

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS CANE
 Chair

KEVIN J. KENNEDY
 Director and General Counsel

WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD
Room 150, Risser Justice Building
120 Martin Luther King, Jr. Boulevard
Madison, Wisconsin
August 27 and 28, 2008
9:30 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Approved proposed administrative rules relating to voter registration.	3
B. Continued SVRS 'HAVA Check' procedure in effect since August 6, 2008, through the fall election.	4
C. Approved proposed administrative rules relating to election observers.	4
D. Reaffirmed four former Elections Board opinions relating to the Wisconsin Election Campaign Fund.	5
E. Reaffirmed five former Elections Board administrative rules relating to the Wisconsin Election Campaign Fund.	5
F. Reaffirmed two formal opinions for the former Elections Board relating to campaign finance solicitation.	5
G. Reaffirmed four informal former Elections Board opinions relating to MCFL organizations.	
H. Approved draft recount manual and requested further review.	5
I. Reaffirmed former Elections Board staff opinion on exit polls.	5
J. Reaffirmed nine opinions of the former Ethics Board.	5
K. Reaffirmed opinions of the former Ethics Board discussed at its July meeting.	6
L. Reaffirmed GAB 1.28 (issue ads) and directed staff to draft a revised rule.	8

Present: Judge Thomas Cane, Judge Michael Brennan, Judge William Eich, Judge Victor Manian, Judge Gordon Myse, Judge Gerald Nichol

Staff present: Kevin Kennedy, Jonathan Becker, Nat Robinson, George Dunst, Rich Bohringer, Barbara Hansen, Sharrie Hauge, Kyle Richmond and Tommy Winkler

A. Call to order

Chairman Cane called the meeting to order at 9:36 a.m.

B. Director's confirmation of appropriate notice of meeting

The G.A.B. Director informed the Board that a proper notice of meeting was given for the two-day Board meeting.

C. Approval of Minutes of Previous Meeting.

MOTION: Approve the minutes of the July 15 & 16, 2008, Government Accountability Board meeting. Moved by Nichol, seconded by Eich. Motion carried.

D. Public Comment

1. **Bob Ohlsen**, Dane County Clerk, appeared to comment about proposed administrative rules relating to voter registration. Materials related to this topic can be found on page 11 of the G.A.B. meeting packet for the August 27 & 28 meeting.
2. **Mike Wittenwyler**, Association of Wisconsin Lobbyists, appeared to comment about the Board's on-going review of administrative rules promulgated by the former Ethics Board. Materials related to this topic can be found on page 97 of the G.A.B. meeting packet for the August 27 & 28 meeting.

Jonathan Becker, Ethics & Accountability Division Administrator, discussed Mr. Wittenwyler's comments with the Board, and the Board agreed by consensus to take up the issues at its December 17, 2008, meeting or in January 2009.

3. **Robert Marchant**, Wisconsin Senate Chief Clerk, appeared to comment on select former Ethics Board opinions and guidelines, and provided the Board with a handout. Materials related to this topic can be found on page 97 of the G.A.B. meeting packet for the August 27 & 28 meeting.
4. **John Washburn** appeared to comment about proposed emergency administrative rules relating to election observers. Materials related to this topic can be found on page 40 of the G.A.B. meeting packet for the August 27 & 28 meeting.
5. **Matt O'Neill**, Democratic Party of Wisconsin, appeared to comment about proposed emergency administrative rules relating to election observers. Materials related to this topic can be found on page 40 of the G.A.B. meeting packet for the August 27 & 28 meeting.
6. **Mark Jefferson**, representing the Republican Party of Wisconsin, and **Christopher Mohrman**, representing the Michael Best Law Firm and attorney for

the Republican Party of Wisconsin and the McCain Campaign, appeared to comment about the Republican Party's request for the Board to review proposed 'HAVA Check' procedures. Materials related to this topic can be found on page 35 of the G.A.B. meeting packet for the August 27 & 28 meeting.

7. **Robert Freibert**, Freibert, Finerty and St. John Law Firm and representing Obama for America and Democratic Party of Wisconsin, appeared to comment about the Republican Party's request for the Board to review proposed 'HAVA Check' procedures. Materials related to this topic can be found on page 35 of the G.A.B. meeting packet for the August 27 & 28 meeting.
8. **Andrea Kaminski**, League of Women Voters of Wisconsin, appeared to comment about the Republican Party's request for the Board to review proposed 'HAVA Check' procedures. Materials related to this topic can be found on page 35 of the G.A.B. meeting packet for the August 27 & 28 meeting.
9. **Julee Helt**, past president, Wisconsin Municipal Clerks Association and Village of Waunakee clerk, appeared to comment about the Republican Party's request for the Board to review proposed 'HAVA Check' procedures. Materials related to this topic can be found on page 35 of the G.A.B. meeting packet for the August 27 & 28 meeting.
10. **Kim Bushey**, president of the Wisconsin County Clerks Association and Walworth County Clerk, appeared to comment about the Republican Party's request for the Board to review proposed 'HAVA Check' procedures. Materials related to this topic can be found on page 35 of the G.A.B. meeting packet for the August 27 & 28 meeting.
11. **Bob Ohlsen**, Dane County Clerk, appeared to comment about the Republican Party's request for the Board to review proposed 'HAVA Check' procedures. Materials related to this topic can be found on page 35 of the G.A.B. meeting packet for the August 27 & 28 meeting.

