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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Labor, Elections, and Urban Affairs (SC-LEUA)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

WISCONSIN CLUB FOR GROWTH, INC.;
its individual board member, ERIC O'KEEFE;
ONE WISCONSIN NOW, INC.; and
SCOT ROSS, its executive director,

Plaintiffs,

v.

Civil Action No. 10CV427

GORDON MYSE, Chair of the
Wisconsin Government Accountability Board;
THOMAS BARLAND, its Vice Chair; each
of its other members, MICHAEL BRENNAN,
THOMAS CANE, GERALD C. NICHOL, and DAVID G.
DEININGER; and KEVIN KENNEDY, its
Director and General Counsel; each only in his official
capacity,

Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT AND FOR PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF**

Wisconsin Club for Growth, Inc. ("Club for Growth") and One Wisconsin Now, Inc. ("One Wisconsin Now") along with a Club for Growth board member, Eric O'Keefe, and Scot Ross, executive director of One Wisconsin Now (together, the "plaintiffs"), bringing this action for declaratory and injunctive relief under 42 U.S.C. § 1983, allege that defendants, in their official capacity as individual members of the Wisconsin Government Accountability Board and collectively (together, the "G.A.B." or "defendants"), have violated or will violate their federal civil rights under color of state law. Specifically, the regulation the G.A.B. has just promulgated

violates the right to speak freely guaranteed by the First Amendment and the right to equal protection under the Fourteenth Amendment.

The corporate plaintiffs and organizations like them, for themselves and their supporters, regularly participate in public policy debates and the political life of this state – often robustly, through paid broadcast and print advertising and, increasingly, through their websites as well as news releases and other statements distributed by e-mail. The plaintiffs rarely, if ever, agree with each other on issues. However, they are co-plaintiffs because the state agency charged with administering the state’s campaign finance laws has, instead, amended these state laws. It has done so without legislative authority or direction, in violation of the plaintiffs’ constitutional rights, and with astonishing overbreadth. The administrative rule effective on August 1, 2010 subjects political speech, even personal e-mail communications, to regulation that has never been – and cannot be – subject to campaign finance regulation.

The state will conduct a primary election on September 14, 2010. Thirty days before then, on August 16, 2010, the plaintiffs’ corporate and individual speech becomes subject to regulation and – for violations of the new administrative rule, possible criminal penalties and prosecution – even though it does not expressly advocate the election or defeat of a clearly-identified candidate. To avoid that, this Court should enter an injunction that prevents the application and enforcement of the administrative rule. The plaintiffs will request such relief by promptly filing a motion for a preliminary injunction and for an expedited hearing, a supporting brief, a corresponding statement of facts, and affidavits in support of the plaintiffs’ motion for injunctive relief.

INTRODUCTION AND SUMMARY ALLEGATIONS

1. Chapter 11 of the Wisconsin Statutes contains the state's laws for regulating campaign finance for state candidates and committees, and those individuals and organizations subject to Chapter 11's reach must abide by its registration and reporting requirements.

2. At the heart of Chapter 11 is its definition of "political purpose" in Wis. Stat. § 11.01(16): when an act is *not* for a political purpose, the act is *not* subject to state campaign finance laws.

3. The express advocacy standard articulated in *Buckley v. Valeo*, 424 U.S. 1 (1976), has been adopted by the Wisconsin legislature in the statutory definition of "political purpose" – "[a]cts which are for political purposes include . . . [t]he making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate." Wis. Stat. § 11.01(16)(a)1.

4. Absent from state campaign finance law is any regulation of issue advocacy – communications that do *not* expressly advocate the election or defeat of a clearly-identified candidate. Instead, Wisconsin only regulates the statutorily-defined category of political speech that is express advocacy.

5. Unlike Congress, in section 203 of the Bipartisan Campaign Reform Act (2 U.S.C. § 434(f)(3)(A)), the Wisconsin legislature has never adopted any limitation on, or registration or reporting obligation for, issue advocacy.

6. While proposals repeatedly have been introduced to revise the definition of "political purpose," expanding the scope of state campaign finance law to try to regulate issue advocacy, none of these legislative proposals has ever been adopted.

7. The G.A.B. has “general authority” over and the “responsibility for the administration of chs. 5 to 12, [and] other laws relating to elections and election campaigns. . . .” Wis. Stat. § 5.05(1).

8. Under Wis. Stat. § 5.05(1)(f), the G.A.B.’s rule-making authority is limited to “[p]romulgat[ing] rules under ch. 227 [the administrative procedure act] applicable to all jurisdictions for the purpose of *interpreting or implementing the laws* regulating the conduct of elections or election campaigns or ensuring their proper administration.” (Emphasis added.) Notwithstanding the legislature’s refusal to act, the G.A.B. has attempted to regulate issue advocacy by rule.

9. This action challenges both the statutory authority of the G.A.B. to try unilaterally to regulate issue advocacy communications through its promulgation of a revised administrative rule in Wis. Admin. Code § GAB 1.28 (“GAB 1.28”), effective on August 1, 2010, as well as the constitutionality of GAB 1.28 itself. (A copy of GAB 1.28 is attached as **Exhibit A**.)

10. By state statute and administrative rule, individuals other than candidates and organizations other than political committees are generally subject to campaign finance regulation only when they: a) make contributions or disbursements for a political purpose; or b) make a communication for a political purpose. *See* GAB 1.28(2) (a section *not* amended).

11. Through the language in the new subsection GAB 1.28(3)(b), the G.A.B. expands the scope of communications considered for a “political purpose” and, accordingly, for the first time attempts to regulate individuals other than candidates and organizations other than political committees when they are *not* engaged in express advocacy.

12. GAB 1.28 violates the First and Fourteenth Amendments. It subjects a speaker to state campaign finance law if the communication “supports or condemns” a clearly-identified

candidate's "position or stance on issues" or "that candidate's public record" and is made in the 30-day period prior to a primary election or the 60-day period prior to a general election (GAB 1.28(3)(b)) (collectively, these time periods are referred to as the "30/60 day preelection periods"). To do that:

- A. GAB 1.28 declares that all communications during the 30/60 day preelection periods that support or condemn a clearly-identified candidate's "position or stance on issues" or "that candidate's public record" are, by definition, made for a political purpose.
- B. GAB 1.28 declares that all communications during the 30/60 day preelection periods that support or condemn a clearly-identified candidate's "position or stance on issues" or "that candidate's public record" are, by definition, "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."
- C. GAB 1.28 declares that all communications during the 30/60 day preelection periods that support or condemn a clearly-identified candidate's "position or stance on issues" or "that candidate's public record" are, categorically, express advocacy communications.

13. In promulgating the revised GAB 1.28, the G.A.B. has exceeded its statutory authority by broadening the definition of "political purpose" beyond that mandated by the state legislature in Wis. Stat. § 11.01(16). The Wisconsin Statutes provide the G.A.B. with no authority to regulate communications that are not express advocacy.

14. Club for Growth and One Wisconsin Now actively participate for and with their supporters in the public policy debate in Wisconsin. They are virtually at opposite ends of the

ideological spectrum, however, with very different views on public policy. Yet, they are united on one fundamental principle: the First Amendment guarantees the right to express – as freely and effectively as possible – their views on public issues and public officials as well as candidates for state public office.

