



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN  
ATTORNEY GENERAL

Kevin M. St. John  
Deputy Attorney General

Steven P. Means  
Executive Assistant

17 W. Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
www.doj.state.wi.us

Lewis W. Beilin  
Assistant Attorney General  
beilinlw@doj.state.wi.us  
608/266-3076  
FAX 608/267-2223

June 1, 2011

**HAND DELIVERED**

The Honorable John W. Markson  
Circuit Court Judge, Br. 1  
Dane County Circuit Court  
215 South Hamilton Street, Rm. 6105  
Madison, WI 53703-3290

Re: *In Re Petitions to Recall Senators*  
Case No. 2011CV1660

Dear Judge Markson:

I enclose for filing a Notice of Motion and Motion for Additional Extension of Time To Meet Deadlines for Good Cause Shown Under Wis. Stat. § 9.10(3)(b), and the Second Affidavit of David Buerger in support of the motion. Your assistant has notified me that the Court has set aside June 3, 2011, at 1:30 p.m. to hear this motion, and that information is accordingly included in the Notice of Motion.

I sincerely thank the Court for setting aside time on such short notice to consider this matter. I notified counsel for all parties by email immediately upon receiving word of the hearing time from your assistant, and am serving the enclosed documents on counsel by email and U.S. mail today.

Thank you very much for your consideration.

Sincerely,

Lewis W. Beilin  
Assistant Attorney General

LWB:rk

Enclosures

c: Jeremy Levinson  
Eric McLeod

cases\gab\cor\2011.5.31 crt ltr.doc

IN RE: PETITIONS TO  
RECALL SENATORS DAN  
KAPANKE, RANDY HOPPER,  
LUTHER OLSEN, DAVE  
HANSEN, SHEILA HARSDORF,  
ALBERTA DARLING, JIM  
HOLPERIN, ROBERT WIRCH, and  
ROBERT COWLES



Case No. 11-CV-1660

Hon. John W. Markson

SENATOR DAN KAPANKE,  
SENATOR RANDY HOPPER,  
SENATOR LUTHER OLSEN,  
SENATOR SHEILA HARSDORF,  
SENATOR ALBERTA DARLING,  
SENATOR DAVE HANSEN,  
SENATOR JIM HOLPERIN,  
SENATOR ROBERT WIRCH,  
SENATOR ROBERT COWLES,

COMMITTEE TO RECALL KAPANKE,  
COMMITTEE TO RECALL HOPPER,  
COMMITTEE TO RECALL OLSEN,  
COMMITTEE TO RECALL HARSDORF,  
COMMITTEE TO RECALL DARLING,  
RECALL DAVE HANSEN,  
JIM HOLPERIN RECALL COMMITTEE,  
TAXPAYERS TO RECALL ROBERT WIRCH,  
COMMITTEE TO RECALL COWLES, and

GOVERNMENT ACCOUNTABILITY  
BOARD,

Interested Parties.

---

**GOVERNMENT ACCOUNTABILITY BOARD'S NOTICE OF MOTION AND MOTION  
FOR ADDITIONAL EXTENSION OF TIME TO MEET DEADLINES FOR GOOD  
CAUSE SHOWN UNDER WIS. STAT. § 9.10(3)(b)**

---

## NOTICE OF MOTION

TO: ALL ABOVE-IDENTIFIED PARTIES  
By counsel Via U.S. Mail and Email

The Wisconsin Government Accountability Board (“GAB”), by its undersigned counsel, will bring a motion for an order extending deadlines for good cause shown under Wis. Stat. § 9.10(3)(b). The motion will be heard by the Court on Friday, June 3, 2011, 1:30 PM at the courthouse at 215 South Hamilton Street, Madison, WI 53707, the Honorable John W. Markson, presiding.

## MOTION

The Wisconsin Government Accountability Board (“GAB”), by its undersigned counsel, hereby moves the Court for an order extending GAB’s deadline to file certifications of sufficiency or insufficiency regarding the petitions to recall State Senators Hansen, Holperin and Wirch for good cause shown under Wis. Stat. § 9.10(3)(b), from June 3, 2011, to June 10, 2011.

In this motion, GAB does not take a position on whether other portions of the Court’s May 5, 2011, and May 16, 2011, orders respecting the other six pending recall petitions should be modified. This motion is supported by the following, and by the Affidavit of David Buerger that is being filed herewith.

## BRIEF PROCEDURAL BACKGROUND

(1) Extensive details of the currently pending recall petitions are set forth in GAB’s April 27, 2011, Motion to Reopen, To Add Parties, and To Extend Deadlines for Good Cause Shown Under Wis. Stat. § 9.10(3)(b), and its supporting affidavits, which for convenience’s sake are not reiterated herein. GAB also incorporates by reference here the factual statements made to the Court in the April 27, 2011, Affidavit of David Buerger.

