

State of Wisconsin\Government Accountability Board

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JUDGE WILLIAM EICH  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

**Wisconsin Government Accountability Board**

212 East Washington Avenue, Third Floor

Madison, Wisconsin

May 10, 2010

9:30 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Adopted Staff Recommendation Against Voluntary Voter ID	3
B. Adopted Forfeiture Schedule for Illegal Corporate Contributions	4
C. Approved Administrative Rule Defining Scope of Regulated Activity, GAB 1.28 (Issue Ad Regulation) and Proposed GAB 1.91 - Disclosure of Independent Political Expenditures	5

Present: Judge William Eich, Judge Gordon Myse, Judge Thomas Barland, Judge Michael Brennan, Judge Thomas Cane, and Judge Gerald Nichol.

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Shane Falk, Michael Haas, Barbara Hansen, Sharrie Hauge, Tommy Winkler, David Buerger, and Reid Magney

**A. Call to Order**

Chairperson Eich called the meeting to order at 9:36 a.m.

**B. Director's Report of Appropriate Meeting Notice**

G.A.B. Director Kevin Kennedy informed the Board that proper notice was given for the meeting.

**C. Signing of the Official Canvass of the April 6, 2010 Spring Election**

Chairperson Eich signed the official canvasses for the Court of Appeals and Circuit Court elections.

## **D. Approval of Minutes of Previous Meetings**

MOTION: Approve the minutes of the March 23-24, 2010 meeting of the Government Accountability Board. Moved by Judge Nichol, seconded by Judge Brennan. Motion carried unanimously.

## **E. Presentations and Comments**

### **1. Presentation by Assembly and Senate Chief Clerks**

Kevin Kennedy introduced Assembly Chief Clerk Patrick Fuller and Senate Chief Clerk Robert J. Marchant, who discussed communication between the Board and the Legislature, the opening of campaign season on June 1, and their efforts to provide training and guidance to legislators and their staffs. They discussed the large turnover in the Legislature next year, and the issues that presents for educating new members and staff. Mr. Fuller said information flow between the Chief Clerks and the Board has improved significantly in the last few months.

Discussion.

### **2. Public Comment**

- A. Attorney Mike Wittenwyler** appeared on behalf of multiple organizations to comment on the Board's proposed rule in response to the *Citizens United* decision. He called the rule very workable and reasonable and said that while it will not please everyone, it is the best the Board could do in light of the Legislature not acting. He offered four minor suggestions, three to clarify portions of the rule and one to clarify the Statement of Scope. He supported the rule and recommended that the Board adopt it.
- B. Mike McCabe** appeared on behalf of the Wisconsin Democracy Campaign (WDC) to comment on the Board's proposed rule in response to the *Citizens United* decision. He said the rule provides less disclosure than the WDC would like, but does much that the State needs. He supported the rule and recommended that the Board adopt it. He stated that the Legislature needs to act in this area to provide more disclosure of the original sources of money spent on independent disbursements.
- C. Mary Ann Hanson** of Brookfield appeared on her own behalf to comment on the omnibus election bill. She expressed concern that she attended the March 23 meeting, but would have liked notice so she could have attended the March 24 meeting at which Representative Smith briefed the Board on the legislation. Kevin Kennedy said the appearance on March 24 was properly noticed on the agenda. Judge Eich said the Board will do a better job in the future of communicating when the Board may come out of closed session to take up a matter in open session.

**D. Ardis Cerny** of Pewaukee appeared on her own behalf to comment on her proposal for voluntary voter ID. She urged the Board to approve allowing voters to request from clerks that they be required to show an ID before voting. She said she wants to protect herself from having her vote stolen by someone who might attempt to impersonate her at the polling place. She asked the Board to institute voluntary voter ID and be the first state in the U.S. to do so; revise election manuals and change policy on voter ID; and retool SVRS to effectuate the policy change.

Discussion.

**E. Deborah Ann Speckmann** of Madison appeared on her own behalf to comment on the voluntary voter ID issue. She said that if people want voter ID, the right way to make that happen is on the state or federal level and legislatively.

**F. Dianne Hermann-Brown** of Sun Prairie appeared on behalf of the Wisconsin Municipal Clerks Association to comment on the omnibus election bill, G.A.B. initiatives to consult with clerks on the new web site, and absentee envelopes, extended hours, and training.

**G. The League of Women Voters of Wisconsin** submitted a letter supporting the G.A.B. staff's position on voluntary voter ID.

Chairperson Eich called a recess at 11 a.m.