15. Club for Growth and One Wisconsin Now frequently make issue advocacy communications, including communications during the 30/60 day preelection periods that “support or condemn” a clearly-identified candidate’s “position or stance on issues” or “that candidate’s public record.”

16. The issue advocacy communications made by Club for Growth and One Wisconsin Now have *never* been subject to registration and reporting under Wisconsin’s campaign finance laws.

17. With the adoption of GAB 1.28, issue advocacy communications made by Club for Growth and One Wisconsin Now and by the individual plaintiffs will be subject to regulation under Chapter 11.

A. The plaintiffs will each be required to establish a separate depository account and transfer funds from their respective general treasuries to these depository accounts. Wis. Admin. Code § GAB 1.91 (emergency rule effective May 20, 2010 through Oct. 16, 2010).

B. The plaintiffs must then register with the G.A.B. and file an oath for “independent disbursements” prior to making any communications subject to regulation under GAB 1.28. Wis. Stat. §§ 11.05; 11.06(7). In the oath, the plaintiffs must declare and disclose “all candidates who will be

supported or opposed by the independent disbursements.” (A copy of the Oath (GAB-6) is attached as **Exhibit B**.)

- C. The plaintiffs will then be subject to periodic reporting requirements, including 24-hour reports during the 15 days prior to a primary or general election. Wis. Stat. §§ 11.12(5), 11.20.
- D. Moreover, a disclaimer must appear on each communication identifying the sponsor and declaring the independent nature of the communication and lack of coordination with a candidate for public office. Wis. Stat. § 11.30.

18. The First Amendment ensures full and free political debate without regulation and, at its core, protects the rights of citizens to engage in unregulated political discourse, to promote shared political principles, and to engage in collective and individual speech aimed at public policy.

19. The expanded scope of “political purpose” and regulation of issue advocacy communications in GAB 1.28 violate the First Amendment by regulating political speech. By expanding the scope of political speech and subjecting it to state campaign finance law, the G.A.B. stifles the plaintiffs’ voices and imposes impermissible burdens and risks, inhibiting the effective and diverse expression of views on public issues.

JURISDICTION AND VENUE

20. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3) and (4) to hear the plaintiffs’ claims for relief arising under the Constitution and under federal law, and it has supplemental jurisdiction under 28 U.S.C. § 1367(a) to hear related claims under state law. It also has jurisdiction under 28 U.S.C. §§ 2201 and 2202, the Declaratory Judgments Act, to grant the declaratory relief requested by the plaintiffs.

21. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the defendants are all residents of Wisconsin and because a substantial part of the events giving rise to the plaintiffs' claims arose or will arise in this district. The G.A.B. is headquartered in Madison.

22. The state's campaign finance laws and regulations are codified in Chapter 11 of the Wisconsin statutes and in Chapter GAB 1 of the Wisconsin Administrative Code, respectively. The defendants, individually or in concert, will act under color of those state laws and regulations in administering and applying GAB 1.28, thereby denying the plaintiffs' rights under the Constitution.

23. The plaintiffs' claims present a justiciable case and controversy ripe for judicial resolution.

24. GAB 1.28 has been duly promulgated by the G.A.B. and was published on July 31, 2010 in the Wisconsin Administrative Register, No. 655. The effective date of the revised rule is August 1, 2010.

25. GAB 1.28 will have an immediate impact on Club for Growth, One Wisconsin Now and their officers, directors, and supporters in that they are actively making communications that would be subject to regulation under the revised rule – communications they have regularly made in the past without being subject to state campaign finance laws.

PARTIES

Plaintiffs

26. Club for Growth and One Wisconsin Now have a continuous, direct, and immediate interest in the state's public policy debates and political life. So do Eric O'Keefe and Scot Ross in their roles with their respective organizations as well as individual citizens.

27. Club for Growth and One Wisconsin Now continuously take public positions on issues of public interest and concern including, but not limited to, commenting on public policy

by providing information and a point of view. These issue advocacy communications do not expressly advocate the election or defeat of a particular candidate, nor are they coordinated with a candidate. However, these issue advocacy communications frequently support or condemn a candidate's position or stance on issues or a candidate's public record, subjecting them to regulation under GAB 1.28.

28. Established in 2004, Club for Growth is a nonstock Wisconsin corporation, recognized as a tax-exempt advocacy organization under section 501(c)(4) of the Internal Revenue Code.

29. Club for Growth is dedicated to informing, educating, and rallying citizens to embrace and enact policies that lead to sustained economic growth, limited government, and minimal taxation. Its principal office is at 1223 West Main Street, Suite 304, Sun Prairie, Wisconsin 53590.

30. Eric O'Keefe resides in Spring Green, Wisconsin and is an individual supporter of Club for Growth as well as a member of its board of directors, a position he has held since 2005.

31. Established in 2005, One Wisconsin Now is a nonstock Wisconsin corporation, recognized as a tax-exempt advocacy organization under section 501(c)(4) of the Internal Revenue Code. It also has an affiliated section 501(c)(3) charitable organization, the Institute for One Wisconsin, Inc., that focuses on educational activities.

32. One Wisconsin Now devotes itself to communicating with the public and public officials messages that advance progressive values, ideas, and policies through a variety of forms of advertising, training, networking, research, and education. Its principal office is at 152 West Johnson Street, Suite 214, Madison, Wisconsin 53703.

33. Scot Ross resides in Madison, Wisconsin and is the executive director of One Wisconsin Now, a position he has held since 2007.

Defendants

34. Defendants are the members and director of the G.A.B. Gordon Myse is the G.A.B.'s chair, and Thomas Barland is its vice chair. The G.A.B.'s four other members are Michael Brennan, Thomas Cane, Gerald C. Nichol, and David G. Deininger. Kevin J. Kennedy is the G.A.B.'s director and general counsel. The G.A.B.'s principal office is at 212 East Washington Avenue, Third Floor, Madison, Wisconsin 53703.

35. The G.A.B. has enumerated, not plenary, administrative authority for the "administration" of state law involving "elections and election campaigns" under Wis. Stat. § 5.05. It can issue subpoenas, bring civil actions for forfeitures, sue and be sued, issue advisory opinions, assist local government in administering elections, maintain voter registration lists, and generally engage in voter education. It cannot make law.

36. Through its members and staff, the G.A.B. has initiated and will continue to initiate enforcement actions against organizations and individuals for engaging in activity regulated under Chapter 11. The G.A.B. also has the authority to retain both special investigators and special prosecutors to assist in the enforcement of the laws it administers.

37. Each of the defendants is sued individually in his official capacity only and in no way personally.

GENERAL ALLEGATIONS

38. 2007 Wisconsin Act 1 created a new agency, the G.A.B., to regulate elections, ethics, lobbying, and campaign finance in Wisconsin. The G.A.B. replaced the Wisconsin State Elections Board and Wisconsin Ethics Board by merging the two agencies. The G.A.B. consists of six members, each of whom by law is a former state judge.