(2) By order dated May 5, 2011, after a court hearing, the Court set a deadline of May 31, 2011, but no later than June 3, 2011, for GAB to complete its “careful examination,” Wis. Stat. § 9.10(3)(b), of 8 pending recall petitions and to file certificates of sufficiency or insufficiency regarding those petitions. Under Wis. Stat. § 9.10(3)(b), any petitions for which certificates of sufficiency are filed during the week of May 31, 2011, lead to orders for recall elections on July 12, 2011.

(3) By order dated May 16, 2011, and upon the stipulation of all parties, the Court added the petition to recall Senator Robert Cowles to the timetable set in the Court’s May 5, 2011, order: GAB was given to June 3, 2011, to file a certificate of sufficiency or insufficiency regarding the petition to recall Senator Cowles.

(4) GAB met in open session on May 23, 2011, at which time it considered the petitions to recall Senators Kapanke, Hopper, and Olsen. The Board voted to instruct its staff to file certificates of sufficiency with respect to each of those petitions, and issue orders calling a recall election for July 12, 2011, with respect to each of those senatorial districts.

(5) GAB again met in open session on May 31, 2011, at which time it considered the petitions to recall Senators Harsdorf, Cowles and Darling. The Board voted to instruct its staff to file certificates of sufficiency with respect to each of those petitions, and issue orders calling a recall election for July 12, 2011, with respect to each of those senatorial districts.

(6) Consistent with the Court’s previous orders, GAB has not yet filed certificates regarding any of the six recall petitions that have come before it. GAB has intended to file those certificates on the last day of the period allowed under the Court’s May 5 and May 16 orders: i.e., June 3.

(7) As more fully described below, and in the Second Affidavit of David Buerger, GAB was unable to prepare the remaining three recall petitions for consideration at its May 31 meeting. GAB is unable to prepare the remaining three recall petitions for consideration by June 3, 2011. GAB requires additional time to complete its consideration of those recall petitions.

#### WORK COMPLETED TO DATE ON PENDING RECALL PETITIONS

(8) GAB staff conducts two reviews of the signatures presented in support of each recall petition. When both reviews of the signatures are complete, GAB staff then turns to addressing the legal challenges presented against the petitions. For each petition, GAB staff prepares a detailed memorandum for the Board, to assist it in rendering a decision at its meeting. The memorandum provides the Board with the staff's conclusions regarding the signatures and its conclusions and recommendations regarding the legal issues raised in the challenges.

(9) GAB staff has conducted the first and second reviews of each recall petition in the order they were offered for filing with GAB. These reviews are all complete.

(10) The petitions were offered for filing and reviews were completed for the petitions on the following dates:

<u>Name</u>	<u>Petition Offered</u>	<u>2nd Review Completed</u>
Kapanke	April 1	April 20
Hopper	April 7	April 25
Olsen	April 18	April 27
Harsdorf	April 19	May 2
Hansen	April 21	May 10
Holperin	April 21	May 13
Wirch	April 21	May 19
Darling	April 21	May 24
Cowles	April 28	May 27

(11) During the process of first and second reviews of all nine recall petitions, GAB staff also had to manage the statewide recount for Wisconsin Supreme Court Justice and prepare

for the Board's regularly scheduled meeting on Tuesday, May 17, 2011. GAB staff began the review of challenges for the recall petitions for Senators Kapanke, Hopper, and Olsen on April 27, 2011. As a result of the first and second reviews of all nine recall petitions and the May 17<sup>th</sup> Board meeting preparations, GAB staff could not finish the exhibits required for the Board to carefully evaluate the sufficiency of the recall petitions against Senators Kapanke, Hopper, and Olsen until May 18, 2011. Upon completion of these exhibits, GAB Staff Counsel was first able to complete the memoranda for the Board.

(12) GAB staff completed all review and analysis work on the Kapanke, Hopper and Olsen petitions by the May 23, 2011, GAB public meeting. The GAB staff materials – including reconciliation tables showing detailed evaluation of the signature challenges, as well as the legal memorandum on each petition were distributed to GAB members on May 20, 2011. These materials can be viewed at: <http://gab.wi.gov/node/1841#attachments>.

(13) GAB staff's focus on completing the second reviews of the recall petitions for Senators Darling and Cowles coupled with limited staff resources left staff unable to complete any of the challenge reviews for any of the other six other petitions until after the May 23, 2011, public meeting of the Board.

(14) Beginning May 23, 2011 (following the public meeting of the Board), GAB staff immediately attempted to concurrently process the challenges to all six remaining petitions, as well as complete the second reviews for the recall petitions relating to Senators Darling and Cowles. GAB Staff Counsel completed briefs regarding the legal challenges relating to the petitions to recall Senators Harsdorf, Darling and Cowles by Wednesday, May 25; however, the underlying staff analysis of the factual individual signature challenges for the Darling petition was not complete. By Thursday morning, May 26, GAB staff estimated that it would be unable

to complete all six challenge reviews before the May 31 Board meeting. Due to the similarities of the legal challenges regarding Senators Harsdorf, Darling and Cowles with the previous recall petitions heard by the Board on May 23, as well as the facts that the analysis of the individual signature challenges were complete for Senator Harsdorf, that no individual signatures were challenged for the petition to recall Senator Cowles, and that only one exhibit remained to be reviewed for Senator Darling, staff focused its attention on those petitions that possibly could be completed in time for the May 31 meeting.

