

*FRIENDS OF SCOTT WALKER,
a Wisconsin Campaign Committee,
P.O. Box 620437
Middleton, WI 53562*

11CV04195

and

*STEPHAN THOMPSON,
1246 Redwing Dr.
Oconomowoc, WI 53066*

CASE NO. _____

CASE CODE: 30701

Plaintiffs,

v.

*WISCONSIN GOVERNMENT
ACCOUNTABILITY BOARD,
212 East Wisconsin Avenue
Madison, WI 53707, and*

J. M. DAVIS

*Members of the Wisconsin Government
Accountability Board, each and only in
his official capacity:*

*MICHAEL BRENNAN, DAVID
DEININGER, GERLAD NICHOL,
THOMAS CANE, THOMAS BARLAND,
and TIMOTHY VOCKE,
212 East Washington Avenue
Madison, WI 53707, and*

*KEVIN KENNEDY, in his official
capacity as director and general counsel
for the Wisconsin Government
Accountability Board,
212 East Washington Avenue
Madison, WI 53707*

CLERK OF COURTS

DEC 15 2011

THIS IS AN AUTHENTICATED COPY OF AN
ORIGINAL DOCUMENT FILED IN THE CLERK
OF COURTS OFFICE WAUKESHA COUNTY.

Defendants.

COMPLAINT

Plaintiff Friends of Scott Walker, Inc. (“FOSW”) and Stephan Thompson (“Thompson”), by their attorneys, Michael Best & Friedrich LLP, hereby file this Complaint against Defendant Wisconsin Government Accountability Board (“GAB”), its members and director and general counsel, seeking declaratory, injunctive and other relief. Plaintiffs would respectfully show this Court as follows:

INTRODUCTION

FOSW is the authorized campaign committee for Governor Scott K. Walker. Governor Walker is currently the subject of the circulation of Recall petitions under Wis. Stat. §9.10. GAB, which has responsibility for the administration of laws relating to recall petitions, see Wis. Stat. §5.05, has publicly announced that otherwise qualified signers of a recall petition affecting Governor Scott K. Walker may sign more than once. Moreover, GAB has further announced that it will not review the petitions for facially duplicative signatures and has placed the burden on FOSW to identify and challenge any second and subsequent signatures. GAB has also publicly stated that it will not strike obviously fictitious names such as Mickey Mouse or signatures without a legible street address.

GAB’s position violates the Equal Protection clauses of the United States and Wisconsin constitutions, Article XIII, Section 12(7) of the Wisconsin Constitution and is contrary to Wisconsin law. GAB’s position allows an elector intentionally choosing to sign more than one Walker recall petition to have an unconstitutionally greater say over a recall election than those electors choosing not to sign. GAB’s position has caused, is causing, and will continue to cause irreparable harm to Thompson, FOSW and the hundreds of thousands, if not millions, of qualified electors who choose not to sign a recall petition. Accordingly, Plaintiffs seeks the relief set forth herein.

PARTIES

1. Plaintiff FOSW is a Wisconsin corporation authorized under the laws of the State of Wisconsin to conduct political activity in every County of the State of Wisconsin. FOSW is the campaign committee of Governor Walker.

2. Plaintiff Thompson is a Wisconsin citizen, resident of Waukesha County. He is a qualified elector, as that term is used in the Wisconsin Constitution and laws, including Wis. Stat. §9.10.

3. GAB is an agency of the State of Wisconsin with its principal office located at 212 East Washington Avenue, Madison, Wisconsin. GAB is the agency responsible for the administration of Wis. Stat. chs. 5 to 12, including those affecting recalls. GAB operates in every County of the State of Wisconsin.

4. Michael Brennan, resident of Marshfield, Wisconsin; David Deininger, resident of Monroe, Wisconsin; Gerald Nichol, resident of Madison, Wisconsin; Thomas Cane, resident of Wausau, Wisconsin; Thomas Barland, resident of Eau Claire, Wisconsin; and, Gordon Myse resident of Appleton, Wisconsin, each personally and individually but only in his official capacity, are all members of GAB. Kevin Kennedy, resident of Dane County, Wisconsin, in his official capacity, is the Director and General Counsel for the GAB.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to Wis. Stat. §§ 9.10, 227.40(1), 801.05(1) and (2).