39. After it came into existence on January 10, 2008, the G.A.B. was required under 2007 Wisconsin Act 1, Section 209, to “reaffirm” all of the Elections Board’s existing regulations, including Wis. Admin. Code § EIBd 1.28 (“EIBd 1.28”). (A copy of EIBd 1.28 is attached as **Exhibit C**. In 2008, all Elections Board administrative rules that had been reaffirmed were renamed with a “GAB” designation.)

40. Effective on June 1, 2001, EIBd 1.28 had been adopted by the Elections Board in response to the decision in *Elections Board v. Wisconsin Manufacturers & Commerce*, 227 Wis. 2d 650, 597 N.W.2d 721 (1999).

41. EIBd 1.28(2)(c) defined an act for a “political purpose” and, by doing so, reiterated the communications considered express advocacy and subject to the registration and reporting requirements under Chapter 11.

42. EIBd 1.28 did not attempt to regulate issue advocacy.

43. On August 28, 2008, the G.A.B. voted to reaffirm the existing regulation, EIBd 1.28, providing guidance to individuals who are not candidates and organizations that are not political committees.

44. After its vote at its August 28, 2008 meeting to reaffirm EIBd 1.28 in the form that it had been adopted by the Elections Board, the G.A.B. directed its staff to determine how it could expand the scope of EIBd 1.28 to also regulate issue advocacy communications – by definition, not covered by the existing rule it had just reaffirmed.

45. On November 11, 2008, the G.A.B. directed its staff to promulgate an amendment to GAB 1.28 that would redefine political purpose specifically to regulate “so-called ‘issue ads’ now used in Wisconsin political campaigns.” (A copy of the G.A.B. minutes and the memorandum prepared for the November 11, 2008 G.A.B. meeting are attached as **Exhibit D**. A

news release on the G.A.B.'s directive at the November 11, 2008 meeting to amend GAB 1.28 is attached as **Exhibit E.**)

46. At its meeting on March 30, 2009, the G.A.B. voted to amend GAB 1.28 and adopt a revised version of the administrative rule. (A copy of the G.A.B.'s news release from that day is attached as **Exhibit F.**)

47. After a series of delays during the administrative rule promulgation process, the G.A.B. finally approved and adopted the revised GAB 1.28 on March 23, 2010. (A copy of the G.A.B. minutes are attached as **Exhibit G.**)

48. With its publication on July 31, 2010, and an effective date of August 1, 2010, GAB 1.28 will apply to issue advocacy communications beginning on August 16, 2010 – 30 days preceding the September 14, 2010 primary election. (Attached as **Exhibit H** is a July 21, 2010 update from Kevin Kennedy on implementation of GAB 1.28.)

49. GAB 1.28 will also apply to issue advocacy communications after the September 14 primary election and before the general election – 60 days preceding the November 2, 2010 general election.

50. With “political purpose” redefined by the G.A.B., issue advocacy communications subject to regulation under GAB 1.28 will be considered an “independent disbursement” or “independent expenditure” under state campaign finance law. As such, these issue advocacy communications will be subject to Chapter 11 as well as the G.A.B.'s other administrative rules.

51. The Wisconsin Statutes do not provide the G.A.B. with any authority to regulate communications that are not express advocacy, nor does it provide any support for adopting GAB 1.28.

52. GAB 1.28, on its face, violates the First and Fourteenth Amendments and deprives the plaintiffs of their federal civil rights because it regulates speech that the U.S. Supreme Court has declared not regulable as express advocacy. *Federal Elections Comm'n v. Wisconsin Right to Life*, 551 U.S. 449, 469-70 (2007).

CLAIMS FOR RELIEF

First Claim – Lack of Statutory Authority for Regulating Issue Advocacy

53. The plaintiffs incorporate by reference the allegations in paragraphs 1 through 52 above.

54. No state law has been enacted expanding the scope of political speech subject to regulation to include issue advocacy communications.

55. Instead, the Wisconsin legislature has not acted on a series of bills introduced in the last 10 years to redefine “political purpose” and broaden the term’s scope to try to regulate issue advocacy communications. (See bills, and relevant excerpts thereof, attached as **Exhibit I**.)

56. Through GAB 1.28, the G.A.B. has done by administrative rule what the state legislature has been unwilling or unable to accomplish. The administrative agency has exercised authority it does not have.

57. In adopting GAB 1.28, the G.A.B. has redefined political purpose and developed an “expanded regulation” where no statutory authority exists. The adoption of the rule, accordingly, is *ultra vires*.

Second Claim – Impermissible Regulation of Issue Advocacy as an Independent Disbursement

58. The plaintiffs incorporate by reference the allegations in paragraphs 1 through 57 above.

59. By modifying the definition of “political purpose,” GAB 1.28 imposes registration and reporting requirements on the plaintiffs and other speakers that make communications during the 30/60 day preelection periods when the communication “supports or condemns” a clearly-identified candidate’s “position or stance on issues” or “that candidate’s public record.”

60. Under GAB 1.28, these issue advocacy communications in the 30/60 day preelection periods will be regulated as independent disbursements (also known as “independent expenditures”) even though the communications do not expressly advocate the election or defeat of a clearly-identified candidate.

61. Deemed sponsors of independent disbursements by this rule, the plaintiffs and other speakers will be subject for the first time to the regulatory authority of the G.A.B. under Chapter 11.

62. Subjecting the plaintiffs and other organizations and citizens to campaign finance regulation and the G.A.B.’s authority, when they have not sponsored express advocacy communications or engaged in any other activity otherwise regulated under Chapter 11, restrains and inhibits speech in violation of the First and Fourteenth Amendments.

Third Claim – “Communication” Is Facially Unconstitutional for Overbreadth

63. The plaintiffs incorporate by reference the allegations in paragraphs 1 through 62 above.

64. By including a new definition of “communication” in GAB 1.28(1)(b) that includes *all* forms of communications that may be utilized for a political purpose, the revised rule subjects *every* method of speech to regulation – including even the use of a \$26 soapbox on a street corner or a \$26 computer program.

65. The G.A.B. has made no showing that such a broad definition of communication can prevent corruption or the appearance of corruption nor that it is narrowly tailored to do so.

66. GAB 1.28 is substantially overbroad in the amount of protected speech that it reaches.

67. Because of its overbreadth, GAB 1.28's definition of "communication" is unconstitutional on its face.

RELIEF SOUGHT

WHEREFORE, Club for Growth, One Wisconsin Now, and the individual plaintiffs ask that the Court:

1. Promptly declare GAB 1.28 unlawful as *ultra vires*, exceeding the scope of GAB's statutory authority as a violation of the plaintiffs' rights;
2. Promptly declare GAB 1.28 unconstitutional and invalid as a violation of the plaintiffs' rights;
3. Preliminarily and, then, permanently enjoin the G.A.B., and any one acting on its behalf or at its direction, from enforcing or in any way applying GAB 1.28;
4. Award the plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to 42 U.S.C. § 1988 and any other applicable statute or authority; and,
5. Grant such other relief as the Court deems proper.

Dated: July 31, 2010.

GODFREY & KAHN, S.C.

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EXHIBIT A

TEXT OF PROPOSED RULE:

SECTION 1. GAB 1.28 is amended to read:

GAB 1.28 Scope of regulated activity; election of candidates.