(15) Between May 23 and May 27, 2011, GAB staff worked to complete its evaluation of the challenges to the recall petitions for Senators Harsdorf, Cowles and Darling. An initial set of materials were conveyed to GAB members on May 27 regarding the recall petitions for Senators Harsdorf, Cowles, and Darling. These materials may be viewed at: <http://gab.wi.gov/about/meetings/2011/may-31-special#attachments>. A few potentially dispositive items were left unaddressed concerning the Darling recall petition in the materials sent to GAB members on May 27.

(16) On Thursday, May 26, 2011, up to 17 separate GAB staff members were assisting with the recall petition challenge reviews. On Friday, May 27, 2011, up to 10 separate GAB staff members were assisting with the recall petition challenge reviews.

(17) GAB had to issue its official notice and agenda of the May 31, 2011, GAB public meeting at the close of business on May 27, 2011. That is because of the intervening weekend and the fact that Monday, May 30, 2011, was a national holiday.

(18) Several GAB staff spent the Memorial Day holiday weekend working to complete the analysis of the few remaining items for the May 31 meeting, and to work on the remaining petitions that could not be completed for the May 31 meeting. The final exhibit for the GAB

staff memorandum for the recall petition against Senator Darling was complete late in the day on Monday, May 30, 2011, Memorial Day.

(19) GAB staff completed the Board materials for the Cowles challenge on May 27, the same day the second review of signatures was complete. This was possible because that challenge is based entirely upon a legal argument that was fully analyzed by GAB staff for the May 23 meeting, and that the GAB itself had passed judgment upon. Senator Cowles did not challenge any individual signatures. The staff memorandum on the Cowles petition was therefore prepared before the analyses of the other remaining recall petition challenges were begun.

(20) The Cowles challenge was worked up by GAB staff "out of order" because doing so was the most efficient way to use GAB staff time. The only consideration in completing the Cowles petition "out of order" was to most efficiently use GAB staff resources in the very limited time remaining before the agenda for the May 31 meeting had to close and be posted.

(21) The recall petition for Senator Darling was filed on the same day as the recall petitions for Senators Hansen, Holperin, and Wirch. The recall petition for Senator Darling was filed a few hours after the recall petitions for Senators Hansen, Holperin, and Wirch; however, the GAB staff's first and second reviews proceeded in the exact order that the petitions were filed.

If the challenge to Senator Darling's recall petition was taken "out of order," the only consideration in completing the Darling petition in such a fashion was the fact that the legal challenges (to the registration and circulation as well as to the integrity of the recall process) were complete and the majority of the underlying analysis of the individual signature challenges were complete. Completing the Darling challenges and preparing the petition for review by the

Board was the most efficient use GAB staff resources in the very limited time remaining before the agenda for the May 31 meeting had to close.

(22) GAB staff still must prepare the detailed certificates of sufficiency for the six recall petitions addressed by the Board at the May 23 and May 31 meetings.

#### UNANTICIPATED COMPLEXITIES IN THE CHALLENGES

(23) The challenges to the signatures supporting the petitions have varied significantly in terms of the quantity of signatures being challenged and the bases for the challenges.

(24) This list shows the number of valid signatures needed to sufficiently support each petition, the number of signatures offered in support of the petition, and the number of signatures directly and specifically challenged for each petition:

<u>Name</u>	<u>Needed</u>	<u>Offered</u>	<u>Staff Verified</u>	<u>Challenged</u>	<u>Bd. Verified</u>
Kapanke	15,588	23,338	21,868	970	21,776
Hopper	15,269	24,614	23,127	944	22,953
Olsen	14,733	24,656	22,381	1,463	22,207
Harsdorf	15,744	25,478	23,861	1,240	23,685
Darling	20,343	27,277	25,044	5,556	22,243
Cowles	15,960	26,135	23,959	0	23,959
Hansen	13,852	19,692	17,099	5,552*	
Wirch	13,537	18,564	17,544	4,043*	
Holperin	15,960	23,189	19,951	6,887*	

\*Note: Challenges to the recall petitions for Senators Hansen, Wirch, and Holperin also include challenges to circulators accounting for another 8,565 signatures for Senator Hansen, another 6,073 signatures for Senator Wirch, and another 8,474 signatures for Senator Holperin. At the time of completing this affidavit, GAB staff has yet to determine whether some of these challenges are to signatures challenged for a separate reason.

(25) Only the challenges to the recall petitions of Senators Darling, Hansen, Wirch and Holperin raise the potential for bringing the verified signature total below the amount required to certify sufficiency of the recall petition. The average number of signature challenges to these

petitions are 5 times greater than the average number of challenges to prior petitions, not including the Senator Cowles's recall petition, which had no individual signature challenges.

