

# State of Wisconsin\Government Accountability Board

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



JUDGE THOMAS H. BARLAND  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

**DRAFT**

Not yet  
approved by  
the Board

## Wisconsin Government Accountability Board

212 East Washington Avenue  
Madison, Wisconsin  
June 8, 2011  
9 a.m.

### Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Reviewed Recall Petition against Senator Hansen	5
C. Reviewed Recall Petition against Senator Holperin	5
D. Reviewed Recall Petition against Senator Wirsch	5

Present: Judge Thomas H. Barland, Judge Gerald Nichol, Judge Gordon Myse, Judge Michael Brennan, Judge Thomas Cane, and Judge David Deininger

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Michael Haas, Shane Falk, Sharrie Hauge, David Buerger, Angela Steinhauer and Reid Magney

### **A. Call to Order**

Chairperson Barland called the meeting to order at 9:02 a.m.

### **B. Director's Report of Appropriate Meeting Notice**

Director and General Counsel Kevin Kennedy informed the Board that proper notice was given for the meeting.

### **C. Review of Sufficiency of Recall Petitions Offered for Filing**

Appearances entered by attorneys Jeremy Levinson and Jennifer Lohr on behalf of the Senator Hansen, Senator Holperin and Senator Wirsch; and by attorneys Eric McLeod and Michael Screnock on behalf of Committee to Recall Dave Hansen, the Committee to Recall Jim Holperin, and the Committee to Recall Robert Wirsch.

## **1. Petitions to Recall Senator Dave Hansen, Senator Jim Holperin and Senator Robert Wirch**

### **a. Presentation on Behalf of Senators Hansen, Holperin and Wirch**

Attorney Levinson made an oral presentation. He discussed the steps the three Democratic incumbents took to examine the validity of the recall petitions, including enlisting the hiring of attorneys, a data analysis firm, and a telephone survey firm. He said their investigation discovered so much fraud and nonfeasance that it is impossible to know the will of the electorate.

Discussion.

### **b. Presentation by Committee to Recall Dave Hansen, Committee to Recall Jim Holperin, and Committee to Recall Robert Wirch**

Attorney McLeod made an oral presentation. He said there is no credible evidence in support of the Democratic Senators' assertions of fraud. He urged the Board to look at evidence, not rhetoric, in considering the petition challenges.

Discussion.

Chairperson Barland called a recess at 11:04 a.m. The Board reconvened at 11:21 a.m.

Attorney Screnock made an oral presentation addressing factual issues raised by the challenges. He said information from the telephone survey was not reliable evidence of fraud. He also addressed issues related to the petition circulators' addresses.

Discussion.

Chairperson Barland called a lunch break at 12:15 p.m. The Board reconvened at 12:53 p.m.

### **c. Staff Presentation**

Staff Counsel Falk made an oral presentation based on the staff memoranda included in the Board materials. He was assisted by Elections Specialist David Buerger. Staff Counsel Falk explained steps the staff undertook to evaluate the challenges, rebuttals and replies, giving equal treatment to all challenges. He said the Board has statutory authority to review verified challenges to recall petitions. He reviewed several issues raised by the challenges, including:

- Addresses of circulators.
- Previous court cases dealing with challenges to petitions.

- Correcting affidavits.
- Individual signatures.
- The lack of case law establishing standards for fraud as a basis for invalidating signatures.
- Whether an entire petition page can be struck if fraud is proven on one or more signatures on a page.

Discussion.

Chairperson Barland called a recess at 2:45 p.m. The Board reconvened at 3 p.m.

Attorney Levinson made an oral presentation in response to staff's report.

Discussion.

Attorney McLeod made an oral presentation in response to staff's report.

Discussion.

**MOTION:** Accept staff's recommendations with regard to individual signatures, with the exception of the rehabilitation issues. Moved by Judge Myse, seconded by Judge Cane.

Discussion about whether the motion applies to all three cases.

**SUBSTITUTE MOTION:** Accept staff's recommendations with regard to individual signatures, with the exception of the rehabilitation issues for the Hansen petition only. Moved by Judge Myse, seconded by Judge Cane.

Discussion.

