

Written Remarks by

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Submitted to the

Joint Committee on Review of Administrative Rules

**The Honorable Leah Vukmir**  
**The Honorable Jim Ott**  
**Co-Chairs**

328 Northwest, Second Floor North, State Capitol  
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1:00 p.m.

Co-Chairpersons Vukmir and Ott and Committee Members:

Thank you for the opportunity to discuss recent decisions of the Government Accountability Board pertaining to election laws. It is my understanding that the Committee would like some background about the Board's decision to permit the use of single-signature recall petitions, as well as the decision to allow the use of informational stickers to ensure that student identification cards comply with the new Voter Photo ID Law. Based upon the invitation to testify which we received yesterday, it is also my understanding that the Committee may have questions regarding the Board's jurisdiction to make such decisions without promulgating administrative rules.

The Government Accountability Board is the state agency charged by the Legislature with administering and enforcing laws related to elections, campaign finance, lobbying, and the code of ethics for public officials. The Legislature granted the Board broad general authority to carry out this responsibility as reflected in Section 5.05(1) of the Statutes. The nonpartisan staff works under the supervision of a nonpartisan, six-member board of former Wisconsin judges.

At its meeting on September 12, 2011, the Government Accountability Board adopted separate staff recommendations related to recall petitions and to the use of stickers on student ID cards used for voting. Both actions were made as part of the Board's ongoing efforts to ensure transparency in the administration of elections at the state and local levels. Board staff specifically brought these matters to the Board's attention so that the issues could be considered in a public meeting. The staff's recommendations were available to the public prior to the meeting, the Board sets aside time for public comments at its meetings, and members of the public submitted comments on both issues.

The Board also works diligently to maintain open lines of communication with the Legislature as well as the Attorney General to advise them of Board actions and implementation plans, and current issues of concern to state and local election officials. We asked our Board to make specific decisions on these two issues so that the Legislature was aware of them and could respond by clarifying its intent, if necessary, in subsequent legislation.

### **Single-Signature Election Petitions**

I have distributed to the Committee the staff memorandum and recommendation our Board reviewed related to the use of an election petition which contains the signature of only one petitioner. While the request came from an individual interested in organizing recall efforts, the Board's affirmation of single-signature petitions applies to other election petitions, such as nomination papers and direct legislation petitions.

As the staff memo to the Board notes, the typical election petition contains spaces for more than one signature, often 10 signatures as illustrated on the Board's suggested petition form. However, those petitions are often submitted to local clerks or to the Board without the entire page containing signatures; sometimes they contain only one signature, and such signatures have always been accepted as valid. There is simply no statute or administrative rule that requires an entire petition page to be signed by electors, or to contain a specific number of signatures.

It is also a common and long-recognized practice that an individual may sign an election petition as both an elector and as a circulator. Section 8.40 of the Statutes requires the petition signer to affix his or her signature to the petition, and a qualified circulator to certify each signature obtained by the

circulator. Petitioners of various political parties have routinely submitted petition pages containing one petitioner's name and the same individual's signature as the circulator.

Having considered this information, the Board saw its decision regarding single-signature petitions as simply a reaffirmation of the current practice and well-established interpretation of the law, given the numerous times that petitions containing one elector's signature have been received and accepted by both the Board and local filing officers. In that sense, the Board's action simply restated in general terms those decisions which had been made previously with regard to all manner of election petitions at both the local and state levels.

There were two new aspects of the Board's action regarding the single-signature petition. The Board determined that an individual needed to sign only once when the petition format contained the necessary information to qualify the signature as valid for both a petitioner and a circulator. The Board's decision recognized that this practice was no different in kind from requiring two signatures from the same individual.

The Board also clarified that a recall petition could be printed from the website of a recall committee with the signer's address pre-printed. This practice is comparable to a circulator or petitioning committee completing the address information for a signer, which is also common and oftentimes very useful in improving the legibility of information on a petition. As candidates for state office, all of you may be aware that nomination papers are often tailored to the desires of a specific candidate or committee, often which illustrates the point that there is not one required format that must be used.

In the recent State Senate recall elections, the Board received many single-signature petitions from committees working to recall senators of both parties. People downloaded them from the Internet, filled them out and signed them, and turned them in to the recall committees, which filed them with along with other recall petitions. Technology has changed only the means of delivering the blank petition form to petition signers, who can now download them from the website of either the Board or a petitioning committee, or receive them by fax or email, rather than only by mail or in person.

Having concluded that the use of a single-signature petition format is not prohibited by current Statutes, the Board did not consider the need to promulgate an administrative rule to specifically permit the practice. The Board has made countless similar decisions in applying the language of the Statutes to specific requests or issues raised by the public or local election officials.

I would note that, contrary to some media reports, the Board did not approve the use of electronic signatures, or submitting petitions by email as part of its decision. Individual petitioners must still physically sign the form, circulators must still physically certify signatures, petitions with original signatures must still be physically delivered to any committee coordinating the effort, and all petition pages must still be physically delivered to the filing officer at the same time. The individual requesting guidance on single-signature petitions proposed a system of circulating petitions online and creating a database to assist in the Board's review of petitions and verification of addresses, but the Board specifically declined to take a position on that proposal.

### **Use of Stickers on Student ID Cards**

I have also distributed copies of the Board staff's memorandum regarding the use of stickers on student ID cards.

Following the enactment of 2011 Wisconsin Act 23, the Board and its staff have reviewed and addressed numerous practical issues which have arisen in implementing the new Voter Photo ID law, and which appear to have no definitive answers in the language of the legislation. The Board initially focused its efforts on the provisions of the law which went into effect immediately for the recall elections which took place in July and August. More recently, we have focused on the requirements related to the forms of ID which must be presented starting with elections in 2012.