(26) GAB staff analyzes the challenges to specific signatures in order to make recommendations to the GAB. The challenges have been of several types, specifically:

- The signature date is incomplete;
- The date is before or after the circulation period;
- The circulator did not properly complete the certification;
- Residency cannot be determined from the address given;
- The address given is outside the Senate district;
- The signer is not a qualified elector;
- Duplicate signatures;
- Failure to sign;
- Illegible or missing names;
- The signature appears faked or forged;
- The purpose of the petition was misrepresented to the signer; and
- The signature was collected fraudulently.

(27) Some of these types of challenges can be reconciled with the GAB staff's first and second reviews relatively simply. For instance, challenges alleging a lack of date, or illegible address, or municipality outside the relevant senate district.

(28) One type of challenge, however, requires significantly more effort on the part of GAB staff to evaluate: the challenge that a particular signer's address is outside the relevant Senate district. On Friday, May 27, 10 GAB staff were able to verify roughly 1,000 signatures over the course of the entire work day.

(29) These are the number of signatures challenged on the ground that the signer resides outside the relevant Senate district:

<u>Name</u>	<u>Challenges to outside-district addresses</u>	<u>Other Address-Based Challenges</u>
Kapanke	273	148
Hopper	332	124
Olsen	474	234
Harsdorf	592	162
Darling	3,462	590
Cowles	0	
Hansen	2,335	516
Wirch	523	482
Holperin	1,073	1,407

#### ADDITIONAL UNANTICIPATED BURDENS RELATING TO THE CHALLENGES TO THE HANSEN, WIRCH AND HOLPERIN PETITIONS

(30) In addition to the above-summarized challenges to specific signatures, the challenges to the Hansen, Holperin and Wirch petitions raise workload issues for GAB staff review that are not raised, or not raised to nearly the same degree, by any other petition challenge.

(31) The challenges to the Hansen, Holperin and Wirch petitions were filed with GAB on May 5, 2011. This was after the GAB had asked the court for an extension of time to handle the large number of recall petitions. The replies were filed on May 16, 2011.

(32) The challenges to the Hansen, Holperin and Wirch petitions are collectively supported by 75 exhibits (as well as memoranda of law). These exhibits are themselves often collections of individual documents, including affidavits, charts, and court documents. GAB staff does not have an exact number, but there are easily hundreds of affidavits and other documents submitted in support of the challenges to the Hansen, Holperin and Wirch petitions that must be reviewed.

(33) Among other things, the affidavits allege wrongdoing by petition circulators. In their legal memoranda, the challengers contend that the evidence of wrongdoing is sufficient to invalidate all signatures collected by the identified circulators. Some of these affidavits are allegedly from the signers of the petitions; others are from persons who say they conducted telephone interviews with signers and then testify to the results of those interviews.

(34) In response to these allegations of wrongdoing by circulators, the recall committees have submitted correcting affidavits and extensive evidentiary material to rebut those allegations. These correcting affidavits require further in-depth GAB staff analysis to determine whether they sufficiently rehabilitate significant numbers of signatures and whole petition pages for certain circulators. For the rebuttal to the challenges to Senator Dave Hansen's recall petition, the recall committee has offered 27 correcting affidavits affecting hundreds of signatures. For the rebuttal to the challenges to Senator Jim Holperin's recall petition, the recall committee has offered 25 correcting affidavits affecting hundreds of signatures. For the rebuttal to the challenges to Senator Robert Wirch's recall petition, the recall committee has offered 4 correcting affidavits affecting hundreds of signatures.

(35) Senators Hansen, Holperin and Wirch have filed additional materials in reply to the rebuttals, and those replies also contain evidentiary material.

(36) The recall committees have filed objections to the replies.

(37) GAB staff must review and consider these materials and make recommendations to the GAB regarding what significance, if any, they have for the sufficiency of the recall petitions. Among the difficulties presented by this task is that although specific challenged circulators are named in the challenges, we have only been provided with partial lists of those petitions pages the challenged circulators submitted. In other words, GAB staff must determine

which petition pages (and there are many *thousands* of petition pages for each petition) may be affected by the challenges to the circulators, in order to determine the total of how many signatures are at stake and which signatures may have been rehabilitated by correcting affidavits from circulators as submitted by the recall committees.

(38) The fact that the materials submitted in connection with the challenges to the Hansen, Holperin and Wirch petitions are so much more extensive, and more complex than the materials presented in support of any of the other challenges, and has been followed-up by additional evidentiary and legal materials in rebuttal and reply, has contributed to GAB staff's inability to complete the analysis of those three challenges in time for the May 31 board meeting.

(39) GAB does not estimate that it will be possible to complete the staff analysis of the challenges to the Hansen, Wirch and Holperin petitions in a careful and deliberate manner before the end of June 3, let alone provide the materials and memoranda to the Board sufficiently in advance of any public meeting so that the Board members have adequate time to review the information before a meeting.