Motion carried unanimously.

**MOTION:** Accept the Hurt affidavit to rehabilitate signatures in the Hansen petition, which would increase the rehabilitation number by nine. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

**MOTION:** Deny the Petitioners' challenge to the receipt and consideration of Exhibits 63-30 (Hansen), 63-12 (Holperin) and 63-20 (Wirch) and consider all the evidence submitted in conjunction with the challenges, whether or not each individual piece had an affidavit accompanying it. Moved by Judge Deininger, seconded by Judge Myse. Motion carried unanimously.

Discussion.

**MOTION:** Accept staff recommendations in regard to individual signatures as set forth in the reports for Senator Holperin and Senator Wirsch. Moved by Judge Myse, seconded by Judge Cane.

Discussion regarding issue of similar handwriting. Staff Counsel Falk said there is similar handwriting, but not clear and convincing evidence of fraud.

Motion carried unanimously.

Discussion.

**MOTION:** Reject any challenges to circulators based on questions about the circulator's address on the petitions. Moved by Judge Cane, seconded by Judge Brennan. Motion carried unanimously.

Discussion by Judge Myse of problems with misrepresentation on petitions circulated by Sherry Ferrell. Judge Cane said he shares Judge Myse's concern.

**MOTION:** Strike only petition signatures for which there have been unrebutted affidavits received by the Board, and not take up wholesale striking of petitions.

Motion did not receive a second.

**MOTION:** Strike the entire pages for which there are valid affidavits that staff has accepted showing there has been misrepresentation or fraud by the circulator Sheri Ferrell. Moved by Judge Nichol.

Discussion. David Buerger said this would strike 88 signatures in Senator Hansen's district and 152 signatures in Senator Holperin's district.

Motion seconded by Judge Myse. He said it would not affect the eventual outcome of the challenges, but it is important for the Board to make a statement that fraud is not acceptable conduct for petition circulators.

Discussion.

Roll call vote: Brennan:	Aye	Cane:	Nay
Deiningner:	Nay	Myse:	Aye
Nichol:	Aye	Barland:	Aye

Motion carried.

Discussion.

Chairperson Barland called a recess at 5:29 p.m., and the Board reconvened at 5:45 p.m.

David Buerger said that for the Hansen petitions, the Board had affirmed challenges to 1,768 signatures, denied challenges to 1,927 signatures, rehabilitated 158 signatures, denied rehabilitation for 353 signatures, which left 15,540 verified signatures. There were 13,852 signatures needed.

**MOTION:** Verify 15,540 valid signatures to recall Senator Hansen; direct staff to file the recall petition and attach a certificate of sufficiency no later than June 10, 2011, as well as call a recall election for Senator Hansen for July 19, 2011. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

**MOTION:** Verify 19,255 valid signatures to recall Senator Holperin; direct staff to file the recall petition and attach a certificate of sufficiency no later than June 10, 2011, as well as call a recall election for Senator Holperin for July 19, 2011. Moved by Judge Myse, seconded by Judge Brennan. Motion carried unanimously.

**MOTION:** Verify 17,138 valid signatures to recall Senator Wirch; direct staff to file the recall petition and attach a certificate of sufficiency no later than June 10, 2011, as well as call a recall election for Senator Wirch for July 19, 2011. Moved by Judge Cane, seconded by Judge Myse. Motion carried unanimously.

## **D. Director's Report**

Director and General Counsel Kennedy reported on the following items:

- The State Senate has acted on legislation to move the presidential preference vote to April, as well as to move the partisan primary to the second Tuesday in August.
- Board staff recently made a presentation to a group of visitors from Africa that received rave reviews.
- Elections Division staff is working on implementation of the new Voter Photo ID law.
- The Board is in a positive situation with the new state budget. Polling place extended hours reimbursements have been eliminated, and the funds will be redirected to training municipal clerks.
- The Department of Administration has extended the appointments of 26 federally-funded positions for one additional year. The Board has enough federal funding for two more bienniums, but the Legislature needs to recognize that it requires more than four people to work on the state's elections.