6. Venue is proper in this judicial district pursuant to Wis. Stat. §801.50(3)(a).

FACTUAL ALLEGATIONS

7. Scott K. Walker is the Governor of the State of Wisconsin. He was elected on November 2, 2010, and took office on January 4, 2011. He also is a qualified elector as that term is used under Wisconsin law.

8. On or about November 4, 2011, GAB notified FOSW that a committee, Close Friends to Recall Walker, was authorized to begin circulating petitions to recall Governor Walker. GAB has the statutory duty to serve as the filing officer in the event Close Friends to Recall Walker offers a recall petition for filing.

9. On or about November 15, 2011, GAB notified FOSW that a second committee, Committee to Recall Walker, was authorized to begin circulating petitions to recall Governor Walker. GAB has the statutory duty to serve as the filing officer in the event Committee to Recall Walker offers a recall petition for filing.

10. In both instances, GAB announced that 540,208 signatures of qualified electors would be necessary for a recall election to be ordered against Governor Walker.

11. During the week of November 14, 2011, the official spokesperson of GAB made public statements regarding the recall petitions currently being circulated, including in part, "There is no prohibition on signing more than once."

12. On November 17, 2011, counsel for FOSW asked GAB to clarify whether an otherwise qualified elector could sign multiple recall sheets "with the intent or hope that his or her name will be counted more than once."

13. On November 18, 2011, staff counsel for GAB responded "that there is no specific prohibition on a person signing a recall petition more than once."

14. The full response of GAB was as follows:

Section 9.10(2)(i), Stats. and our administrative rules (Sections GAB 2.07(3)(b) and 2.11) provide that, if a challenger establishes that a person signed a recall petition more than once, the second and subsequent signatures may not be counted as valid. The statutes do not specifically prohibit the act of signing a recall or nomination paper more than one time, regardless of whether the signer has an intent to try to have multiple signatures counted. While Sections 8.10(2)(c) and 8.15(5)(a), Wis. Stats., do prescribe a nomination paper form that includes the language that the signer affirms he or she has "not signed the nomination paper of any other candidate for the same office at this election," no analogous [*sic*] language is found in Sec. 9.10, Wis. Stats., with respect to recall petitions. We do not recommend that people sign separate recall petition pages multiple times, unless the signer has a reasonable basis to conclude that the first signature will not be counted because of a lack of confidence in the reliability of the circulator. While it is not our role to give advice about the tactics used by either side (provided they are legal), it would seem that signing multiple times carries a risk of harming a recall effort by artificially inflating the number of signatures a recall committee believes it has collected. It was our experience that the committees involved in this year's Senate recalls attempted to check for and eliminate duplicate signatures before filing the petition. The G.A.B. will conduct a facial review of the petition and while its primary focus will not include checking for duplicate signatures, any duplicates that are detected will be rejected. Of course, duplicate signatures may also be challenged by the targeted incumbent.

During its review of recall petitions this year, the Board considered arguments that the conduct of a circulator may be so fraudulent that all signatures collected by a circulator should be rejected, even if some signatures were collected correctly. At that time [*sic*], [you partner] from your office argued that the Board did not have authority to strike whole petition pages, even in the instance of fraud. The Board ultimately did not address the issue of striking all petition pages offered by a particular circulator because the Board determined that the challengers had not met the clear and convincing burden proving fraud occurred in the first instance. In the context of your questions, if an individual circulator submitted petition pages with multiple signatures of the same person, the Board could consider an argument that this constituted some evidence of fraud supporting the rejection of all signatures submitted by that circulator, but any such challenge must be accompanied by evidence meeting the clear and convincing burden. The Board would then base its decision on the specific facts and applicable law. In addition, if the Board determines that specific facts demonstrate that there might be a criminal intent that warrants attention of law enforcement, the Board may refer cases to the appropriate district attorney.

To directly answer your questions, Mr. Magney was quoted correctly and the G.A.B.'s interpretation of the law is that there is no specific prohibition on an individual signing a recall petition more than once, for whatever reason. We do

not take a position as to whether that is a good or bad practice in specific cases, particularly in light of media reports that some individuals may attempt to collect signatures and then refuse to forward them to the appropriate committee. Our staff's facial review of recall petitions typically does not include a review for duplicate signatures, but that does not prevent the Board from considering whether any specific actions should be incorporated into the review process if the Board receives credible information that individuals are deliberately signing petitions more than once in the hopes of having duplicate signatures counted as valid. Certainly, an officeholder may challenge duplicate signatures and the Board has routinely upheld such challenges.