(40) The challenge to the petition to recall Senator Darling also made an allegation of circulator wrongdoing; however, it presented only one affidavit alleging that one signer had been misled by the circulator, which was much easier to address than the many similar affidavits submitted with the challenges to the recall petitions of Senators Hansen, Holperin, and Wirch.

#### OTHER UNANTICIPATED BURDENS ON GAB RESOURCES SINCE THE LAST COURT HEARING IN THIS MATTER

(41) On May 25, 2011, the Governor signed a new Voter ID law, many portions of which come into effect upon publication. Those elements of the law will therefore apply to any recall elections triggered by the pending recall petitions.

(42) GAB staff has the duty of preparing an analysis of the Voter ID law, for the guidance of local election officials and the general public.

(43) The nonpartisan analysis of the Voter ID law prepared by GAB staff during the period of time since the last court hearing in this matter may be viewed at:

[http://gab.wi.gov/sites/default/files/publication/65/jcf\\_assembly\\_substitute\\_amendment\\_bill\\_analysis\\_fo\\_21244.pdf](http://gab.wi.gov/sites/default/files/publication/65/jcf_assembly_substitute_amendment_bill_analysis_fo_21244.pdf).

(44) GAB staff resources have been dedicated to beginning the review of this new legislation and preparing a schedule of work to be performed prior to the Act's effective dates.

**GOOD CAUSE EXISTS TO EXTEND THE DEADLINES TO FILE CERTIFICATES REGARDING THE THREE PETITIONS THAT GAB HAS NOT YET CONSIDERED**

(45) GAB has proceeded with its review and analysis of the pending recall petitions since the May 5, 2011, order but has been unable to complete this enormous task. Staff and the board have approached the task in a manner that maximized the efficient use of staff and board time. Staff has prepared as many pending recall petitions for consideration by the GAB as could be done within the time available prior to scheduled meetings of the GAB, without regard to the partisan affiliations of the respective recall committees and incumbent Senators. At this time, three petitions remain unfinished, and cannot be finished before the expiration of the current court deadline of June 3, 2011.

(46) The unanticipated burdens on GAB staff raised by the challenges to the petitions constitutes good cause under Wis. Stat. § 9.10(3)(b) to extend the deadlines for the filing of certificates on the 3 pending petitions that the GAB has not considered in open meetings.

Therefore, for the reasons stated herein, and supported by the affidavits of David Buerger, including the Second Affidavit of David Buerger filed herewith, GAB respectfully requests that the Court enter an order extending its deadline under Wis. Stat. § 9.10(3)(b) to file

certificates of sufficiency or insufficiency as to the petitions to recall Senators Hansen, Holperin and Wirch, to June 10, 2011.

Dated this 1st day of June, 2011.

Respectfully submitted,

J.B. VAN HOLLEN  
Attorney General

A handwritten signature in black ink, appearing to read "Lewis W. Beilin", with a long horizontal flourish extending to the right.

LEWIS W. BEILIN  
Assistant Attorney General  
State Bar #1038835

Attorneys for Wisconsin Government  
Accountability Board

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-3076  
(608) 267-2223 (Fax)  
beilinlw@doj.state.wi.us

IN RE: PETITIONS TO  
RECALL SENATORS DAN  
KAPANKE, RANDY HOPPER,  
LUTHER OLSEN, DAVE  
HANSEN, SHEILA HARSDORF,  
ALBERTA DARLING, JIM  
HOLPERIN, ROBERT WIRCH, and  
ROBERT COWLES



Case No. 11-CV-1660

Hon. John W. Markson

SENATOR DAN KAPANKE,  
SENATOR RANDY HOPPER,  
SENATOR LUTHER OLSEN,  
SENATOR SHEILA HARSDORF,  
SENATOR ALBERTA DARLING,  
SENATOR DAVE HANSEN,  
SENATOR JIM HOLPERIN,  
SENATOR ROBERT WIRCH,  
SENATOR ROBERT COWLES,

COMMITTEE TO RECALL KAPANKE,  
COMMITTEE TO RECALL HOPPER,  
COMMITTEE TO RECALL OLSEN,  
COMMITTEE TO RECALL HARSDORF,  
COMMITTEE TO RECALL DARLING,  
RECALL DAVE HANSEN,  
JIM HOLPERIN RECALL COMMITTEE,  
TAXPAYERS TO RECALL ROBERT WIRCH,  
COMMITTEE TO RECALL COWLES, and

GOVERNMENT ACCOUNTABILITY  
BOARD,

Interested Parties.

---

**SECOND BUERGER AFFIDAVIT**

---

STATE OF WISCONSIN    )  
                                  )  
COUNTY OF DANE        )

David Buerger, being first duly sworn, deposes and states as follows:

(1) I am employed by the Wisconsin Government Accountability Board (“GAB”) as an Elections Specialist. I am also an attorney licensed to practice law in Wisconsin. I am one of the staff of the GAB Elections Division. I am making this affidavit in support of the GAB’s request for additional time to complete its statutory duties under Wis. Stat. § 9.10(3) with respect to three pending recall petitions offered for filing with GAB. I have personal knowledge of the matters discussed herein.