**MOTION:** To adjourn. Moved by Judge Myse, seconded by Judge Brennan. Motion carried unanimously.

#####

The next regular meeting of the Government Accountability Board is scheduled for Tuesday, August 2, 2011, at the G.A.B. offices located at 212 East Washington Avenue, Third Floor, in Madison, Wisconsin beginning at 9:30 a.m.

June 8, 2011 Government Accountability Board meeting minutes prepared by:

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Reid Magney, Public Information Officer

June 24, 2011

June 8, 2011 Government Accountability Board meeting minutes certified by:

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Judge Gerald Nichol, Acting Board Secretary

June 27, 2011

# State of Wisconsin\Government Accountability Board

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Director and General Counsel

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## Wisconsin Government Accountability Board

212 East Washington Avenue, Third Floor

Madison, Wisconsin

May 17, 2011

9:30 a.m.

### Open Session Minutes

#### Summary of Significant Actions Taken

#### Page

- |                                                                            |   |
|----------------------------------------------------------------------------|---|
| A. Directed Staff to Continue Review of Requests for Voting Equipment Data | 2 |
| B. Received Staff Report on Statewide Recount                              | 3 |
| C. Received Staff Report on Recall Petitions                               | 3 |

Present: Judge Thomas H. Barland, Judge Gerald Nichol, Judge Gordon Myse, Judge Michael Brennan, Judge Thomas Cane, and Judge David Deininger

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Michael Haas, Shane W. Falk, Sharrie Hauge, Sarah Whitt, and Reid Magney

#### **A. Call to Order**

Chairperson Barland called the meeting to order at 9:31 a.m.

#### **B. Director's Report of Appropriate Meeting Notice**

Director and General Counsel Kevin Kennedy informed the Board that proper notice was given for the meeting.

#### **C. Minutes of Previous Board Meetings**

**MOTION:** Approve the amended minutes of the March 22-23, 2011 meeting of the Government Accountability Board. Moved by Judge Nichol, seconded by Judge Cane. Motion carried unanimously.

#### **D. Closed Session**

Adjourn to closed session to consider written requests for advisory opinions and confer with counsel concerning pending litigation.

**MOTION:** Move to closed session pursuant to §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), to consider written requests for advisory opinions and confer with counsel concerning pending litigation. Moved by Judge Myse, seconded by Judge Nichol.

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

Motion carried.

Hearing no objection, Chairperson Barland called a recess at 9:35 a.m. The Board reconvened in open session beginning at 10:37 a.m.

## **E. Public Comment**

**Andrea Kaminski of Madison** appeared on behalf of the League of Women Voters of Wisconsin to discuss the voter photo ID bill before the Legislature. She said the League opposes the bill but will work with the G.A.B. and other groups to ensure voters have the appropriate identification for voting.

**Susan Crawford of Madison** appeared on behalf of the Joanne Kloppenburg campaign in support of the complaint against Waukesha County Clerk Kathy Nickolaus. She urged the Board to appoint a special investigator.

**John Washburn of Milwaukee** appeared on his own behalf to discuss his Public Records law requests for backup data from electronic voting equipment, and to urge the Board to instruct clerks to retain the information.

Discussion.

Judge Myse told Mr. Washburn the Board supports transparency and believes that records which can legally be released should be released.

## **F. Washburn Inquiry Relating to Voting Equipment Data Retention**

Kevin Kennedy introduced Staff Counsel Shane Falk, who made an oral and written presentation. Staff asks for Board direction to continue to review Mr. Washburn's requests, and to return to a future Board meeting with a report and recommendations addressing Mr. Washburn's concerns.

Discussion.

**MOTION:** Direct staff to continue its review of the issues identified in Mr. Washburn's

inquiry and return to the Board at the July meeting with a report and any recommendations. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

## **G. Statewide Recount Status Update**

Elections Division Administrator Nathaniel E. Robinson introduced Staff Counsel Michael Haas and Elections Specialist Ross Hein, who made an oral presentation based on the memo included on page 91 of the Board packet. The Board has been informing the public of progress with the update through daily postings to the website. As of the meeting date, results had been certified for 71 of the 72 counties, with only Waukesha County outstanding. Staff has helped Waukesha County with advice on how to streamline the hand-recount process.