(1) Definitions. As used in this rule:

(a) "Political committee" means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) "Communication" means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

(c) "Contributions for political purposes" means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for ~~the purpose of expressly advocating the election or defeat of an identified candidate~~ political purposes.

(2) Individuals other than candidates and ~~committees~~ persons other than political committees are subject to the applicable ~~disclosure related and recordkeeping related~~ requirements of ch. 11, Stats., ~~only~~ when they:

(a) Make contributions or disbursements for political purposes, or

(b) Make contributions to any person at the request or with the authorization of a candidate or political committee, or

(c) Make a communication ~~containing~~ for a political purpose.

(3) A communication is for a "political purpose" if either of the following applies:

(a) The communication contains terms such as the following or their functional equivalents with reference to a clearly identified candidate that expressly advocates the election or defeat of that candidate and that unambiguously relates to the campaign of that candidate:

1. "Vote for;"
2. "Elect;"
3. "Support;"
4. "Cast your ballot for;"
5. "Smith for Assembly;"
6. "Vote against;"
7. "Defeat;" or
8. "Reject."

(b) The communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election and ending on the date of that election and that includes a reference to or depiction of a clearly identified candidate and:

1. Refers to the personal qualities, character, or fitness of that candidate;
2. Supports or condemns that candidate's position or stance on issues; or
3. Supports or condemns that candidate's public record.

~~(3)~~(4) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) or (2), or (3) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

SECTION 2. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.(22)(intro), Stats.

Dated July 13, 2010

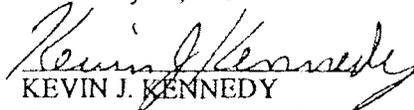

KEVIN J. KENNEDY
Government Accountability Board
Director and General Counsel

EXHIBIT B

OFFICE USE ONLY

OATH FOR COMMITTEES AND INDIVIDUALS MAKING INDEPENDENT DISBURSEMENTS

1. COMMITTEE OR INDIVIDUAL MAKING INDEPENDENT DISBURSEMENTS

Full Name	Street, City, Zip	Telephone No.

2. OATH

Pursuant to s. 11.06(7), Stats., I, _____
(full name of committee treasurer or individual)

being duly sworn, state that with respect to independent disbursements in support of the candidates listed (the committee does not) (I do not) act in cooperation or consultation with any candidate or agent or authorized committee of a candidate who is supported and (the committee does not) (I do not) act in concert with or at the request or suggestion of any candidate or any agent or authorized committee of a candidate who is supported. (The committee does not) (I do not) act in cooperation or consultation with any candidate or agent or authorized committee of a candidate who benefits from a disbursement made in opposition to a candidate listed and (the committee does not) (I do not) act in concert with, or at the request or suggestion of, any candidate or agent or authorized committee of a candidate who benefits from a disbursement made in opposition to a candidate listed.

(Signature of Treasurer or Individual)

STATE OF WISCONSIN
COUNTY OF _____

Subscribed and sworn to (affirmed) before me this _____ day of _____, _____.

(Notary Public or Person Authorized to Administer Oaths)

My Commission expires _____, _____. (For Notary Only) Is Permanent

3. LIST ALL CANDIDATES WHO WILL BE SUPPORTED OR OPPOSED BY THE INDEPENDENT DISBURSEMENTS. ATTACH ADDITIONAL SHEETS IF NECESSARY.

Name of Candidate	Address	Party	Pro	Con

**THIS FORM IS PRESCRIBED BY THE WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD
212 E. Washington Ave, 3rd Floor, P.O. BOX 7984, MADISON, WI 53707-7984**

THE INFORMATION ON THIS FORM REQUIRED BY s. 11.06(7), WIS STATS. FAILURE TO PROVIDE THE INFORMATION MAY SUBJECT YOU TO THE PENALTIES OF ss. 11.06, 11.61, 11.66, WIS. STATS.

INSTRUCTIONS FOR FILING VOLUNTARY OATH FOR COMITTEES AND INDIVIDUALS MAKING INDEPENDENT DISBURSEMENTS

1. The oath must be filed at the same time the Campaign Registration Statement (Form GAB-1) is filed or before independent disbursements are made in support or opposition to a clearly identified candidate.
2. Complete each section of the form.
 - a. Provide the complete name and address of the committee or individual making the independent disbursement.
 - b. Sign and have notarized the oath which affirms that the committee or individual does not act in cooperation or consultation with any candidate, committee or authorized agent of the candidate or committee with respect to the independent disbursements.
3. List the complete name, address and party, if any, of each candidate to be supported or opposed and indicate pro or con.
4. An oath must be filed in each calendar year in which independent disbursements of more than \$25 will be made.
5. Any questions concerning these requirements should be directed to the Government Accountability Board staff at (608) 266-8005.

Section 11.06(7) of the Wisconsin Statutes requires that every committee which and every individual who desires to make independent disbursements during any calendar year which are to be used to advocate the election or defeat of any clearly identified candidate or candidates in any election shall, before making any independent disbursements in excess of \$25 in a calendar year, file a statement under oath affirming that the committee or individual does not act in cooperation, consultation, in concert with, or at the request or suggestion of, any candidate or any agent or authorized committee of a candidate who is supported or who benefits from the independent disbursement. Any person who falsely makes such an oath or any committee or agent of a committee who carries on any activities with intent to violate such oath is guilty of a violation of Chapter 11, Wisconsin Statutes.

When political party committees and legislative campaign committees make independent disbursements, they lose their status as political party committees and become special interest committees for the purposes of campaign finance law.

An individual or a committee, other than a political party committee or a legislative campaign committee, may make both independent disbursements on behalf of a candidate and direct contributions to the candidate.

EXHIBIT C

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

(9) Any registrant who makes or receives an in-kind contribution shall report the contribution on Schedule 3-C of its campaign finance report.

History: Cr. Register, January, 1992, No. 433, eff. 2-1-92.

EIBd 1.25 Loan treatment respecting limitations. A loan when made by any person, committee or group (except a loan of money by a commercial lending institution made by the institution in accordance with applicable banking laws and regulations in the ordinary course of business) shall be reported as a contribution or disbursement, and also as an incurred obligation by the debtor. When such a loan is received by a registrant, it is counted within the contribution limitation of the creditor while outstanding, but is not counted within the limitation after repayment. The amount or value of any such outstanding loans and any other contributions or disbursements shall at no time exceed any limitation specified in ss. 11.26 and 11.31, Stats.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75; am. Register, February, 1986, No. 362, eff. 3-1-86.

EIBd 1.26 Return of contribution. (1) This rule is promulgated to clarify the treatment and reporting of returned contributions.

(2) The return of a contribution is not a disbursement subject to the limitations on disbursements in s. 11.31, Stats., and it is not a contribution subject to the limitations on contributions in s. 11.26, Stats.

(3) A candidate who applies for a grant from the Wisconsin election campaign fund and who returns a contribution that was deposited into the campaign depository shall report the returned contribution on either the Wisconsin election campaign fund campaign finance report, Form EB-24, or the campaign finance report, Form EB-2. The candidate shall make the report on the form that is due for the period when the contribution was returned. When the candidate reports on Form EB-24, the candidate shall report the returned contributions on both Schedule 2-A, DISBURSEMENTS, Schedule 2-D, EXCLUSIONS FROM SPENDING LIMITS, and Schedule 3-A, ADDITIONAL DISCLOSURE as a returned contribution. When the candidate reports on Form 2-A, the candidate shall report the returned contribution on both Schedule 2-A, DISBURSEMENTS, and Schedule 3-A, ADDITIONAL DISCLOSURE, as returned contribution.