WORK COMPLETED TO DATE ON PENDING RECALL PETITIONS

(2) As noted in my April 28, 2011, affidavit, GAB staff conducts two reviews of the signatures presented in support of each recall petition. When both reviews of the signatures are complete, GAB staff then turns to addressing the legal challenges presented against the petitions. For each petition, GAB staff prepares a detailed memorandum for the Board, to assist it in rendering a decision at its meeting. The memorandum provides the Board with the staff’s conclusions regarding the signatures and its conclusions and recommendations regarding the legal issues raised in the challenges.

(3) GAB staff has conducted the first and second reviews of each recall petition in the order they were offered for filing with GAB. These reviews are all complete.

(4) The petitions were offered for filing and reviews were completed for the petitions on the following dates:

<u>Name</u>	<u>Petition Offered</u>	<u>2nd Review Completed</u>
Kapanke	April 1	April 20
Hopper	April 7	April 25
Olsen	April 18	April 27
Harsdorf	April 19	May 2
Hansen	April 21	May 10

Holperin	April 21	May 13
Wirch	April 21	May 19
Darling	April 21	May 24
Cowles	April 28	May 27

(5) During the process of first and second reviews of all nine recall petitions, GAB staff also had to manage the statewide recount for Wisconsin Supreme Court Justice and prepare for the Board's regularly scheduled meeting on Tuesday, May 17, 2011. GAB staff began the review of challenges for the recall petitions for Senators Kapanke, Hopper, and Olsen on April 27, 2011. As a result of the first and second reviews of all nine recall petitions and the May 17<sup>th</sup> Board meeting preparations, GAB staff could not finish the exhibits required for the Board to carefully evaluate the sufficiency of the recall petitions against Senators Kapanke, Hopper, and Olsen until May 18, 2011. Upon completion of these exhibits, GAB Staff Counsel was first able to complete the memoranda for the Board.

(6) GAB staff completed all review and analysis work on the Kapanke, Hopper and Olsen petitions by the May 23, 2011, GAB public meeting. The GAB staff materials – including reconciliation tables showing detailed evaluation of the signature challenges, as well as the legal memorandum on each petition were distributed to GAB members on May 20, 2011.

(7) GAB staff's focus on completing the second reviews of the recall petitions for Senators Darling and Cowles coupled with limited staff resources left staff unable to complete any of the challenge reviews for any of the other six other petitions until after the May 23, 2011, public meeting of the Board.

(8) Beginning May 23, 2011 (following the public meeting of the Board), GAB staff immediately attempted to concurrently process the challenges to all six remaining petitions, as well as complete the second reviews for the recall petitions relating to Senators Darling and Cowles. GAB Staff Counsel completed briefs regarding the legal challenges relating to the

petitions to recall Senators Harsdorf, Darling and Cowles by Wednesday, May 25; however, the underlying staff analysis of the factual individual signature challenges for the Darling petition was not complete. By Thursday morning, May 26, GAB staff estimated that it would be unable to complete all six challenge reviews before the May 31 Board meeting. Due to the similarities of the legal challenges regarding Senators Harsdorf, Darling and Cowles with the previous recall petitions heard by the Board on May 23, as well as the facts that the analysis of the individual signature challenges were complete for Senator Harsdorf, that no individual signatures were challenged for the petition to recall Senator Cowles, and that only one exhibit remained to be reviewed for Senator Darling, staff focused its attention on those petitions that possibly could be completed in time for the May 31 meeting.

(9) Between May 23 and May 27, 2011, GAB staff worked to complete its evaluation of the challenges to the recall petitions for Senators Harsdorf, Cowles and Darling. An initial set of materials were conveyed to GAB members on May 27 regarding the recall petitions for Senators Harsdorf, Cowles, and Darling. A few potentially dispositive items were left unaddressed concerning the Darling recall petition in the materials sent to GAB members on May 27.

(10) On Thursday, May 26, 2011, up to 17 separate GAB staff members were assisting with the recall petition challenge reviews. On Friday, May 27, 2011, up to 10 separate GAB staff members were assisting with the recall petition challenge reviews.

(11) GAB had to issue its official notice and agenda of the May 31, 2011, GAB public meeting at the close of business on May 27, 2011. That is because of the intervening weekend and the fact that Monday, May 30, 2011, was a national holiday.

(12) Several GAB staff spent the Memorial Day holiday weekend working to complete the analysis of the few remaining items for the May 31 meeting, and to work on the remaining petitions that could not be completed for the May 31 meeting. The final exhibit for the GAB staff memorandum for the recall petition against Senator Darling was complete late in the day on Monday, May 30, 2011, Memorial Day.

(13) GAB staff completed the Board materials for the Cowles challenge on May 27, the same day the second review of signatures was complete. This was possible because that challenge is based entirely upon a legal argument that was fully analyzed by GAB staff for the May 23 meeting, and that the GAB itself had passed judgment upon. Senator Cowles did not challenge any individual signatures. The staff memorandum on the Cowles petition was therefore prepared before the analyses of the other remaining recall petition challenges were begun.