Judge Cane asked whether staff was seeing any errors the Board should be concerned about.

Ross Hein said the recount numbers have been comparable to the Election Night reports, and that staff has instituted a review process to identify and seek clarification for any reporting unit with more than a 10-vote difference. Nat Robinson said the recount has been good for identifying lessons learned and best practices.

## **H. Recall Petition Status Update**

Nat Robinson introduced Elections Specialist David Buerger, who made an oral presentation based on the memo included on page 110 of the Board materials. He said a total of nine recall petitions have been offered for filing with approximately a quarter-million signatures, and reviewed the intake process.

Discussion.

Kevin Kennedy said the goal is to combine as many of the nine elections as possible at the same time. The Board will hold special meetings consider the first three petitions on May 23, and the remaining six on May 31.

## **I. Report on Accessibility and Voting Equipment Security Compliance Audits**

Nat Robinson introduced Elections Specialist Jo Futrell, who coordinated field audits during the April 5 Spring Election and the May 3 Special Elections. Jo Futrell made an oral presentation based on the memo included on page 112 of the Board materials. On April 5, staff teams visited 29 polling places in 28 municipalities; on May 3, staff teams visited 30 polling places in 28 municipalities. In addition to accessibility audits, staff also reviewed electronic voting system security. Futrell reviewed the team's preliminary findings and next steps.

Discussion.

## **J. Report on Enhanced Mail-in Voter Registration**

Nat Robinson introduced SVRS Functional Team Lead Sarah Whitt and IS Technical Resources John Hoeth, project manager of the Enhanced Mail-In Voter Registration system. They made an oral presentation based on a written memo included on page 119 of the Board materials. The system was originally limited to people with a driver license or state-issued ID card, but after citizen requests and Board direction, the system will now be open to all people who are able to register to vote. The system will also be available up to Election Day so poll workers can use it to fill out registration forms. The system will be going into user acceptance testing in late May and early June.

Discussion.

## **K. Legislative Status Report**

Kevin Kennedy referred Board members to the report from Mike Haas and SVRS Applications Trainer Edward Edney on page 121 of the Board materials. He provided an update on the voter photo ID bill passed by the Assembly and discussed significant points in the bill. Provisions dealing with the date of the Partisan Primary and the Military and Overseas Voter Empowerment Act were removed from the bill, and will be considered separately.

Discussion.

## **L. Administrative Rules Status Report**

Shane Falk made an oral presentation based on a written report included on page 123 of the Board materials. Assembly Bill 8 from the Special Session has not been concurred in and signed by the Governor. Rule GAB 1.91 has been objected to by a member of the public, and the Joint Committee for Review of Administrative Rules has until June 6 to act on the rule.

Discussion.

## **M. Director's Report**

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

A written report from Ethics and Accountability Division Administrator Jonathan Becker was included in the Board packet. Mr. Becker presented an oral report. He discussed the January 2011 Continuing Reports, noting that of the 1,300 registrants, 56 reports are still

outstanding. Staff is also working hard on the Lobbying website, and keeping current with Statements of Economic Interest. He noted that Campaign Finance Auditor Dennis Morvak will be retiring on July 1. He also reported on his recent trip to Slovenia, where he presented talks on government ethics.

### **Office of Director and General Counsel Report – general administration**

A written report from Kevin J. Kennedy, Sharrie Hauge and Reid Magney was included in the Board packet. Ms. Hauge reported on the status of the agency's budget request, noting that appearances before the Joint Committee on Finance have been postponed twice. She also introduced two new employees, Accountant Mike Lauth and Office Operations Associate Ian Stewart, and reported on the status of open positions.

Discussion.

Judge Barland noted the report that staff has now achieved 100 percent certification with Contract Sunshine.

### **Elections Division Report – election administration**

A written report from Nathaniel E. Robinson was included in the Board packet. Mr. Robinson gave an oral presentation, and introduced SVRS UAT Lead Ann Oberle, who discussed the Four Year Voter Record Maintenance project. Staff recently mailed postcards to 240,000 registered voters who have not voted in the last four years.

