

any activities with intent to violate an oath under par. (a) is guilty of a violation of this chapter.

Based upon the language of the above statutes, as well as Wis. Adm. Code s. GAB 1.42 and the decision of the Wisconsin Court of Appeals in Wisconsin Coalition for Voter Participation et al. v. State Elections Board (No. 99-2574), the G.A.B. has determined that a voluntary committee violates the oath set forth in §11.06(7) when it makes disbursements (whether or not for the purpose of express advocacy) that satisfy the following elements: (1) the speech is made for the purpose of influencing voting at a specific candidate's election; and (2) the speech or expenditure is coordinated with a candidate or campaign. The coordination element is met if the communication of the voluntary committee is made at the request or suggestion of the campaign or if the cooperation, consultation or coordination between the campaign and the voluntary committee is such that the candidate or his agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over, a communication's (1) contents; (2) timing; (3) location, mode, or intended audience; or (4) volume. Elections Bd Opinion 00-02.

Conclusions.

The Government Accountability Board concludes that there is no probable cause to believe that All Children Matter, Brett Davis, and the Brett Davis for State Assembly campaign violated Chapter 11 of the Wisconsin Statutes by coordinating political expenditures or by improperly furnishing and receiving in-kind campaign contributions.

The State of Wisconsin Government Accountability Board on the unanimous, affirmative vote of the six members meeting on March 31, 2009, adopts these preliminary findings of fact and conclusions.

STATE OF WISCONSIN GOVERNMENT
ACCOUNTABILITY BOARD

By Judge Michael Brennan, Chair

In the Matter of

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**REPORT OF
INVESTIGATION**

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**All Children Matter, Brett Davis,
and Brett Davis for State
Assembly**

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GAB Case #2008-28

Background.

In the fall 2008 campaign for 80th Assembly District, the incumbent, Brett Davis, published and distributed campaign literature critical of his opponent John Waelti, with regard to Mr. Waelti’s purported supported of a health care initiative known as Healthy Wisconsin. During the same time period, All Children Matter, published and distributed a piece of campaign literature which also criticized Mr. Waelti’s purported support of the Healthy Wisconsin proposal. Both pieces of literature contained similar criticisms of the health care plan.

Applicable statutes and legal authority.

Section 11.06, Wisconsin Statutes, provides:

11.06(7)(a)

Every committee, other than a personal campaign committee, which and every individual, other than a candidate who desires to make 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 disbursement, except within the amount authorized under s. 11.05 (1) or (2), file with the registration statement under s. 11.05 a statement under oath affirming that the committee or individual does not act in cooperation or consultation with any candidate or agent or authorized committee of a candidate who is supported, that the committee or individual does 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, that the committee or individual does 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, and that the committee or individual does 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.

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11.06(7)(c)

Any individual who or committee which falsely makes an oath under par. (a), or any individual, committee or agent of an individual or committee who or which carries on

any activities with intent to violate an oath under par. (a) is guilty of a violation of this chapter.

Based upon the language of the above statutes, as well as Wis. Adm. Code s. GAB 1.42 and the decision of the Wisconsin Court of Appeals in Wisconsin Coalition for Voter Participation et al. v. State Elections Board (No. 99-2574), the G.A.B. has determined that a voluntary committee violates the oath set forth in §11.06(7) when it makes disbursements (whether or not for the purpose of express advocacy) that satisfy the following elements: (1) the speech is made for the purpose of influencing voting at a specific candidate's election; and (2) the speech or expenditure is coordinated with a candidate or campaign. The coordination element is met if the communication of the voluntary committee is made at the request or suggestion of the campaign or if the cooperation, consultation or coordination between the campaign and the voluntary committee is such that the candidate or his agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over, a communication's (1) contents; (2) timing; (3) location, mode, or intended audience; or (4) volume. Elections Bd Opinion 00-02.

Investigation activity.