(4) Any registrant and candidate who does not apply for a grant from the Wisconsin election campaign fund who returns a contribution that was deposited into the campaign depository shall report the returned contribution on the campaign finance report, Form EB-2, that is due for the period when the contribution was returned. The candidate shall report the returned contribution on both Schedule 2-A, DISBURSEMENTS, and Schedule 3-A, ADDITIONAL DISCLOSURE, as a returned contribution.

(5) Any registrant and candidate who returns a contribution that is not deposited into the campaign depository within 10 days of receipt is not required to report the returned, unaccepted contribution on a campaign finance report.

(6) A registrant who receives a return of contribution shall report it on the campaign finance report, Form EB-2, on Schedule 1-C, OTHER INCOME, and shall designate this as "return of contribution."

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75; am. Register, September, 1978, No. 273, eff. 10-1-78, r. and recd. (3) to (5), cr. (6), Register, February, 1986, No. 362, eff. 3-1-86.

EIBd 1.28 Scope of regulated activity; election of candidates. (1) Definitions. As used in this rule:

(a) "Political committee" means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) "Contributions for political purposes" means contributions made to 1) a candidate, or 2) a political committee or 3) an individ-

ual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for the purpose of expressly advocating the election or defeat of an identified candidate.

(2) Individuals other than candidates and committees other than political committees are subject to the applicable disclosure-related and recordkeeping-related requirements of ch. 11, Stats., only when they:

- (a) Make contributions for political purposes, or
- (b) Make contributions to any person at the request or with the authorization of a candidate or political committee, or
- (c) Make a communication containing terms such as the following or their functional equivalents with reference to a clearly identified candidate that expressly advocates the election or defeat of that candidate and that unambiguously relates to the campaign of that candidate:
 1. "Vote for;"
 2. "Elect;"
 3. "Support;"
 4. "Cast your ballot for;"
 5. "Smith for Assembly;"
 6. "Vote against;"
 7. "Defeat;"
 8. "Reject."

(3) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) or (2) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

History: Emerg. cr. eff. 8-25-76; cr. Register, January, 1977, No. 253, eff. 2-1-77; am. (1) (b) and (2) (a), Register, February, 1986, No. 362, eff. 3-1-86; am. (2) (c), Register, May, 2001, No. 545, eff. 6-1-01.

EIBd 1.29 Scope of regulated activity; referenda. The requirements of disclosure and recordkeeping of s. 11.23, Stats., are applicable to individuals and groups other than groups formed primarily to influence the outcome of a referendum as to contributions, disbursements and obligations which are directly related to express advocacy of a particular result in a referendum. Nothing contained herein should be construed to exempt groups formed primarily to influence the outcome of a referendum from the requirements of disclosure and recordkeeping of s. 11.23, Stats.

History: Emerg. cr. eff. 8-25-76; emerg. am. eff. 9-7-76; cr. Register, January, 1977, No. 253, eff. 2-1-77.

EIBd 1.30 Revocation of exemption from filing campaign finance reports. (1) When a person, committee or group other than a committee or individual required to file an oath under s. 11.06 (7), Stats., who or which claims an exemption from filing campaign finance reports because the registrant will not receive contributions, make disbursements, or incur obligations in an aggregate amount in excess of \$1,000 in a calendar year and who or which does not anticipate accepting any contribution or contributions from a single source, other than contributions totaling no more than \$1,000 made by the candidate to his or her own campaign, exceeding \$100 in that year, the registrant shall lose the exemption when the registrant exceeds the \$1,000 and \$100 limits, respectively. The registrant shall then inform the appropriate filing officer by filing either an amended campaign registration statement (Form EB-1) stating that the registrant is no longer eligible for exemption or by a letter filed with the filing officer or with the U.S. postal service by first class mail with sufficient prepaid postage, addressed to the appropriate filing officer, no later than the date on which the registrant exceeds the \$1,000 and \$100 limits. The registrant becomes subject to the applicable reporting requirements as of the date on which the registrant exceeds the \$1,000 and \$100 limits, including the requirement to report contributions received, disbursements made, and obligations incurred before the registrant exceeds the \$1,000 and \$100 limits.

EXHIBIT D

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 300 Southeast
State Capitol
Madison, Wisconsin
November 11, 2008
9:30 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Declined to reconsider a previous decision not to allow the use of blind trusts by state public officials.	3
B. Directed staff to develop a recommendation, including standards and uniform guidance, for local clerks to perform retroactive "HAVA Checks" for consideration no later than the January 2009 meeting.	3
C. Directed staff to promulgate amendment of GAB 1.28, pertaining to "issue ads" and the definition of "political purpose."	4
D. Reaffirmed three former Elections Board formal opinions and five administrative rules relating to training and selection of election officials, and duties and responsibilities of campaign treasurers.	4
E. Reaffirmed ten former Ethics Board formal opinions relating to local officials/gifts and meals and local officials/other issues, and held 35 formal opinions relating to local officials/conflicts of interest and local officials/gifts and meals for further review.	4

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, Shane Falk, Michael Haas, Sharrie Hauge, Ross Hein, Bart Jacque and Kyle Richmond

A. Call to order

Chairman Cane called the meeting to order at 9:35 a.m.

B. Director's Report of Appropriate Notice of Meeting

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

Open Session Minutes of G.A.B. Board Meeting
Tuesday, November 11, 2008
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C. Approval of Minutes of Previous Meeting

MOTION: Approve the minutes of the October 6, 2008, Government Accountability Board meeting. Moved by Nichol, seconded by Manian. Motion carried.

D. Public Hearing on Administrative Rules

1. GAB Chapter 4, Elections Observers
2. GAB Chapter 5, Ballot and Electronic Voting System Security

Director Kennedy and Ross Hein gave a summary of the two administrative rules.

Before moving to public comment, Judge Nichol requested to speak and congratulated the G.A.B. staff, Wisconsin's local election officials, and other state officials, including the Department of Administration management and staff, on a successful election on November 4, 2008. The other members of the Board concurred.

E. Public Comment

1. **Joe Mikolajczak**, New Berlin, appeared to comment about GAB Chapter 4, the election observer rule.
2. **Matt O'Neill**, representing the Democratic Party of Wisconsin, appeared to comment about GAB Chapter 4, the election observer rule.
3. **Paul Malischke**, Madison, appeared to comment about GAB Chapter 4, the election observer rule and distributed some suggestions for the Board's consideration.
4. **Robert Welch**, representing the Wisconsin Broadcasters Association, and **Thomas Fonfara**, representing the Wisconsin Newspaper Association, appeared to comment about GAB Chapter 4, the election observer rule.
5. **Paul Malischke**, representing Fair Elections Wisconsin, appeared to comment about GAB Chapter 5, ballot and electronic voting system security and distributed some suggestions for the Board's consideration.
6. **George K. Steil, Sr.**, representing Attorney General J.B. Van Hollen, appeared to comment about the use of blind trusts. Materials related to this topic can be found on pages 26-39 of the G.A.B. meeting packet for the November 11, 2008 meeting.
7. **Donald K. Schott**, representing Justice Patience Roggensack, appeared to comment about the use of blind trusts. Materials related to this topic can be found on pages 26-39 of the G.A.B. meeting packet for the November 11, 2008 meeting.