Discussion.

Judge Brennan expressed concern with the bill giving the Governor more power to review administrative rules.

Discussion.

Kevin Kennedy noted that two Board members have conflicts with the scheduled meeting on July 25.

**MOTION:** To reschedule the July 25 meeting to August 2. Moved by Judge Nichol, seconded by Judge Cane. Motion carried.

The Board recessed for lunch from 1:07 p.m. to 1:41 p.m.

## **K. Closed Session**

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

pending litigation, and consider performance evaluation data of a public employee over whom the Board exercises responsibility.

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

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

Motion carried.

Hearing no objection, Chairperson Barland called a recess. The Board reconvened in closed session beginning at 1:42 p.m.

**Summary of Significant Actions Taken in Closed Session:**

- A. Requests for Advice: Three matters considered.
- B. Investigations and Enforcement: Six pending matters considered; two matters closed, no matters dismissed, one investigation authorized, no lawsuits authorized.
- C. Litigation: Six pending matters considered.

The Board adjourned in closed session at 4:45 p.m.

#####

The next regular meeting of the Government Accountability Board is scheduled for Tuesday, May 23, 2011, at the G.A.B. offices located at 212 East Washington Avenue, Third Floor, in Madison, Wisconsin beginning at 9 a.m.

May 17, 2011 Government Accountability Board meeting minutes prepared by:

March 17, 2011 Government Accountability Board meeting minutes certified by:

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Judge Gerald Nichol, Vice Chair

June 8, 2011

# State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY  
Director and General Counsel

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## Wisconsin Government Accountability Board

212 East Washington Avenue  
Madison, Wisconsin

May 23, 2011  
9 a.m.

### Open Session Minutes

#### Summary of Significant Actions Taken

#### Page

- |                                                                     |   |
|---------------------------------------------------------------------|---|
| A. Certified Results of the 2011 Election for Supreme Court Justice | 1 |
| B. Reviewed Recall Petition against Senator Kapanke                 | 2 |
| C. Reviewed Recall Petition against Senator Hopper                  | 3 |
| D. Reviewed Recall Petition against Senator Olsen                   | 4 |

Present: Judge Thomas H. Barland, Judge Gerald Nichol, Judge Gordon Myse, Judge Michael Brennan, Judge Thomas Cane, and Judge David Deininger

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Michael Haas, Shane W. Falk, Sharrie Hauge, David Buerger and Reid Magney

#### **A. Call to Order**

Chairperson Barland called the meeting to order at 9:03 a.m.

#### **B. Director's Report of Appropriate Meeting Notice**

Director and General Counsel Kevin Kennedy informed the Board that proper notice was given for the meeting.

#### **C. Review of County Canvass Recount Returns and Determination of April 5, 2011 Election for Supreme Court Justice**

Chairperson Barland signed the Canvass Recount Returns and Determination of April 5, 2011 Election for Supreme Court Justice, which determined that Justice David Prosser Jr. received the greatest number of votes. He noted that the statewide recount did not result

in a dramatic change in vote totals, and that it cast a healthy spotlight on the process of how votes are counted in the state.

## **D. Review of Sufficiency of Recall Petitions Offered for Filing**

Chairperson Barland called a recess at 9:11 a.m. to wait for counsel for petitioners to arrive. The meeting resumed at 9:20 a.m.

Appearances entered by attorneys Jeremy Levinson and Jennifer Lohr on behalf of the Committee to Recall Kapanke, the Committee to Recall Hopper and the Committee to Recall Olsen; and by attorney Eric McLeod for Senator Kapanke, Senator Hopper and Senator Olsen.

### **1. Petition to Recall Senator Dan Kapanke**

#### **a. Presentation on Behalf of Senator Kapanke**

Attorney McLeod made an oral presentation. He argued that the petition was fatally defective because the petitioner failed to complete the registration process.

Discussion.

#### **b. Presentation by Committee to Recall Kapanke**

Attorney Levinson made an oral presentation. He argued that because the statement of intent was attached to the GAB-1 registration form, the registration is complete and the petitions should be considered.

Discussion.