Board Staff Counsel Michael Haas interviewed State Representative Brett Davis and Adam Foltz, Campaign Manager for Brett Davis for State Assembly, in person and on separate occasions, and also interviewed the Complainant, Larry Sauer, by telephone. Board staff also reviewed copies of the literature published by All Children Matter and the Brett Davis for State Assembly campaign, as well as published newspaper reports regarding the literature at issue.

Findings.

The Complainant indicated that he received the literature in the mail from All Children Matter and the Davis campaign on the same day, which he thought was suspicious and more than a coincidence. He called Rep. Davis to complain about the similar pieces when he received the literature. Mr. Sauer said he did not have any direct information or evidence about the printing or distribution of the literature or any attempt to coordinate the efforts of All Children Matter and the Davis campaign.

Both Rep. Davis and Mr. Foltz indicated that the Davis campaign expected the Healthy Wisconsin proposal to be a main campaign issue because it had been debated in the previous legislative session and one of the main sponsors was State Senator John Erpenbach, whose Senate district includes the 80th Assembly District. The Healthy Wisconsin proposal was also the topic of a previous newspaper article or column in the *Wall Street Journal*.

In the summer of 2008, Rep. Davis and the two Democratic challengers participated in a health care forum. Rep. Davis recalled his specific goal of getting both Democratic candidates on the record regarding the Healthy Wisconsin proposal in anticipation of raising it as a campaign issue during the General Election campaign. Rep. Davis stated that Mr. Waelti and the other Democratic candidate endorsed the concept of Healthy Wisconsin at the forum and that Rep. Davis outlined his concerns about the proposal at the same forum.

Mr. Foltz recalled listening to the forum and knowing immediately that the candidates' differences regarding the Healthy Wisconsin proposal would be the topic of the first Davis campaign literature in the General Election, regardless of the Democratic nominee. Mr. Foltz indicated that the text of the flyer was easy to draft in advance because both Democratic candidates had endorsed the concept. Mr. Foltz worked with Kevin Moore at the Republican Assembly Committee to draft the text of the literature piece, and they determined that it would be mailed shortly after the primary election in September.

The piece was printed and distributed by Arena Communications, and both Rep. Davis and Mr. Foltz pointed out that the process of finalizing the text, approving the final version, printing and mailing generally takes at least a couple of weeks. Rep. Davis and Mr. Foltz both stated that they had no communication with any representative of All Children Matter regarding the campaign literature or any plans of All Children Matter related to the campaign or the Healthy Wisconsin proposal.

Rep. Davis stated that he directed Mr. Foltz regarding the substance of the literature piece and Mr. Foltz indicated that he worked with Mr. Moore and Arena Communications to produce it. Newspaper reports imply that a separate piece of literature criticizing Mr. Waelti's position regarding Healthy Wisconsin was distributed by All Children Matter to voters in the district by early October, and that the Davis piece was mailed shortly afterward. Mr. Foltz believed that the Davis campaign printed two separate pieces on the topic and believed that at least one was distributed prior to the All Children Matter mailing.

Both the Davis and the All Children Matter literature criticize Mr. Waelti's position regarding Healthy Wisconsin. Both pieces cite the *Wall Street Journal* article to support statements regarding the plan's supposed budgetary and tax impact. However the pieces also contain differences in style and emphasis and cite different sources for their claims.

Regardless of the actual similarities and differences in the two pieces, the key issue is whether the All Children Matter piece was coordinated with the Davis campaign, because it was made at the request or suggestion of the campaign, or because the Davis campaign exercised control over the timing, content, mode of

distribution, or volume of the All Children Matter mailing. Based on the Davis campaign's deliberate development of the Healthy Wisconsin proposal as an issue in the campaign, and the prior public debate regarding the proposal, and based on a lack of evidence connecting the production of the All Children Matter literature to Representative Davis or his campaign, Board staff is unable to conclude that All Children Matter improperly coordinated its expenditure with the Davis campaign.

Conclusions.

There is no evidence that All Children Matter improperly or illegally coordinated disbursements related to its Healthy Wisconsin literature with the campaign of Brett Davis, or that it violated its oath under s. 11.06(7), Wis. Stats.

Submitted March 30, 2008 by Michael R. Haas, Staff Counsel.