Hearing no objections, the Chairman called a recess at 11:25 a.m. and reconvened the meeting at 11:41 a.m.

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8. **Bob Ohlsen**, Dane County Clerk, appeared to comment about GAB Chapter 4, the election observer rule, and on proposed action regarding retroactive "HAVA Checks." Mr. Ohlsen urged the Board to delay commencement of retroactive HAVA checks until after the 2009 Spring Election. Materials related to the second topic can be found on a handout distributed to the Board at the G.A.B. meeting of November 11, 2008.
9. **Kim Bushey**, Walworth County Clerk, appeared to comment about proposed action regarding retroactive "HAVA Checks." Ms. Bushey concurred with Mr. Ohlsen's suggestion concerning the timing of retroactive "HAVA Checks". Materials related to this topic can be found on a handout distributed to the Board at the G.A.B. meeting of November 11, 2008.
10. **Mike McCabe**, Wisconsin Democracy Campaign, appeared to comment about the proposed administrative rule defining the scope of campaign finance regulation, GAB 1.28. Materials related to this topic can be found on pages 40-48 of the G.A.B. meeting packet for the November 11, 2008 meeting.

Hearing no objection, the Chairman took up Item G out of order.

G. Use of Blind Trusts by State Public Officials

Jonathan Becker summarized the issue for Board members.

MOTION: Allow the use of blind trusts, the requirements for which will be determined.
Moved by Manian, seconded by Cane.

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

Motion failed, 2-4.

F. Proposed Action Regarding Retroactive HAVA Checks

Nathaniel E. Robinson summarized the issue for Board members.

MOTION: Direct staff to develop a recommendation for consideration regarding guidance to be provided to local clerks for the implementation of retroactive HAVA checks. The Board will consider the recommendation at its January 2009 meeting. In order to ensure statewide consistency, the Board also reaffirms its direction to local clerks not to initiate retroactive HAVA checks until further action by the Board. Moved by Nichol, seconded by Myse.

MOTION: Amend the original motion to begin with "As directed at its August 27, 2008 meeting..." and insert "no later than" in the second sentence after the word

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“recommendation” and strike the word “at.” Moved by Nichol, seconded by Brennan.
Motion to amend carried.

Original motion carried as amended.

The Chairman called a break for lunch at 1:00 p.m. and reconvened the meeting at 1:30 p.m.

H. Proposed Administrative Rule Defining the Scope of Campaign Finance Regulation, GAB 1.28.

Jonathan Becker summarized the alternative draft rules in the Board’s materials.

MOTION: Amend GAB 1.28 according to Proposed Rule (Alternative 1) as set out on pages 41-2 of the Board’s materials. Moved by Eich, seconded by Myse.

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

Motion carried, 6-0.

I. Review of Select Former State Elections Board Operating Procedures, Opinions and Rules Related to:

1. Training and Selecting Election Officials
2. Duties and Responsibilities of Campaign Treasurers

MOTION: Reaffirm Opinion El.Bd. 75-1 and Administrative Rules El.Bd 11.01, 11.02, 11.03, 11.04, and 11.05 relating to training and selection of election officials. Moved by Myse, seconded by Eich. Motion carried.

MOTION: Reaffirm Opinions El.Bd. 74-11 and El.Bd. 74-15 relating to duties and responsibilities of campaign treasurers. Moved by Myse, seconded by Nichol. Motion carried.

J. Review of Select Former State Ethics Board Operating Procedures, Opinions and Rules Related to:

1. Local Official – Conflicts of Interest
2. Local Officials – Acceptance of Items
3. Local Officials – Other

MOTION: Reaffirm 2003 Wis Eth Bd 16, 2002 Wis Eth Bd 7, 1997 Wis Eth Bd 15, 1992 Wis Eth Bd 17, 1992 Wis Eth Bd 9, 1992 Wis Eth Bd 8, 2006 Wis Eth Bd 01, 2003 Wis Eth Bd 13, 1999 Wis Eth Bd 1, 1998 Wis Eth Bd 16, and postpone action on 1993 Wis Eth Bd 8 and 1992 Wis Eth 31, and any items

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pertaining to conflicts of interest. Moved by Nichol, seconded by Myse. Motion carried.

K. Director's Report

Elections Division Report

(Presented by Nathaniel E. Robinson)

Report received for information purposes only. The Board took no action.

A special report on the November 4 General and Presidential Election was also provided to the Board. Board members reiterated their praise for agency staff for a well-run problem-free election.

Judge Myse requested that a report be made on voting systems and security compliance monitoring for future elections, and that the election observer "Rules-at-a-Glance" brochure be rewritten. The other members of the Board concurred.

Ethics & Accountability Division Report

(Presented by Jonathan Becker)

Report received for information purposes only. The Board took no action.

Office of the General Counsel Report

(Presented by Kevin J. Kennedy and Sharrie Hauge)

Report received for information purposes only. The Board took no action.

Board members expressed their appreciation for G.A.B. staff members' work on the agency budget and plans to move, and especially thanked Sharrie Hauge for her effort on the budget.

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; and confer with counsel concerning pending litigation;. Moved by Nichol, seconded by Manian.

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

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Motion carried.

Hearing no objection, the Chairman called a recess at 3:40 p.m. The Board reconvened in closed session beginning at 3:47 p.m.

Summary of Significant Actions Taken in Closed Session

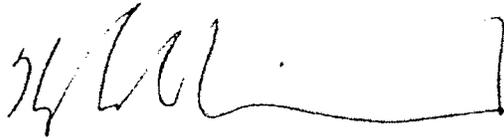
- A. Requests for Advice: None considered.
- B. Investigations: Seventeen matters considered; 10 matters closed.

The meeting adjourned at 4:50 p.m.

###

The next meeting of the Government Accountability Board is scheduled for 9:30 a.m., Wednesday, December 17, 2008, in Room 150, Risser Justice Building, 120 Martin Luther King, Jr. Boulevard, Madison, Wisconsin.

November 11, 2008 Government Accountability Board meeting minutes prepared by:



Kyle R. Richmond, Public Information Officer

November 14, 2008

Date

November 11, 2008 Government Accountability Board meeting minutes certified by:

Judge Michael Brennan, Board Secretary

December 17, 2008

Date

State of Wisconsin\Government Accountability Board

Ethics & Accountability Division
44 East Mifflin, Ste. 601
Madison, WI 53703
Phone (608) 266-8123
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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For November 11, 2008 Board meeting
TO: Members, Wisconsin Government Accountability Board
FROM: Jonathan Becker, Administrator, Division of Ethics and Accountability
SUBJECT: Proposed issue ad rule

Accompanying this memo are four alternative administrative rules to define "political purpose" to include so-called issue ads. The alternatives differ only in (3) (b). Alternative 1 reflects the Brennan Center's suggested rule at this time. Alternative 2 is somewhat more expansive and reflects some of my thinking. Alternative 3 reflects George Dunst's proposal. Alternative 4 is based on the Federal Election Commission's rule, 11 CFR §114.15.