#### **c. Staff Presentation**

Staff Counsel Shane Falk made an oral presentation based on the staff memorandum included in the Board materials.

Discussion.

**MOTION:** Adopt staff's legal analysis and deny Senator Kapanke's legal challenge to the whole of the recall petition, specifically including the first paragraph on Page 5 of the staff memo that the petition meets the registration requirements of §9.10(2)(d), Wis. Stats. Moved by Judge Deininger, seconded by Judge Myse. Motion carried unanimously.

**MOTION:** Affirm challenges to 92 individual recall petition signatures and deny challenges to 109 individual recall petition signatures for the reasons stated in

staff's exhibit, and verify 21,776 valid recall petition signatures. Moved by Judge Deininger, seconded by Judge Myse. Motion carried unanimously.

**MOTION:** Direct staff to file the recall petition and attach a certificate of sufficiency on May 31, 2011 but no later than June 3, 2011 and call a recall election for July 12, 2011. Moved by Judge Deininger, seconded by Judge Nichol. Motion carried unanimously.

Chairperson Barland called a recess at 10:52 a.m. The Board returned to session at 11:05 a.m.

## **2. Petition to Recall Senator Randy Hopper**

### **a. Presentation on Behalf of Senator Hopper**

Attorney McLeod made a brief oral presentation, reiterating the legal argument made previously on behalf of Senator Kapanke.

Discussion.

### **b. Presentation by Committee to Recall Hopper**

Attorney Levinson made a brief oral presentation.

### **c. Staff Presentation**

Staff Counsel Falk made an oral presentation based on the staff memorandum included in the Board materials.

Discussion.

**MOTION:** Adopt staff's legal analysis and deny Senator Hopper's legal challenge to the whole of the recall petition, specifically including the first paragraph on Page 5 of the staff memo that the petition meets the registration requirements of §9.10(2)(d), Wis. Stats. Moved by Judge Myse, seconded by Judge Brennan. Motion carried unanimously.

**MOTION:** Affirm challenges to 174 individual recall petition signatures and deny challenges to 287 individual recall petition signatures for the reasons stated in staff's exhibit, and to verify 22,953 valid recall petition signatures. Moved by Judge Myse, seconded by Judge Nichol. Motion carried unanimously.

**MOTION:** Direct staff to file the recall petition and attach a certificate of sufficiency on May 31, 2011 but no later than June 3, 2011 and call a recall election for July 12, 2011. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

### **3. Petition to Recall Senator Luther Olsen**

#### **a. Presentation on Behalf of Senator Olsen**

Attorney McLeod stated that his legal argument was the same as presented on behalf of Senators Kapanke and Hopper.

Discussion.

#### **b. Presentation by Committee to Recall Olsen**

Attorney Levinson referenced his previous comments on the legal issue and deferred to staff regarding challenges to signatures.

#### **c. Staff Presentation**

Staff Counsel Falk made an oral presentation based on the staff memorandum included in the Board materials.

Discussion.

**MOTION:** Adopt staff's legal analysis and deny Senator Olsen's legal challenge to the whole of the recall petition, specifically including the first paragraph on Page 5 of the staff memo that the petition meets the registration requirements of §9.10(2)(d), Wis. Stats. Moved by Judge Cane, seconded by Judge Brennan. Motion carried unanimously.

**MOTION:** Affirm challenges to 174 individual recall petition signatures and deny challenges to 275 individual recall petition signatures for the reasons stated in staff's exhibit, and to verify 22,207 valid recall petition signatures. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

**MOTION:** Direct staff to file the recall petition and attach a certificate of sufficiency on May 31, 2011 but no later than June 3, 2011 and call a recall election for July 12, 2011. Moved by Judge Cane, seconded by Judge Myse.

### **E. Director's Report**

Director and General Counsel Kennedy reported on the staff's progress in reviewing recall petitions, and noted that the deadline for an appeal in the Supreme Court recount is May 31. He also reported on staff work regarding the voter photo identification bill signed by the Governor.

## F. Closed Session

Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees, confer with counsel concerning pending litigation, and consider performance evaluation data of a public employee over whom the Board exercises responsibility.

