

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

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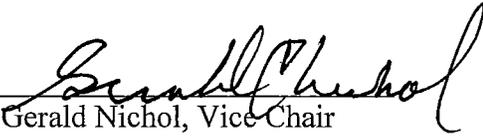
The next meeting of the Government Accountability Board is scheduled for Wednesday, June 8, 2011, at the G.A.B. offices located at 212 East Washington Avenue, Third Floor, in Madison, Wisconsin beginning at 9 a.m.

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


Reid Magney, Public Information Officer

June 23, 2011

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



Judge Gerald Nichol, Vice Chair

June 27, 2011