In viewing these proposals, it is important to keep in mind Justice Roberts' language in *Wisconsin Right to Life*:

In light of these considerations, a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. Under this test, WRTL's three ads are plainly not the functional equivalent of express advocacy. First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office.

The challenge is in trying to draft a rule that will pass constitutional muster and at the same time actually have a real effect in subjecting to regulation those ads that are subject to no reasonable interpretation other than as an appeal to vote for or against a specific candidate. My Alternative 2 seems somewhat broader than Alternatives 1 or 3. Alternative 4 takes the approach of offering a safe harbor for communications not considered express advocacy.

Proposed rule (Alternative 1)

Amend GAB 1.28 to read:

GAB 1.28 Scope of regulated activity; election of candidates. (1)

Definitions. As used in this rule:

(a) "Political committee" means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) "Communication" means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

(c) "Contributions for political purposes" means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for political purposes ~~the purpose of expressly advocating the election or defeat of an identified candidate.~~

(2) Individuals other than candidates and ~~committees~~ persons other than political committees are subject to the applicable ~~disclosure related and recordkeeping related~~ requirements of ch. 11, Stats., ~~only~~ when they:

(a) Make contributions or disbursements for political purposes, or

(b) Make contributions to any person at the request or with the authorization of a candidate or political committee, or

(c) Make a communication for a political purpose.

(3) A communication is for a "political purpose" if it:

(a) Contains ~~containing~~ terms such as the following or their functional equivalents with reference to a clearly identified candidate ~~that expressly advocates the election or defeat of that candidate and that~~ unambiguously relates to the campaign of that candidate:

1. "Vote for;"
2. "Elect;"
3. "Support;"
4. "Cast your ballot for;"
5. "Smith for Assembly;"
6. "Vote against;"

7. "Defeat;" or
8. "Reject."

(b) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election and that includes a reference to or depiction of a clearly identified candidate and:

1. Refers to the personal qualities, character, or fitness of that candidate;
2. Supports or condemns that candidate's position or stance on issues; or
3. Supports or condemns to that candidate's public record.

(4) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) or (2) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

(The intent of this rule will be to subject to regulation "ads that are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The impact will be to prohibit the use of corporate money for such ads and to require registration of those paying for such ads and the reporting of related expenditures. It would have applied to the Supreme Court ads whose transcripts were furnished to the Board at its last meeting.)

Proposed rule (Alternative 2)

Amend GAB 1.28 to read:

GAB 1.28 Scope of regulated activity; election of candidates. (1)

Definitions. As used in this rule:

(a) "Political committee" means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) "Communication" means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

(c) "Contributions for political purposes" means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for political purposes ~~the purpose of expressly advocating the election or defeat of an identified candidate.~~

(2) Individuals other than candidates and ~~committees~~ persons other than political committees are subject to the applicable ~~disclosure-related and recordkeeping-related~~ requirements of ch. 11, Stats., ~~only~~ when they:

(a) Make contributions or disbursements for political purposes, or

(b) Make contributions to any person at the request or with the authorization of a candidate or political committee, or

(c) Make a communication for a political purpose.

(3) A communication is for a "political purpose" if it:

(a) Contains ~~containing~~ terms such as the following or their functional equivalents with reference to a clearly identified candidate that expressly advocates the election or defeat of that candidate and that unambiguously relates to the campaign of that candidate:

1. "Vote for;"
2. "Elect;"
3. "Support;"
4. "Cast your ballot for;"
5. "Smith for Assembly;"
6. "Vote against;"

7. "Defeat;"
8. "Reject;" or

(b) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election and that includes a reference to or depiction of a clearly identified candidate and:

1. Refers to the personal qualities, character, or fitness of that candidate;
2. Refers to that candidate's position or stance on issues;
3. Refers to that candidate's public record;
4. Refers to that candidate's supporters or opponents; or
5. Refers to campaign communications disseminated by or on behalf of that candidate or that candidate's opponents.

(4) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) or (2) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

(The intent of this rule will be to subject to regulation "ads that are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The impact will be to prohibit the use of corporate money for such ads and to require registration of those paying for such ads and the reporting of related expenditures. It would have applied to the Supreme Court ads whose transcripts were furnished to the Board at its last meeting.)

Proposed rule (Alternative 3)

Amend GAB 1.28 to read:

GAB 1.28 Scope of regulated activity; election of candidates. (1)

Definitions. As used in this rule:

(a) "Political committee" means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) "Communication" means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

(c) "Contributions for political purposes" means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for political purposes ~~the purpose of expressly advocating the election or defeat of an identified candidate.~~

(2) Individuals other than candidates and ~~committees~~ persons other than political committees are subject to the applicable ~~disclosure-related and recordkeeping-related~~ requirements of ch. 11, Stats., ~~only~~ when they:

(a) Make contributions or disbursements for political purposes, or

(b) Make contributions to any person at the request or with the authorization of a candidate or political committee, or

(c) Make a communication for a political purpose.

(3) A communication is for a "political purpose" if it:

(a) Contains ~~containing~~ terms such as the following or their functional equivalents with reference to a clearly identified candidate that expressly advocates the election or defeat of that candidate and that unambiguously relates to the campaign of that candidate:

1. "Vote for;"
2. "Elect;"
3. "Support;"
4. "Cast your ballot for;"
5. "Smith for Assembly;"
6. "Vote against;"

7. "Defeat;"
8. "Reject;" or

(b) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election and that includes a reference to or depiction of a clearly identified candidate and:

1. The communication does not focus on a legislative issue, take a position on that issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter;
2. The communication mentions an election, candidacy, political party, or challenger; [and/or?]
3. The communication takes a position on a candidate's character, qualifications, or fitness for office.

(4) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) or (2) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

(The intent of this rule will be to subject to regulation "ads that are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The impact will be to prohibit the use of corporate money for such ads and to require registration of those paying for such ads and the reporting of related expenditures. It would have applied to the Supreme Court ads whose transcripts were furnished to the Board at its last meeting.)

Proposed rule (Alternative 4)

Amend GAB 1.28 to read:

GAB 1.28 Scope of regulated activity; election of candidates. (1)

Definitions. As used in this rule:

(a) "Political committee" means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) "Communication" means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

(c) "Contributions for political purposes" means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for political purposes ~~the purpose of expressly advocating the election or defeat of an identified candidate.~~

(2) Individuals other than candidates and ~~committees~~ persons other than political committees are subject to the applicable ~~disclosure-related and recordkeeping-related~~ requirements of ch. 11, Stats., ~~only~~ when they:

(a) Make contributions or disbursements for political purposes, or

(b) Make contributions to any person at the request or with the authorization of a candidate or political committee, or

(c) Make a communication for a political purpose.