As colleges and universities prepared to issue student ID cards for the current school year which could be used for voting purposes, the Board was asked whether existing ID cards may be used with a sticker or label affixed to the card that displays the dates of issuance and expiration along with the student's signature. Few, if any, student ID cards currently issued by Wisconsin schools comply with the requirements of the Voter Photo ID law.

Institutions are therefore exploring the most cost-effective means of providing standard ID cards to students which may also be used for voting.

As the staff recommendation indicates, Section 5.02(6m)(f) of the Statutes describes an acceptable student ID card as one that “contains” the issuance and expiration dates along with the signature of the individual to whom it is issued. Act 23 did not provide any further guidance regarding interpretation of the term “contain,” or place further restrictions or specifications on how the issuance and expiration dates and signature must appear on the student ID. There is nothing in the language of the Act or its legislative history that addresses whether the legislation permitted student ID dates and signature to be affixed by use of a sticker or whether they must be more integral to the actual production of the card, such as a signature within a laminated card, or on a signature strip similar to the back of a credit card.

Absent such specific language, Board staff recommended and the Board adopted a policy interpretation of the Statutes to permit the use of stickers or labels containing the issuance and expiration dates, as well as the student’s signature, affixed to a student ID, provided that the sticker or label has some indication that it was produced by the institution such as a small logo or the school’s initials. The Board noted that this approach is similar, for instance, to the blue cards which the Department of Motor Vehicles previously issued to drivers to attach to the back of licenses to document an address change, and to the DMV’s annual registration stickers which are affixed to license plates.

In allowing stickers, the Board recognized that the Voter Photo ID law requires additional documentation to verify the validity of the particular student ID card for voting purposes. Students may use ID cards only in conjunction with a separate proof of enrollment issued by the institution, another policy determination adopted by the Board at the same meeting.

### **Board Policy Guidance vs. Administrative Rulemaking**

Members of the public, local election officials, legislators, and other policymakers routinely ask the Board to provide guidance on the practical effect of Statues governing the administration of elections. In the Board’s opinion it is both impractical and unwise to invoke the rulemaking process in each case where the Board is asked for guidance to ensure uniform application of the law. We also believe that it is not required pursuant to the

Statutes governing rulemaking. To do so would hinder the State's ability to ensure timely guidance and uniform administration of elections throughout Wisconsin.

Consider, for example, if the Board declined to issue its guidance until the issues arose in the midst of a campaign cycle or on Election Day. Recall petitioners have only 60 days to gather signatures from the date the petitioner registers. Local election officials would be confronted with making decisions about the validity of student ID cards during absentee voting or at the polling place. It is not possible in either case to promulgate an administrative rule to address the issue so that the public or election officials could receive timely guidance. More to the point, in both cases the Statutes do not prohibit the two actions which were approved by the Board.

While the Board issues its guidance and interpretations as a way of establishing and promoting uniform election procedures statewide, those decisions may ultimately be affirmed or rejected by a court of law in actions challenging the Board's interpretation or the application of the law in specific cases. Of course, the Board also modifies its decisions and guidance to conform to any subsequent laws enacted by the Legislature and signed by the Governor.

The Legislature has authorized various means by which the Board may provide guidance to local election officials, candidates, and the public. Section 5.05 authorizes the Board to issue advisory opinions related to election, campaign finance, lobbying, and ethics laws which serve as precedent in similar cases. Our website contains many formal advisory opinions issued by the Board and its predecessor agencies, the State Elections Board and the State Ethics Board.

Another example of the legislative directive to issue guidance regarding election-related matters without the use of administrative rules can be found in Section 6.869. That provision requires the Board to prescribe uniform instructions for absentee voters, some of whom may present a copy of a student ID card as their form of identification. This is particularly relevant to this discussion as some absentee voters may use a student ID to satisfy the proof of identification requirement.

In addition, Section 7.08(1)(b) requires the Board to publish election forms "and all other materials as it deems necessary to conduct the elections."

Section 7.08(3) also requires the Board to publish an election manual “written so as to be easily understood by the general public explaining the duties of the election officials, together with notes and references to the statutes as the board considers advisable.” The election manual is subject to periodic review and revision when necessary.

Based on my experience with both the Elections Board and the Government Accountability Board, I do not believe that these specific decisions required or warranted the formal promulgation of administrative rules. The Board viewed its actions as part of its ongoing effort to educate election officials and the public, and to update its election manual and other guidance to address new issues raised by the Voter Photo ID Law.

### **Board’s Nonpartisan Nature**

In light of the public statement issued yesterday by the Assembly Speaker and the Senate Majority Leader regarding these issues, I wish to assure the Committee that these policy decisions, like all of the Board’s actions, were addressed and resolved in a nonpartisan manner by both our staff and by the Board itself.

As you are aware, the members of the Government Accountability Board and its staff are required to serve on a nonpartisan basis, similar to the staff of the legislative service agencies. We take that responsibility and obligation very seriously, and we recognize that it provides a foundation of credibility for all that we do.

The Board’s focus and commitment is to ensure fair, transparent, and impartial administration of elections. Given that legislative language necessarily cannot address every particular detail of matters under the Board’s jurisdiction, the Board is often called upon to make policy decisions and interpretations which do not invoke the formality of administrative rulemaking, involving election laws as well as campaign finance, ethics and lobbying rules. The Board’s decisions regarding single-signature election petitions and stickers on student ID cards continue that role of the Government Accountability Board.