

# State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

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## 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 Wirch	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 Wirch; 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 Wirch.

## **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 Wirch. 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
Deininginger:	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 Wirsch; 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 Wirsch 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:

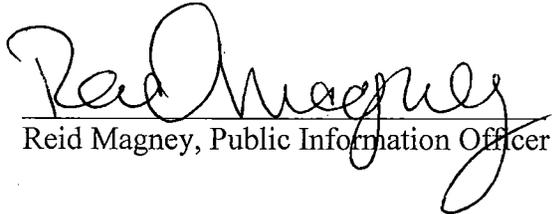
- The State Senate has acted on legislation to move the presidential preference vote to April, as well as to move the partisan primary to the second Tuesday in August.
- Board staff recently made a presentation to a group of visitors from Africa that received rave reviews.
- Elections Division staff 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:

  
Reid Magney, Public Information Officer

June 24, 2011

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

  
Judge Gerald Nichol, Acting Board Secretary

June 27, 2011