**F. Consideration of Proposal for Voters to Request to Voluntarily Provide Photo Identification**

(Presented by Shane Falk)

Staff Counsel Shane Falk presented an oral and written report to the Board regarding Ms. Ardis Cerny's request for voters to be allowed to request that they be required to show a photo ID at the polling place. The staff position is that the Board has no legislative authority to implement voluntary photo ID for voters. The Board has rulemaking authority, but it is limited to interpreting existing law. Staff has received multiple calls from municipal clerks regarding representations made to clerks about voluntary photo ID. The Board has procedures in place to deal with situations in which someone goes to the polls and is told he or she has already voted. The procedures require the clerk to verify whether there has been a clerical error, to allow the use of a challenged ballot, and to notify law enforcement immediately.

Discussion.

Judge Barland asked about statistics on the number of complaints and actual cases of election fraud, and suggested getting Legislative authority to track such incidents. Kevin Kennedy said the staff knows that it does happen, but not that often. Judge Myse said the Board is under the impression that election fraud is not a widespread problem, but lacks

empirical data. Kevin Kennedy said staff has been discussing data collection, and noted that chief election inspectors are already required to note any unusual activity on the inspectors' statements. Shane Falk noted that based upon past experience, and particularly the November 2008 election, many of the reports of potential fraud end up being incorrect or misunderstandings. Judge Eich said it appears the consensus of the Board is to have staff report on what steps can be taken to increase information about voter fraud, including caveats.

**MOTION:** To approve the staff report finding that implementation of voluntary voter ID would require Legislative authority and approve staff's March 18, 2010 policy memorandum prohibiting voluntary photo identification. Moved by Judge Myse, seconded by Judge Brennan. Motion carried unanimously.

**MOTION:** To direct staff to investigate ways to collect data regarding allegations of voter fraud. Moved by Judge Myse, seconded by Judge Barland. Motion carried unanimously.

## **G. Implementation of the Impartial Justice Act**

(Presented by Jonathan Becker and Michael Haas)

Staff Counsel Michael Haas made an oral and written presentation to the Board about implementation of the Impartial Justice Act, which provides public funding for Wisconsin Supreme Court elections. Ethics Division Administrator Jonathan Becker said the law requires significant new reporting by those who apply for grants, as well as those who do not apply for grants, including monthly and semi-monthly reports. Staff has made changes to the Campaign Finance Information System, and will need to audit reports to determine whether candidates are eligible to receive grants.

Discussion. Board members and staff discussed reporting, grant amounts, events that may trigger additional grants, and the administrative process for staff to work with the State Treasurer's office to release grants to the candidates.

## **H. Adopt forfeiture schedule for illegal corporate contributions**

(Presented by Jonathan Becker)

Jonathan Becker presented an oral and written report recommending the Board adopt a uniform schedule of forfeitures for illegal corporate campaign contributions. The Campaign Finance Information System has made it easier for staff to audit for this kind of contribution. The Board has never had a standard forfeiture schedule for this violation. Staff recommends that the Board adopt the forfeiture schedule, found on page 63 of the Open Session Board materials and set out below.

**Receiving Committee:**

1. Forfeit the amount of the illegal contribution by returning the contribution to the contributor or by donating it to a charity or the common school fund. (*G.A.B. recommends donating to charity or the common school fund.*)
2. Pay a forfeiture equal to 150% of the amount of the illegal contribution, up to a maximum of \$500.

**Corporation Making an Illegal Contribution:**

1. Forfeit double the amount of illegal contribution if the contribution **has not** been returned to the contributor by the recipient (meaning, the recipient donated the contribution to a charity or the common school fund).
2. If the recipient chooses to return the contribution to the contributor, forfeit three times the amount of the illegal contribution.
3. If the original settlement offer under #1 or #2 has not been paid or payment plan arranged within 30 days, the amount of the initial settlement offer may be doubled.

**Referral to Department of Justice**

1. If a settlement offer has not been accepted and forfeitures paid within 45 days, refer the matter to DOJ to pursue via court action.

Discussion. Judge Barland suggested changing the wording in paragraph 1 of the Corporation section to say “Forfeit double the amount of illegal contribution if the contribution has been donated to a charity or the common school fund.” Staff agreed. He also suggested changing the wording in paragraph 2 of the Corporation section to say “triple forfeiture.” Staff agreed. Jonathan Becker said that in the event of extenuating or exacerbating circumstances, staff will come to the Board for direction.