In addition, to minimize the number of rejected signatures it is in the interest of the recall committees to detect and remove duplicate signatures before a petition is submitted for review. Mr. Magney also did discuss with the reporter that challenges may be made to duplicate signatures, although that was left out of the news report. As you can appreciate, our staff constantly responds to inquiries from the public, political committees and the media, and we strive to provide a consistent, clear, and even-handed message based on the law and G.A.B. rules, to not only encourage compliance with the election laws but also to protect the integrity of, and enhance confidence in, the process. We regularly issue reminders to voters, local election officials and candidates on timely topics, which are reported as media outlets see fit. It may be that this topic deserves to be included as part of future news releases or public messages regarding recall activity, which would provide another opportunity to expand on the comment which you quoted. That is a decision for the agency's management to make in the context of other priorities and information that needs to be distributed, and therefore I am copying Director Kennedy and Mr. Magney on this email so that they are aware of the concern you have raised. Please feel free to contact me if you have any additional questions or concerns.

15. GAB's position is erroneous as a matter of law and violates the Wisconsin and United States Constitution, as well as Wisconsin statutes.

16. A recall election may only be scheduled if a certain number of individual, otherwise qualified electors choose to sign a recall petition. Wis. Con. Art. XIII, § 12; Wis. Stat. § 9.10.

17. Article XIII, Section 12 of the Wisconsin Constitution sets the parameters of recalls in the State of Wisconsin. That Article is "self-executing and mandatory. Laws may be

enacted to facilitate its operation but no law shall be enacted to hamper, restrict or impair the right of recall.” Wis. Con. Art. XIII, Sec. 12(7).

18. GAB’s interpretation of Wis. Stat. § 9.10, specifically that it does not prohibit an individual from signing a recall petition multiple times with the intent and hope that his signature be counted twice, is an impermissible and unconstitutional interpretation because it turns section 9.10 into a “law [which] hamper[s], restrict[s] and impair[s]” the constitutional rights of recall of those who choose not to sign a petition.

19. Moreover, the decision of one otherwise qualified elector to sign or not sign a recall petition can have no more weight than the decision of another otherwise qualified elector.

20. An elector who knowingly signs multiple recall petitions with the intent to have his or her name counted more than once, and GAB’s public acquiescence of such a situation, violates the Equal Protection rights of those otherwise qualified electors who choose not to sign a recall petition.

21. Mr. Thompson has chosen not to sign a recall petition. GAB’s position allows other, equally-situated qualified electors to have their decisions count more than the individual decision of Mr. Thompson and the hundreds of thousands, perhaps millions, of other Wisconsin electors who have chosen not to sign.

22. Moreover, an elector who signs a recall petition makes an implicit statement that he or she is otherwise qualified to sign a recall petition and have his or her signature counted once. A person who signs more than one recall petition with the intent to have his or her signature counted more than once is, at a minimum, in violation of Wis. Stat. § 12.05, and if that person falsifies their personal information in order to facilitate their double signing, is in violation of Wis. Stat. § 12.13(3)(a).

23. GAB has publicly stated that it will not strike obviously fictitious names such as Mickey Mouse or signatures without a legible street address. A person who signs a recall petitions using a fictitious name or address, is diluting Mr. Thompson's individual influence and rendering his purposeful decision not to sign a recall petition meaningless. Moreover, a person who signs with a fictitious name or fictitious address commits election fraud in violation of Wis. Stat. §12.13(3)(a) ("Prohibited Acts. No person may: (a) Falsify any information in respect to . . . petition for an election, including a recall petition or petition for a referendum. . . .").

24. GAB's statement that FOSW may seek to challenge the counting of multiple signatures does not cure the constitutional and other legal defect.