Judge Myse arrived just after noon.

Hearing no objections, the Chairman called a recess at 12:10 p.m. and reconvened the meeting at 1:07 p.m.

E. Proposed Administrative Rules Relating to Voter Registration
(presented by Nathan Judnic)

MOTION: Approve the proposed administrative rules relating to voter registration.
Moved by Nichol, seconded by Eich. Motion carried.

F. Republican Party Request to Review Proposed HAVA Check Procedures

MOTION: Approve Option 1, which recommends beginning a five-step process with new voter applications processed on or after September 10, 2008 and the adoption of a proposed emergency administrative rule authorizing the issuance of a provisional ballot in limited circumstances as recommended by Elections Division staff memo. Moved by Eich, seconded by Nichol.

MOTION: Amend previous motion to change date of 'HAVA Check' to August 6, 2008. Moved by Myse, seconded by Eich. Motion to amend carried.

Hearing no objections, the Chairman called a recess at 2:40 p.m. and reconvened the meeting at 2:54 p.m.

MOTION: Approve the original motion as amended. Moved by Eich, seconded by Nichol.

Roll call vote:	Brennan:	No	Cane:	Aye
	Eich:	No	Myse:	No
	Nichol:	Aye	Manian:	Aye

Motion failed, 3-3.

MOTION: Continue with the 'HAVA Check' procedure in effect as of August 6, 2008, through the fall election, and correct the SVRS database later. A mismatch with Wisconsin DOT data, in and of itself, shall not result in disqualification of a voter. Moved by Myse, seconded by Eich.

Throughout the discussion on the "HAVA Check," county and municipal clerks spoke from the audience on the difficulty and adverse impact of making the "HAVA Check" process retroactive back to January 1, 2006.

Roll call vote:	Brennan:	Aye	Cane:	Aye
	Eich:	Aye	Myse:	Aye
	Nichol:	Aye	Manian:	No

Motion carried, 5-1.

G. Proposed Administrative Rules Relating to Election Observers

MOTION: Amend Section GAB 4.01(19) to maintain language restricting observer attire that makes reference to a candidate, political party or a referendum group and delete references to rights and responsibilities of voters. Moved by Eich, seconded by Nichol.

Roll call vote:	Brennan:	Aye	Cane:	Aye
	Eich:	Aye	Myse:	Aye
	Nichol:	Aye	Manian:	Aye

Motion carried, 6-0.

MOTION: Approve staff proposal as amended. Moved by Eich, seconded by Manian. Motion carried.

H. Review of Select Former Elections Board Operating Procedures, Opinions and/or Rules Related to:

1. Wisconsin Election Campaign Fund
2. Campaign Finance Solicitation
3. Informal Elections Board Opinions on MCFL Organizations
4. Recount Manual
5. Exit Polls
6. Review of Ability of Municipal Clerk to Conduct Late Voter Registration at Alternate Locations

MOTION: Reaffirm four opinions relating to WECF. Moved by Eich, seconded by Nichol. Motion carried.

MOTION: Reaffirm five administrative rules relating to WECF. Moved by Eich, seconded by Myse. Motion carried.

MOTION: Reaffirm two formal opinions relating to campaign finance solicitation. Moved by Nichol, seconded by Myse. Motion carried.

MOTION: Reaffirm four informal opinions relating MCFL organizations. Moved by Myse, seconded by Manian. Motion carried.

MOTION: Approve the draft revised recount manual and place on the next agenda for further review. Moved by Eich, seconded by Nichol.

MOTION: Reaffirm staff opinion on exit polls. Moved by Brennan, seconded by Myse. Motion carried.

By consensus, the Board requested that staff draft an opinion regarding the review of the ability of the municipal clerk to conduct late voter registration at alternate locations.

I. Review of Select Former Ethics Board Opinions and/or Guidelines Related to:

1. Accepting meals and travel
2. Acceptance of fees and honoraria
3. Lobbying registration and reporting
4. Three miscellaneous opinions

By consensus, the Board allowed former Ethics Board opinions from 1978 to 1989 to lapse.

MOTION: Reaffirm nine opinions of the Ethics Board identified by the Senate Chief Clerk during testimony. Moved by Eich, seconded by Brennan.

MOTION: Affirm Ethics Board opinions referred to at July 15, 2008 G.A.B. meeting, except those objected to by Judge Myse, Mr. Whittenwyler and Mr. Marchant. Moved by Nichol, seconded by Eich. Motion carried.

J. Director's Report

Elections Division Report

(presented by Nathaniel E. Robinson)

By consensus, the Board agreed to respond to the Attorney General's letter regarding the 'HAVA Check' process. The Director will respond with an explanation of the Board's decision on August 27, 2008.