**MOTION:** To adopt the staff recommendation for the forfeiture schedule as modified by Judge Barland’s suggestions. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

**I. Campaign Finance Overview booklet (for informational purposes only)**

(Presented by Tommy Winkler)

Tommy Winkler made an oral presentation to the Board regarding staff’s recent activities revising and creating campaign finance overview manuals and filing handbooks to inform candidates about registration and reporting requirements under Chapter 11, stats. A copy of the overview manual starts on page 66 of the Open Session Board materials.

## **Presentation to Chairperson William Eich**

Kevin Kennedy announced that this is Chairperson William Eich’s final meeting of the Government Accountability Board because his term is expiring. He said Judge Eich is the first of the original six Board members to have his term expire, and that staff wanted to recognize Judge Eich. Kennedy presented Judge Eich with a thank-you card signed by members of the staff, as well as a certificate to recognize and honor Judge Eich for his service in ensuring and promoting public confidence in Wisconsin government as a member of the Government Accountability Board from 2008 to 2010, and as its Chair in 2010. Kennedy also presented Judge Eich with a commendation signed by Governor Jim Doyle, noting his valuable contributions to the operations and oversight of the Board as a new state agency. Judge Eich thanked his fellow Board members and the staff, and stated that he enjoyed his service as a member of the Board.

Chairperson Eich called a recess at 12:15 p.m.

### **J. Administrative Rules**

#### **1. Status Report on Administrative Rule Defining Scope of Regulated Activity, GAB 1.28 (Issue Ad Regulation)**

(Presented by Shane Falk)

Shane Falk reported that the Legislative Report for GAB 1.28 has been submitted to the Legislature with the changes discussed at the previous Board meeting. The proposed rule will go into effect unless one of the standing committees files an objection within 30 days of receiving the rule from their respective Chief Clerk.

#### **2. Proposed GAB– Disclosure of Independent Political Expenditures**

(Presented by Shane Falk)

Shane Falk made an oral and written presentation to the Board regarding the emergency rule on independent political expenditures. He discussed minor amendments to the rule and statement of scope, including changing “union” to “labor organization” and adding “tribes,” which would provide clarification in the statement of scope.

Discussion. Staff and Board members discussed how much disclosure could be required under the existing Chapter 11, as well as requirements for shareholder approval of communications. The Board also discussed the difference between disclosing contributions “made for” political purposes, and those which are “used for” political purposes. Wisconsin law only requires disclosure of contributions made for a political purpose, while Ohio recently changed its law to require disclosure of contributions used for a political purpose.

**MOTION:** To amend the proposed emergency rule GAB 1.91 in accordance with the following suggestions made by Attorney Wittenwyler: 1)analysis should include a clear statement that the G.A.B. is not regulating these organizations as PACs and also that the disclosure of contributions is limited to those earmarked for independent expenditures; 2)the definition of “independent” should include the phrase “and is not made in concert with;” 3)the responsibility for the filing fee should be specific to the depository account; and 4)the statement of scope should include “labor organization” instead of “union” and “tribe” as entities affected. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

**MOTION:** Pursuant to §§5.05(1)(f), 227.11(2)(a) and 227.24, Wis. Stats., the Board approves the proposed Notice of Order of the Government Accountability Board (Emergency Rule Order Creating GAB 1.91, Wis. Adm. Code), as amended, and directs the staff to publish it. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

**MOTION:** To direct staff to examine legislative changes to allow greater transparency in reporting of independent political expenditures and contributions used for that purpose, which the Board could propose to the Legislature. Moved by Judge Myse, seconded by Judge Nichol. Motion carried unanimously.

**MOTION:** Pursuant to §227.24(4), Stats., the staff shall schedule a public hearing to occur within 45 days of the anticipated publication date of the Notice of Order of the Government Accountability Board (Emergency Rule Order Creating GAB 1.91, Wis. Adm. Code). Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

**MOTION:** To amend the Statement of Scope for the creation of GAB §1.91, Wis. Adm. Code to reflect modifications made to the Emergency Rule. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

**MOTION:** Pursuant to §§5.05(1)(f), 227.11(2)(a), and 227.135, Wis. Stats., the Board formally approves the proposed Statement of Scope for the creation of GAB §1.91, Wis. Adm. Code, as amended. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

### **3. Status Report on Pending Administrative Rules**

Shane Falk provided the Board with an oral and written report on the status of pending administrative rules. Staff has been very busy with the end of the legislative session, the Impartial Justice Act and the Citizens United decision. Staff hopes to catch up with administrative rules in the near future.