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

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

Motion carried.

Hearing no objection, Chairperson Barland called a recess. The Board reconvened in closed session beginning at 11:37 a.m.

### **Summary of Significant Actions Taken in Closed Session:**

A. Investigations and Enforcement: One pending matter considered; no matters closed, no matters dismissed, no investigations authorized, no lawsuits authorized.

The Board adjourned in closed session at 12:15 p.m.

#####

The next regular meeting of the Government Accountability Board is scheduled for Tuesday, May 31, 2011, at the G.A.B. offices located at 212 East Washington Avenue, Third Floor, in Madison, Wisconsin beginning at 8:30 a.m.

May 23, 2011 Government Accountability Board meeting minutes prepared by:

May 23, 2011 Government Accountability Board meeting minutes certified by:

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Judge Gerald Nichol, Vice Chair

June 27, 2011

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## Wisconsin Government Accountability Board

212 East Washington Avenue  
Madison, Wisconsin  
May 31, 2011  
8:30 a.m.

### Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Reviewed Recall Petition against Senator Harsdorf	1
C. Reviewed Recall Petition against Senator Cowles	3
D. Reviewed Recall Petition against Senator Darling	3

Present: Judge Thomas H. Barland, Judge Gerald Nichol, Judge Gordon Myse, Judge Michael Brennan, Judge Thomas Cane, and Judge David Deininger

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Michael Haas, Shane Falk, Sharrie Hauge, David Buerger, Angela Steinhauer and Reid Magney

### **A. Call to Order**

Chairperson Barland called the meeting to order at 8:33 a.m.

### **B. Director's Report of Appropriate Meeting Notice**

Director and General Counsel Kevin Kennedy informed the Board that proper notice was given for the meeting.

### **C. Review of Sufficiency of Recall Petitions Offered for Filing**

Appearances entered by attorneys Jeremy Levinson and Jennifer Lohr on behalf of the Committee to Recall Harsdorf, the Committee to Recall Cowles and the Committee to Recall Darling; and by attorneys Eric McLeod and Michael Screnock on behalf of Senator Harsdorf, Senator Cowles and Senator Darling.

## **1. Petition to Recall Senator Sheila Harsdorf**

### **a. Presentation on Behalf of Senator Harsdorf**

Attorney McLeod objected to the entire proceeding, arguing the Board was in violation of the court order because the recall petitions offered for filing against the three Democratic Senators would not be acted upon by the June 3 deadline for certification under the current court order.

Chairperson Barland said the recall petitions against the three Democratic Senators would not be taken up at this meeting. Director Kevin Kennedy said that until the deadline of June 3, Attorney McLeod's objections were premature.

Discussion.

Staff Counsel Shane Falk reported to the Board on the staff's progress in reviewing the petitions and challenges, and said that staff would be in court soon to seek additional time to complete the review.

Discussion.

Attorney Levinson made an oral presentation. He said the court's order anticipated that the recalls would be certified by the end of the week.

Discussion regarding when the staff would go to court to seek an extension of the existing order. Director Kennedy said the Board's attorney from the Department of Justice would file once the results of today's meeting were known.

Attorney McLeod made an oral presentation. He asked that the legal arguments he made at the May 23 Board meeting – that the petition was fatally defective because the petitioner failed to complete the registration process – be incorporated into the record for purposes of consideration.

Discussion.

### **b. Presentation by Committee to Recall Harsdorf**

Attorney Levinson made an oral presentation. He reiterated the arguments made at the Board's May 23 meeting.

### **c. Staff Presentation**

Staff Counsel Falk made a brief oral presentation based on the staff memorandum included in the Board materials.

**MOTION:** Adopt staff's legal analysis, specifically as found in the last paragraph on page 6 of the Memorandum, and deny Senator Harsdorf's legal challenge to the whole of the recall petition; affirm challenges to 176 individual recall petition signatures, deny challenges to 438 individual recall petition signatures for the reasons stated in staff's exhibit, and verify 23,685 valid signatures to recall Senator Harsdorf. Moved by Judge Myse, seconded by Judge Brennan. Motion carried unanimously.