(3) A communication is for a "political purpose" if it:

(a) Contains ~~containing~~ terms such as the following or their functional equivalents with reference to a clearly identified candidate ~~that expressly advocates the election or defeat of that candidate and that~~ unambiguously relates to the campaign of that candidate:

1. "Vote for;"
2. "Elect;"
3. "Support;"
4. "Cast your ballot for;"
5. "Smith for Assembly;"
6. "Vote against;"

7. "Defeat;" or
8. "Reject."

(b) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

(c) A communication is not for a political purpose if it is not made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election or if it does not include a reference to or depiction of a clearly identified candidate or if it:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public;
2. Does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office; and
3. Either:
 - (i) Focuses on a legislative, executive or judicial matter or issue; and
 - (A) Urges a candidate to take a particular position or action with respect to the matter or issue, or
 - (B) Urges the public to adopt a particular position and to contact the candidate with respect to the matter or issue; or
 - (ii) Proposes a commercial transaction, such as purchase of a book, video, or other product or service, such as attendance (for a fee) at a film exhibition or other event.

(d) A communication includes indicia of express advocacy if it:

- (i) Mentions any election, candidacy, political party, opposing candidate, or voting by the general public; or
- (ii) Takes a position on any candidate's or officeholder's character, qualifications, or fitness for office.

(4) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) or (2) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

(The intent of this rule will be to subject to regulation "ads that are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The impact will be to prohibit the use of corporate money for such ads and to require registration of those paying for such ads and the reporting of related expenditures. It would have applied to the Supreme Court ads whose transcripts were furnished to the Board at its last meeting.)

EXHIBIT E

Government Accountability Board

State of Wisconsin

17 W. Main St., Suite 310 • Madison, WI 53703 • gab@wi.gov • (608) 266-6005 • Help Desk (608) 261-2028 • <http://gab.wi.gov>

FOR IMMEDIATE RELEASE:
Tuesday, December 30, 2008

FOR MORE INFORMATION, CONTACT:
Kyle R. Richmond, 608-267-7887

Accountability Board Achieves Major First-Year Goals

MADISON, WI – Wisconsin’s Government Accountability Board (G.A.B.) will conclude its first year with a substantial set of achievements in the areas of elections, ethics, campaign finance and lobbying.

“While 2008 has passed quickly, the Board has worked hard and acted in a timely manner on a wide-ranging agenda,” said Kevin Kennedy, G.A.B. Director and General Counsel. “Wisconsin citizens can be assured that the new board and agency are acting to address important public policy concerns.”

Kennedy listed the following major accomplishments for 2008. The Board and its staff:

- Carried out four statewide elections in a smooth, efficient, transparent manner, reinforcing Wisconsin’s reputation for fair and impartial elections. (Wisconsin had the second highest rate of voter turnout in the country for the November 4 election.)
- Created the state’s new Campaign Finance Information System (CFIS), which will make considerably more information available to the public about political contributions in Wisconsin.
- Trained a large number and wide variety of stakeholders, including municipal clerks, campaign finance registrants, statewide Special Registration Deputies, and new Chief Election Inspectors, and launched a new Web-Based Election Training System.
- Voted to amend a state administrative rule to redefine the political purpose of the unregulated, so-called “issue ads” now used in Wisconsin political campaigns, as part of its statutorily mandated review of former Elections Board rules.
- Achieved compliance with the federal Help America Vote Act of 2002 (HAVA) by completing important parts of the Statewide Voter Registration System (SVRS), including data interfaces with other Wisconsin state agencies, and launched the Voter Public Access (VPA) website to provide the public with voter registration and polling place information.

- Barred the use of "blind trusts" by state public officials, requiring them to reveal their investments.
- Completed almost all of the work required by the State Legislature for a 12-month review of all former administrative rules, formal opinions, guidelines and internal operating procedures of the former Elections and Ethics boards.
- Organized the new Government Accountability Board and staff.

"When one compares the amount and scope of our work with the size of our Board and staff, it is clear we have accomplished a lot," Kennedy said. "It's been a busy year."

The G.A.B. also implemented a new rule governing election observers in Wisconsin, and is in the midst of carrying out a study to improve the reporting of election data with a \$2 million grant from the U.S. Election Assistance Commission, Kennedy said. In addition, the agency processed 2596 statements of economic interest for Wisconsin's state public officials, tracked 697 lobbying organizations, and reviewed nomination papers for 450 candidates for state and federal office.

G.A.B. goals for 2009 include vigorous enforcement of campaign finance, elections, ethics and lobbying laws, implementation of a legislative agenda to improve core agency responsibilities, and expansion of training for agency clientele.

Another G.A.B. goal will be accomplished very soon: Combining its 40-person staff in one office headquarters near the State Capitol so that the public, election officials, state legislators and lobbyists can access all agency services in one location.

"We hope to be greeting visitors in a new, central office by the beginning of February," Kennedy said. "Our new headquarters will include space for Board meetings and make 'one-stop-shopping' easier for our regular clients."

The move to new office space will soon be formally announced, Kennedy said. The agency's current telephone numbers and e-mail addresses will not change.

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The Government Accountability Board (G.A.B.) is responsible for administration and enforcement of campaign finance, elections, ethics and lobbying laws in Wisconsin. The G.A.B. is made up of six non-partisan, former judges and is supported by an agency of non-partisan staff members. Additional information about the mission of the G.A.B. may be obtained by telephone at 1-608-266-8005, by electronic mail at gab@wi.gov, or through the Internet at <http://gab.wi.gov>.

EXHIBIT F

Government Accountability Board

State of Wisconsin

212 E. Washington Ave. Third Floor • Madison, WI 53703 • gab.wis.gov • (608) 266-4005 • Public Desk (608) 261-2804 • info@gab.wis.gov

FOR IMMEDIATE RELEASE:
Monday, March 30, 2009

FOR MORE INFORMATION, CONTACT:
Kyle R. Richmond, 608-267-7887

G.A.B. Sends Issue Ad Rule to the Legislature

MADISON, WI – The Government Accountability Board (G.A.B.), on Monday, sent to the Legislature for approval an amended rule which would regulate political “issue ads” in Wisconsin.

The revised rule would subject to state campaign finance laws those individuals or groups that fund advertising which clearly identifies a specific candidate for office and contains language which suggests support or opposition for the candidate.

The Board held a public hearing on the amended GAB 1.28 Monday morning, voting unanimously – 6-0 – to move the amended rule to the Legislature. Only ads that contain specific words, such as “vote for” or “elect” are currently subject to regulation.

“This is a big step toward leveling the playing field and creating greater transparency in elections in Wisconsin,” said G.A.B. Director Kevin Kennedy. “With this vote, the Board has made clear that it stands on the side of public accountability.”

The G.A.B. began studying the issue of political advertising that avoids the use of so-called “magic words” nine months ago, hearing a variety of testimony from various speakers and considering four versions of the amended rule. Those words are:

- vote for
- elect
- support
- cast your ballot for
- [candidate name] for [office name]
- vote against
- defeat
- reject

“It’s very easy to side-step use of those words in today’s political campaigns while unmistakably advocating the election or defeat of a candidate,” said Ethics and Accountability Division Administrator Jonathan Becker. “This amendment will close the regulatory loophole.”

The rule will go to the State Legislature for review. If there are no objections, the rule will take effect the first day of the month after it is published in the Wisconsin Administrative Register.

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