Discussion. Staff and the Board discussed issues related to creation of GAB 1.90 for MCFL corporations. The Board directed staff to postpone further work on the promulgation of GAB 1.90 until determining whether GAB 1.91 will go into effect. The

Board also discussed Board members' attendance at public hearings on proposed rules. Board members will be notified so they may attend if they desire.

**K. Implementation of the federal Military and Overseas Voters Empowerment (MOVE) Act**

(Presented by Staff Counsel Michael Haas and Election Specialist David Buerger)

Michael Haas made an oral and written presentation to the Board regarding staff's efforts to implement the MOVE Act, which takes effect for the fall election. Significant changes have been made to the Statewide Voter Registration System so military and overseas voters can track the status of their absentee ballots online. The Act contains a requirement that military and overseas voters have 45 days before an election to complete and transmit their ballots, something which is not possible because of the timing of Wisconsin's September Primary Election. Staff has been exchanging correspondence with the U.S. Department of Defense and the U.S. Department of Justice, and is in the process of applying for a waiver. Kevin Kennedy said that if necessary, we could extend the time period after the election in which military ballots are counted, from 10 to 15 days. Staff believes the Board can implement the MOVE Act administratively, in the absence of legislative action this session.

**L. Legislation**

**1. Summary of Recent Legislative Activity**

(Presented by Kevin Kennedy)

Kevin Kennedy presented an oral and written report to the Board regarding recent legislative activities, including the Impartial Justice Act Trailer Bill, 2009 AB 913. The omnibus election legislation, 2009 AB 895 and 2009 SB 640, passed the Assembly but did not come up for a vote in the Senate by the end of the session. He also discussed the reasons the omnibus bill did not pass, as well as planning for legislative initiatives for the upcoming session.

**2. Legislative Status Report**

The Legislative Status Report set out at page 105 of the Open Session Board materials was received for information only. No action was taken.

**M. Director's Report**

**Elections Division Report – election administration**

Written report from Nathaniel E. Robinson was included in the Board packet. Mr. Robinson gave an oral presentation, and discussed efforts to collaborate with neighboring states, including a new agreement with Minnesota to match voter data in an effort to identify voters who may have voted in both states in the November 2008 election. SVRS

Director Barbara Hansen reported that staff is now evaluating the potential matches, which will be turned over to prosecutors if any are found. Discussion.

Mr. Robinson also reported on efforts to modernize the antiquated canvass system for the September Primary Election, and ongoing work with the Department of Transportation on online voter registration. Discussion.

**Ethics and Accountability Division Report – campaign finance ethics, and lobbying administration**

Written report from Jonathan Becker was included in the Board packet. Tommy Winkler made an oral presentation regarding the Campaign Finance Information System and its use for conducting audits, and the work on the new lobbying web site. Discussion regarding improvements to CFIS and the lack of complaints received from the January Continuing reporting period.

**Office of General Counsel Report – general administration**

Written report from Kevin J. Kennedy, Sharrie Hauge and Reid Magney was included in the Board packet. Ms. Hauge reported on the federal audit of Help America Vote Act funds, which identified five problems. Staff will get a draft audit report and work with the U.S. Election Administration Commission on the audit resolution process.

Ms. Hauge discussed improvements to the Contract Sunshine web site, as well as staff efforts to improve compliance by other agencies. Discussion. Kevin Kennedy noted that unlike Wisconsin, other states that have online reporting of contracts and expenditures also have an integrated business information system for all agencies. Judge Myse said he believes staff should be more aggressive about telling the public which agencies are not complying with the law and let them explain it.

**N. 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; and confer with counsel concerning pending litigation.

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 Barland, seconded by Judge Cane.

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

Motion carried.

Hearing no objection, Chairperson Eich called a recess at 2:15 p.m. The Board reconvened in closed session beginning at 2:30 p.m.

**Summary of Significant Actions Taken in Closed Session:**

- A. Litigation: Three pending matters and two potential matters considered.
- B. Investigations: 62 pending matters considered; two investigations authorized.
- C. Enforcement Actions: Seven matters closed.

####

The next meeting of the Government Accountability Board is scheduled for Wednesday, July 21 and Thursday, July 22, in Madison, Wisconsin, beginning at 9:30 a.m. The location for the meeting has not been determined.

May 10, 2010 Government Accountability Board meeting minutes prepared by:

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Reid Magney, Public Information Officer

May 21, 2010

May 10, 2010 Government Accountability Board meeting minutes certified by:

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Judge Thomas Barland, Board Secretary

July 21, 2010