25. A government agency may not place unequal burdens on respective electors. Under GAB's position, an elector signing multiple petitions with the intent that the signatures be counted more than once faces no deterrent or penalty. In order to be counted equally with that person, Mr. Thompson would have to undertake the burden (without the assistance of the GAB) of identifying and challenging the multiple submissions of signatures by the elector. However, Mr. Thompson, like all other elector's, is not expressly authorized by Wis. Stat. § 9.10 to participate in the petition verification process or to challenge GAB's determination. Accordingly, Mr. Thompson is left with no mechanism by which he can protect his rights.

26. While FOSW can participate in the statutory petition verification process, under current GAB rules, FOSW will have only 10 days to examine, compare and then challenge more than 540,000 signatures – more than 50,000 signatures a day.

27. Under these circumstances, it will be a practical impossibility for FOSW and/or Thompson to review, identify and challenge multiple signatures.

COUNT I
DECLARATORY RELIEF

28. The averments of the foregoing Paragraphs are realleged and incorporated by reference herein with the same force and effect as if set forth in full below.

29. A genuine dispute, ripe for adjudication, exists between the Plaintiffs and GAB that must be resolved as soon as possible.

30. For the reasons set forth above, Plaintiffs are entitled to a declaration that electors signing a recall petition more than once with the intent that his or her signature be counted more than once, and GAB's acquiescence in such behavior, violates the Equal Protection Clauses of the United States Constitution and the Wisconsin Constitution, and Wisconsin law.

31. For the reasons set forth above, Plaintiffs are entitled to a declaration that GAB's interpretation of Wis. Stat. 9.10 violates Article XIII, Section 12(7) of the Wisconsin Constitution because it turns section 9.10 into a law which impairs, restricts and hampers the Constitutional right of recall of those who chose not to sign a recall petition.

COUNT II
INJUNCTIVE RELIEF

32. The averments of the foregoing Paragraphs are realleged and incorporated by reference herein with the same force and effect as if set forth in full below.

33. Temporary and permanent injunctive relief is needed to protect against irreparable injury to Plaintiffs.

34. For the reasons stated herein, Plaintiffs are entitled to temporary and permanent injunctions prohibiting GAB from violating the Equal Protection rights and the rights of recall under the Wisconsin Constitution of Plaintiffs by (a) publicly stating that electors may legally sign more than one recall petition with the intent that his or her signature be counted more than

once; (b) publicly stating that GAB will not strike signatures containing fictitious names and/or illegible addresses; (c) placing the burden on FOSW to identify and challenge multiple signatures by a single elector, which are identifiable by a facial review of the petition; and (d) placing the burden on FOSW to identify and challenge patently fictitious names and illegible addresses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand judgment as follows:

1. Judgment in favor of Plaintiffs and against GAB declaring that electors signing more than one recall petition with the intent that his or her signature be counted more than once violates the United States Constitution, the Wisconsin Constitution, and Wisconsin law.

2. Judgment in favor of Plaintiffs and against GAB declaring that GAB's interpretation of Wis. Stat. § 9.10, specifically that it does not prohibit an individual from signing a recall petition multiple times with the intent and hope that his signature be counted twice, is an impermissible and unconstitutional interpretation because it turns section 9.10 into a "law [which] hamper[s], restrict[s] and impair[s]" the constitutional rights of recall of those who choose not to sign a petition.

3. Judgment in favor of Plaintiffs and against GAB declaring that electors signing a recall petition with patently fictitious names and illegible addresses violates the United States Constitution, the Wisconsin Constitution, and Wisconsin law.

4. Judgment in favor of Plaintiffs and against GAB directing GAB to look for and eliminate facially duplicative signatures, patently fictitious names and illegible addresses during their careful examination of the petition.

5. Temporary and permanent injunctions prohibiting GAB from violating the Equal Protection rights and Constitutional right of recall of the Plaintiffs by (a) publicly stating that electors may legally sign more than one recall petition with the intent that his or her signature be counted more than once; (b) publicly stating that GAB will not strike signatures containing fictitious names and/or illegible addresses; (c) placing the burden on FOSW to identify and challenge multiple signatures by a single elector, which are identifiable by a facial review of the petition; and (d) placing the burden on FOSW to identify and challenge patently fictitious names and illegible addresses.

6. An award of costs, disbursements, and attorney's fees to the extent allowed by law.

7. Such other and further relief as the court may deem just and equitable.

Dated this 15th day of December, 2011.

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