(14) The Cowles challenge was worked up by GAB staff "out of order" because doing so was the most efficient way to use GAB staff time. The only consideration in completing the Cowles petition "out of order" was to most efficiently use GAB staff resources in the very limited time remaining before the agenda for the May 31 meeting had to close and be posted.

(15) The recall petition for Senator Darling was filed on the same day as the recall petitions for Senators Hansen, Holperin, and Wirch. The recall petition for Senator Darling was filed a few hours after the recall petitions for Senators Hansen, Holperin, and Wirch; however, the GAB staff's first and second reviews proceeded in the exact order that the petitions were filed. If the challenge to Senator Darling's recall petition was taken "out of order," the only consideration in completing the Darling petition in such a fashion was the fact that the legal challenges (to the registration and circulation as well as to the integrity of the recall process)

were complete and the majority of the underlying analysis of the individual signature challenges were complete. Completing the Darling challenges and preparing the petition for review by the Board was the most efficient use GAB staff resources in the very limited time remaining before the agenda for the May 31 meeting had to close.

(16) GAB staff still must prepare the detailed certificates of sufficiency for the six recall petitions addressed by the Board at the May 23 and May 31 meetings.

#### UNANTICIPATED COMPLEXITIES IN THE CHALLENGES

(17) The challenges to the signatures supporting the petitions have varied significantly in terms of the quantity of signatures being challenged and the bases for the challenges.

(18) This list shows the number of valid signatures needed to sufficiently support each petition, the number of signatures offered in support of the petition, and the number of signatures directly and specifically challenged for each petition:

<u>Name</u>	<u>Needed</u>	<u>Offered</u>	<u>Staff Verified</u>	<u>Challenged</u>	<u>Bd. Verified</u>
Kapanke	15,588	23,338	21,868	970	21,776
Hopper	15,269	24,614	23,127	944	22,953
Olsen	14,733	24,656	22,381	1,463	22,207
Harsdorf	15,744	25,478	23,861	1,240	23,685
Darling	20,343	27,277	25,044	5,556	22,243
Cowles	15,960	26,135	23,959	0	23,959
Hansen	13,852	19,692	17,099	5,552*	
Wirch	13,537	18,564	17,544	4,043*	
Holperin	15,960	23,189	19,951	6,887*	

\*Note: Challenges to the recall petitions for Senators Hansen, Wirch, and Holperin also include challenges to circulators accounting for another 8,565 signatures for Senator Hansen, another 6,073 signatures for Senator Wirch, and another 8,474 signatures for Senator Holperin. At the time of completing this affidavit, GAB staff has yet to determine whether some of these challenges are to signatures challenged for a separate reason.

(19) Only the challenges to the recall petitions of Senators Darling, Hansen, Wirch and Holperin raise the potential for bringing the verified signature total below the amount required to certify sufficiency of the recall petition. The average number of signature challenges to these

petitions are 5 times greater than the average number of challenges to prior petitions, not including the Senator Cowles's recall petition, which had no individual signature challenges.

(20) GAB staff analyzes the challenges to specific signatures in order to make recommendations to the GAB. The challenges have been of several types, specifically:

- The signature date is incomplete;
- The date is before or after the circulation period;
- The circulator did not properly complete the certification;
- Residency cannot be determined from the address given;
- The address given is outside the Senate district;
- The signer is not a qualified elector;
- Duplicate signatures;
- Failure to sign;
- Illegible or missing names;
- The signature appears faked or forged;
- The purpose of the petition was misrepresented to the signer; and
- The signature was collected fraudulently.

(21) Some of these types of challenges can be reconciled with the GAB staff's first and second reviews relatively simply. For instance, challenges alleging a lack of date, or illegible address, or municipality outside the relevant senate district.

(22) One type of challenge, however, requires significantly more effort on the part of GAB staff to evaluate: the challenge that a particular signer's address is outside the relevant Senate district. On Friday, May 27, 10 GAB staff were able to verify roughly 1,000 signatures over the course of the entire work day.

(23) These are the number of signatures challenged on the ground that the signer resides outside the relevant Senate district:

<u>Name</u>	<u>Challenges to outside-district addresses</u>	<u>Other Address-Based Challenges</u>
Kapanke	273	148
Hopper	332	124
Olsen	474	234
Harsdorf	592	162

Darling	3,462	590
Cowles	0	0
Hansen	2,335	516
Wirch	523	482
Holperin	1,073	1,407

ADDITIONAL UNANTICIPATED BURDENS RELATING TO THE CHALLENGES TO  
THE HANSEN, WIRCH AND HOLPERIN PETITIONS

(24) In addition to the above-summarized challenges to specific signatures, the challenges to the Hansen, Holperin and Wirch petitions raise workload issues for GAB staff review that are not raised, or not raised to nearly the same degree, by any other petition challenge.

