

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 Meeting of June 27, 2011

TO: Members, Wisconsin Government Accountability Board

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

Prepared Kevin J. Kennedy and Presented by:
Shane Falk and Michael Haas, Staff Counsels

SUBJECT: Challenge to Nomination Papers of David Vanderleest – Addendum

On June 27, 2011, David Vanderleest filed a timely response to the challenges against his nomination papers. The response included sworn affidavits from Mr. Vanderleest and another circulator, Dave Boyce, as well as 54 exhibits. The response addressed the challenges pertaining to Mr. Vanderleest's address on his Declaration of Candidacy and his circulator certification on nomination papers, as well as challenges to other individual signatures.

Upon review of the response and exhibits, it is the opinion of staff that Mr. Vanderleest has provided sufficient evidence that the address listed on his Declaration of Candidacy (DOC) form and his nomination papers is his current address and was at the time that nomination papers were circulated. After further verification using Voter Public Access (VPA) and the Statewide Voter Registration System, staff also believes that four signatures which were preliminarily struck after reviewing the challenges have been rehabilitated and should be added back into the total of valid signatures. These changes are itemized below.

A. ADDRESS OF DAVID VANDERLEEST

The challenge alleged that David Vanderleest listed an incorrect residential address of 505 South Maple Street, Green Bay, on both his Declaration of Candidacy and on nomination papers which he signed as the circulator. The challenge alleged that other public documents indicated that Mr. Vanderleest resided at 10789 Cty Rd G, Coleman, Wisconsin, or at 507 South Maple Street, Green Bay, or at 501-507 South Maple Street, Green Bay. The challenge asserted that, pursuant to §§8.21(4)(b) and 8.40(2), Wis. Stats., listing an incorrect address invalidated both the DOC and all of the signatures obtained by Mr. Vanderleest as a circulator, of which he collected approximately 47 out of 62 pages filed.

As part of his response, Mr. Vanderleest filed an affidavit in which he states that he has resided at 505 S. Maple Street, Green Bay, since May 21, 2011, and that before that date he resided at 10789 County Road G, in the Town of Brazeau. All of the public documents cited in the Paragraph 8 of the challenge filed by Linda Patzke, which list the address of 10789 County Road G predate May 21, 2011 and the circulation of nomination papers by Mr. Vanderleest. The public record from the Brown County Assessor's office establishes only at some time that Mr. Vanderleest used the County Road G address as a mailing address, but that he owned the building at 501-507 South Maple Ave., which apparently is a multi-family housing unit. Finally, the listing of the 501-507 South Maple Street property as one of Mr. Vanderleest's assets on his Statement of Economic Interest does not contradict the use of 505 South Maple Street as his residence.

Based upon the response submitted by Mr. Vanderleest, staff recommends that the Board not invalidate signatures or pages of signatures based upon a challenge to the address listed on his DOC form or on his circulator's certificate. The challenge has failed to establish by clear and convincing evidence that the presumption of validity and substantial compliance found in GAB §2.05(4) and (5), Wis. Adm. Code, should be rebutted, as required by GAB §2.07(3)(a), Wis. Adm. Code.

B. SIGNATORY ADDRESS OUTSIDE DISTRICT

Based upon the sworn affidavit of Mr. Vanderleest and accompanying exhibits, staff recommends that challenges to the following signatures be denied and that four signatures should be added back into the total of valid signatures:

1. Page 2, lines 1 and 2 (Kirstin Hurd and John Hurd, 2510 Indian Hills Drive, Green Bay, in the Village of Howard). Staff verified through VPA that this address is located in Senate District 30.
2. Page 16, line 8 (David Koertge, 1156 Hillcrest Heights, Green Bay, in the Village of Howard). Staff verified through VPA and SVRS that this address is located in Senate District 30.
3. Page 25, line 3 (Stephanie Endelsy, N4073 Hwy 32, Pulaski). VPA shows the address of N4073 Hwy 32, Pulaski, as being located in Senate District 2, but shows the address of 4073 Hwy 32, Pulaski, as being located in Senate District 30. Mr. Vanderleest's response contains a sworn statement that this signatory resides at 4073 Hwy 32, Pulaski.

Given the additional evidence contained in Mr. Vanderleest's response, staff believes that the challenges to the four signatures described in this section failed to establish by clear and convincing evidence that the presumption of validity and substantial compliance found in GAB §2.05(4) and (5), Wis. Adm. Code, should be rebutted, as required by GAB §2.07(3)(a), Wis. Adm. Code.

Recommendation

Staff recommends the Board adopt the following motions:

1. Deny the general challenge of Linda Patzke to the entirety of David Vanderleest's nomination papers based upon the address contained in his Declaration of Candidacy form, and the challenge to all nomination papers he circulated based upon the address he listed in the circulator's certificate.
2. Deny the challenges to the four individual signatures described above, and add those four signatures to the total number of valid signatures, thus certifying a total of 429 valid signatures filed by David Vanderleest.
3. The Government Accountability Board directs the staff to certify David Vanderleest for placement of the ballot for the July 19, 2011 recall primary election in Senate District 30.