**MOTION:** Direct staff to file the recall petition and attach a certificate of sufficiency on May 31, 2011 but no later than June 3, 2011 and call a recall election for Senator Harsdorf for July 12, 2011. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

## **2. Petition to Recall Senator Robert Cowles**

### **a. Presentation on Behalf of Senator Cowles**

Attorney McLeod made a brief oral presentation, reiterating the legal challenge made previously to the petition's sufficiency.

### **b. Presentation by Committee to Recall Cowles**

Attorney Levinson said he had nothing to add.

### **c. Staff Presentation**

Staff Counsel Falk made an oral presentation based on the staff memorandum included in the Board materials.

**MOTION:** Adopt staff's legal analysis, specifically as found in the last paragraph on page 6 of the staff Memorandum, and deny Senator Cowles' legal challenge to the whole of the recall petition; verify 23,959 valid signatures to recall Senator Cowles; direct staff to file the recall petition and attach a certificate of sufficiency on May 31, 2011 but no later than June 3, 2011, as well as call a recall election for Senator Cowles for July 12, 2011. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

## **3. Petition to Recall Senator Alberta Darling**

### **a. Presentation on Behalf of Senator Darling**

Attorney McLeod made an oral presentation. In addition to his previous statements regarding the recall committee registration, he argued there are questions about the validity of the petition circulator. He noted that Senator

Darling submitted 3,500 signature challenges, and staff is recommending 2,500 of the signatures should be rejected on grounds the signers do not live in the district.

Discussion.

### **b. Presentation by Committee to Recall Darling**

Attorney Levinson made an oral presentation, incorporating his previous arguments regarding the validity of the recall committee's registration. He argued that the law says that mistakes on a petition are not a reason to void the whole page, but fraud is.

Discussion.

### **c. Staff Presentation**

Staff Counsel Falk made an oral presentation based on the staff memorandum included in the Board materials. He and Elections Specialist David Buerger reviewed changes in the number of valid signatures based on challenge reviews completed over the Memorial Day weekend.

Discussion.

**MOTION:** Deny Senator Darling's legal challenge to the whole of the recall petition, and adopt staff's legal analysis, specifically as found in the second full paragraph on page 5 of the Memorandum; deny Senator Darling's general challenge to the petition and the petition recall process integrity, and adopt staff's legal analysis, specifically as found in the first full paragraph on page 10 of the Memorandum. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

**MOTION:** Affirm challenges to 2,813 individual recall petition signatures, deny challenges to 1,666 individual recall petition signatures for the reasons stated in staff's exhibit, specifically Exhibits A-F and H-N, leaving verified signatures totaling 22,243. Moved by Judge Cane, seconded by Judge Myse. Motion carried unanimously.

**MOTION:** Direct staff to file the recall petition and attach a certificate of sufficiency on May 31, 2011 but no later than June 3, 2011, as well as call a recall election for Senator Darling for July 12, 2011. Moved by Judge Cane, seconded by Judge Myse. Motion carried unanimously.

## **E. Director's Report**

Director and General Counsel Kennedy noted that today is the deadline for filing a notice of appeal for the Wisconsin Supreme Court recount.

## F. Closed Session

Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees, confer with counsel concerning pending litigation, and consider performance evaluation data of a public employee over whom the Board exercises responsibility.

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

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

Motion carried.

Hearing no objection, Chairperson Barland called a recess. The Board reconvened in closed session beginning at 11:05 a.m.

### **Summary of Significant Actions Taken in Closed Session:**

- A. Pending Litigation: One matter considered.
- B. Investigations: Two matters considered; no matters closed, no matters dismissed, no investigations authorized, no lawsuits authorized.

The Board adjourned in closed session at 12:08 p.m.

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The next meeting of the Government Accountability Board is scheduled for Wednesday, June 8, 2011, at the G.A.B. offices located at 212 East Washington Avenue, Third Floor, in Madison, Wisconsin beginning at 9 a.m.

May 31, 2011 Government Accountability Board meeting minutes prepared by:

May 31, 2011 Government Accountability Board meeting minutes certified by:

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Judge Gerald Nichol, Vice Chair

June 27, 2011