Hearing no objection, the Chair called a five-minute recess at 4:46 p.m.

Ethics & Accountability Division Report

(presented by Jonathan Becker)

Office of the General Counsel Report

(presented by Kevin J. Kennedy and Sharrie Hauge)

MOTION: Authorize Director to certify candidates for president and vice president. Moved by Myse, seconded by Eich. Motion carried.

K. 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; and confer with counsel concerning pending litigation:

MOTION: Move to closed session pursuant to Sections 5.05(6a), 19.85(1) (c), (g), (h), and 19.851 Wis. Stats., to consider written requests for advisory opinions, 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 compensation and performance of Legal Counsel. Moved by Eich, seconded by Nichol.

Roll call vote: Brennan:	Aye	Cane:	Aye
Eich:	Aye	Myse:	Aye
Nichol:	Aye	Manian:	Aye

Motion carried. The Board convened in closed session beginning at 4:55 p.m.

Summary of Significant Actions Taken in Closed Session

- A. Requests for Advice: One item considered and closed.
- B. Investigations: Eleven items considered; six items closed.

The meeting adjourned at 5:58 p.m. until the next day.

Thursday, August 28, 2008 _____

Return to Open Session

Present: Judge Thomas Cane, Judge William Eich, Judge Michael Brennan, Judge Gerald Nichol, Judge Victor Manian, Judge Gordon Myse

Staff Present: Kevin Kennedy, Jonathan Becker, Nat Robinson, Rich Bohringer, Kyle Brown, George Dunst, Barbara Hansen, Sharrie Hauge, and Kyle Richmond.

L. Call to Order

Chairman Cane called the meeting to order at 9:15 a.m.

M. Review of Former Elections Board Administrative Rule Related to Scope of Regulation GAB 1.28. (Note: This includes the regulation of political communications described as “issues ads.”)

Jonathan Becker, Ethics & Accountability Division Administrator, presented a summary of GAB 1.28 and “issue ads” to the Board.

N. Public Comment

1. **Beverly Speer**, Wisconsin Democracy Campaign, appeared to comment about the rule related to the scope of regulation GAB 1.28. Materials related to this topic can be found on page 135 of the G.A.B. meeting packet for the August 27 & 28 meeting.
2. **Randy Elf**, James Madison Center for Free Speech, appeared to comment about the rule related to the scope of regulation GAB 1.28. Materials related to this topic can be found on page 135 of the G.A.B. meeting packet for the August 27 & 28 meeting.
3. **Steve Hoersting**, Center for Competitive Politics, appeared to comment about the rule related to the scope of regulation GAB 1.28. Materials related to this topic can be found on page 135 of the G.A.B. meeting packet for the August 27 & 28 meeting.

4. **Mike Wittenwyler**, Association of Wisconsin Lobbyists, appeared to comment about the rule related to the scope of regulation GAB 1.28. Materials related to this topic can be found on page 135 of the G.A.B. meeting packet for the August 27 & 28 meeting.

Hearing no objections, the Chair called for a break at 10:57 a.m. and reconvened the meeting at 11:18 a.m.

5. **Jay Heck**, Common Cause in Wisconsin, appeared to comment about the rule related to the scope of regulation GAB 1.28. Materials related to this topic can be found on page 135 of the G.A.B. meeting packet for the August 27 & 28 meeting.
6. **James Buchen**, Wisconsin Manufacturers and Commerce, appeared to comment about the rule related to the scope of regulation GAB 1.28. Materials related to this topic can be found on page 135 of the G.A.B. meeting packet for the August 27 & 28 meeting.

Hear no objections, the Chair called for a lunch break at 12:30 p.m. and reconvened the meeting at 1:08 p.m.

- M. **Review of Former Elections Board Administrative Rule Related to Scope of Regulation GAB 1.28. (continued)** (Note: This includes the regulation of political communications described as “issues ads.”)

MOTION: Affirm GAB 1.28 as it is currently written. Moved by Nichol, seconded by Manian.

Roll call vote:	Brennan:	Aye	Cane:	Aye
	Eich:	Aye	Myse:	Aye
	Nichol:	Aye	Manian:	Aye

Motion carried, 6-0.

By consensus, the Board directed staff to draft a revised rule for consideration at the October Government Accountability Board meeting.

MOTION: Adjourn the meeting. Moved by Eich, seconded by Nichol. Motion carried.

The meeting was adjourned at 1:30 p.m.

The next meeting of the Government Accountability Board is scheduled for 9:30 a.m., Monday, October 6, 2008, in Room 150 of the Risser Justice Center, 120 Martin Luther King Jr. Boulevard, Madison, Wisconsin.

August 27 and 28, 2008 Government Accountability Board meeting minutes prepared by:

A handwritten signature in black ink, appearing to read "K. Richmond", written over a light gray rectangular background.

Kyle R. Richmond, Public Information Officer

August 18, 2008

Date

August 27 and 28, 2008 Government Accountability Board meeting minutes certified by:

Judge Michael Brennan, Board Secretary

Date