufficient, indicate problem below:

Date Committee Contacted: _____ Contacted by: _____

Date of Final Approval: _____ Signature of Elections Specialist: _____

WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD
NATHANIEL E. ROBINSON, ELECTIONS DIVISION ADMINISTRATOR
212 EAST WASHINGTON AVENUE, 3RD FLOOR
P.O. BOX 7984
MADISON, WI 53707-7984



(608) 261-2028

GAB ID#: _____

_____, _____

This is to acknowledge receipt of the petition to recall

Campaign Registration Statement (GAB-1) filed _____

Statement of Intent filed _____

Petition filed _____

Number of Valid Signatures: _____

This is the number of valid signatures determined by the Government Accountability Board staff. This number is subject to challenge within 10 days after the petition is offered for filing.

Verified by _____

Date _____



DETERMINATION OF SUFFICIENCY OF RECALL PETITIONS

MARCH 17, 2011

GOVERNMENT ACCOUNTABILITY BOARD

General Procedure

1. Using a red pen, circle any item on the nomination paper that is questioned (when a signature is not counted) or make a circle where an item is missing.
2. Make a red check mark (✓) to the right of the row to indicate signatures not counted.
3. Make a red check mark (✓) to the right of the row to indicate a blank line.
4. Make a red question mark (?) to note questionable items that have been counted.
5. Use a red pen to write the number of signatures counted on the upper, right-hand corner of each sheet.

Header Review

RECALL PETITION			
TO: _____ <small>(official with whom nomination papers or declaration of candidacy for the office is filed)</small>			
We, the undersigned qualified electors of the _____ <small>(jurisdiction or district of officeholder)</small>			
petition for the recall of _____ from office pursuant <small>(name of officeholder to be recalled and office)</small>			
to Article XIII, Section 12 of the Wisconsin Constitution and § 9.10 of the Wisconsin Statutes.			

The header on each page must contain:

1. Substantially similar language to the above sample petition
2. Filing officer (Government Accountability Board)
3. District (should contain both a number and type, i.e. 1st Senate District)
4. Name of person being recalled (Senator John Smith)

Body Review

SIGNATURES OF ELECTORS	STREET & NUMBER OR RURAL ROUTE <small>Rural address must also include box or fire no.</small>	MUNICIPALITY OF RESIDENCE <small>Indicate Town, City, or Village</small>	DATE OF SIGNING
1.		<input type="checkbox"/> Town <input type="checkbox"/> Village <input type="checkbox"/> City	

To determine if a line should be counted it must contain:

1. Signature (need not be legible)
2. Street number and Street name (no address verification at this step)
3. Municipality
 - a. The list of acceptable municipalities is by district in the binder at each table
4. Date (day, month, and year required)
 - a. Each petition has a different circulation period beginning with the date the GAB-1 was filed for the recall and ending the date the petition was filed.

- i. These dates can be found on the Recall Petition Receipt attached to the recall petition's box.

Footer Review

Certification of Circulator

I, _____, certify:
(name of circulator)

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

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

(date)

(signature of circulator)

The footer on each page must contain:

1. Substantially similar language to the above sample petition
2. Printed name of circulator
3. Circulator's residential address, including municipality
4. Date (day, month, and year required)
 - a. must be the same day or later than ALL signatures on the page
5. Signature of the Circulator

Frequently Asked Questions (FAQ)

If:	Then:
Ditto marks are used for address or municipality information.	Count the signature <u>only</u> if ditto marks follow a valid address/municipality.
Ditto marks are used for date	Do <u>NOT</u> count the signature.
Any part of the date of signer is missing	Do <u>NOT</u> count the signature.
Address of signer is missing but residency can be determined by other information on that page	Count the signature. Indicate where information is found.
Municipality of circulator is missing...	Count the signatures on the page <u>only</u> if the municipality can be determined by information on that page. Indicate where the information is found.
Any part of the circulator date is missing...	Do <u>NOT</u> count any signatures on the page.
Circulator signed on the line that should have had the printed name	Count the signatures on that page.

Note: Administrative rule GAB 2.05 outlines the criteria for determining sufficiency of signatures on nomination papers. A copy is attached for review and information.