(25) The challenges to the Hansen, Holperin and Wirch petitions were filed with GAB on May 5, 2011. This was after the GAB had asked the court for an extension of time to handle the large number of recall petitions. The replies were filed on May 16, 2011.

(26) The challenges to the Hansen, Holperin and Wirch petitions are collectively supported by 75 exhibits (as well as memoranda of law). These exhibits are themselves often collections of individual documents, including affidavits, charts, and court documents. I do not have an exact number, but there are easily hundreds of affidavits and other documents submitted in support of the challenges to the Hansen, Holperin and Wirch petitions that must be reviewed.

(27) Among other things, the affidavits allege wrongdoing by petition circulators. In their legal memoranda, the challengers contend that the evidence of wrongdoing is sufficient to invalidate all signatures collected by the identified circulators. Some of these affidavits are allegedly from the signers of the petitions; others are from persons who say they conducted telephone interviews with signers and then testify to the results of those interviews.

(28) In response to these allegations of wrongdoing by circulators, the recall committees have submitted correcting affidavits and extensive evidentiary material to rebut those allegations. These correcting affidavits require further in-depth GAB staff analysis to determine whether they sufficiently rehabilitate significant numbers of signatures and whole petition pages for certain circulators. For the rebuttal to the challenges to Senator Dave Hansen's recall petition, the recall committee has offered 27 correcting affidavits affecting hundreds of signatures. For the rebuttal to the challenges to Senator Jim Holperin's recall petition, the recall committee has offered 25 correcting affidavits affecting hundreds of signatures. For the rebuttal to the challenges to Senator Robert Wirch's recall petition, the recall committee has offered 4 correcting affidavits affecting hundreds of signatures.

(29) Senators Hansen, Holperin and Wirch have filed additional materials in reply to the rebuttals, and those replies also contain evidentiary material.

(30) The recall committees have filed objections to the replies.

(31) GAB staff must review and consider these materials and make recommendations to the GAB regarding what significance, if any, they have for the sufficiency of the recall petitions. Among the difficulties presented by this task is that although specific challenged circulators are named in the challenges, we have only been provided with partial lists of those petitions pages the challenged circulators submitted. In other words, GAB staff must determine which petition pages (and there are many *thousands* of petition pages for each petition) may be affected by the challenges to the circulators, in order to determine the total of how many signatures are at stake and which signatures may have been rehabilitated by correcting affidavits from circulators as submitted by the recall committees.

(32) The fact that the materials submitted in connection with the challenges to the Hansen, Holperin and Wirch petitions are so much more extensive, and more complex than the materials presented in support of any of the other challenges, and has been followed-up by additional evidentiary and legal materials in rebuttal and reply, has contributed to GAB staff's inability to complete the analysis of those three challenges in time for the May 31 board meeting.

(33) I do not estimate that it will be possible to complete the staff analysis of the challenges to the Hansen, Wirch and Holperin petitions in a careful and deliberate manner before the end of June 3, let alone provide the materials and memoranda to the Board sufficiently in advance of any public meeting so that the Board members have adequate time to review the information before a meeting.

(34) The challenge to the petition to recall Senator Darling also made an allegation of circulator wrongdoing; however, it presented only one affidavit alleging that one signer had been misled by the circulator, which was much easier to address than the many similar affidavits submitted with the challenges to the recall petitions of Senators Hansen, Holperin, and Wirch.

OTHER UNANTICIPATED BURDENS ON GAB RESOURCES SINCE THE  
LAST COURT HEARING IN THIS MATTER

(35) On May 25, 2011, the Governor signed a new Voter ID law, many portions of which come into effect upon publication. Those elements of the law will therefore apply to any recall elections triggered by the pending recall petitions.

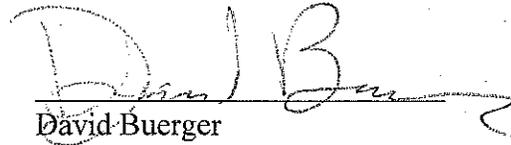
(36) GAB staff has the duty of preparing an analysis of the Voter ID law, for the guidance of local election officials and the general public.

(37) The nonpartisan analysis of the Voter ID law prepared by GAB staff during the period of time since the last court hearing in this matter may be viewed at:

[http://gab.wi.gov/sites/default/files/publication/65/jcf\\_assembly\\_substitute\\_amendment\\_bill\\_analysis\\_fo\\_21244.pdf](http://gab.wi.gov/sites/default/files/publication/65/jcf_assembly_substitute_amendment_bill_analysis_fo_21244.pdf).

(38) GAB staff resources have been dedicated to beginning the review of this new legislation and preparing a schedule of work to be performed prior to the Act's effective dates.

Dated at Madison, this 1<sup>st</sup> day of June, 2011.



David Buerger  
Government Accountability Board  
212 E. Washington Avenue  
Post Office Box 7894  
Madison, WI 53707-7984

Subscribed and sworn to me  
this 1<sup>st</sup> day of June, 2011.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: pen