

State of Wisconsin\Government Accountability Board

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



JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board
212 East Washington Avenue
Madison, Wisconsin
May 23, 2011
9 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
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:

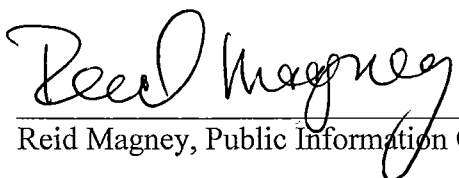
A. Investigations and Enforcement: One pending matter considered; no matters closed, no matters dismissed, no investigations authorized, no lawsuits authorized.

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

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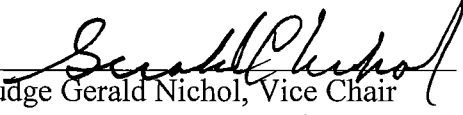
The next regular meeting of the Government Accountability Board is scheduled for Tuesday, May 31, 2011, at the G.A.B. offices located at 212 East Washington Avenue, Third Floor, in Madison, Wisconsin beginning at 8:30 a.m.

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


Reid Magney, Public Information Officer

June 2, 2011

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



Judge Gerald Nichol, Vice Chair

June 27, 2011