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In the Matter of	)	
	)	<b>PRELIMINARY FINDINGS OF</b>
	)	<b>FACT AND CONCLUSIONS</b>
<b>Keep Our North Strong PAC</b>	)	
<b>Holperin for Senate, and</b>	)	
<b>Jim Holperin</b>	)	GAB Case #2008-40

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**Background.** The Government Accountability Board received a complaint suggesting improper coordination between Keep Our North Strong PAC, Holperin for Senate, and Jim Holperin. The allegation is based on the fact that Roger Breske is the sole funder of the PAC and also was an active member of Mr. Holperin’s Senate campaign. The PAC paid for ads supporting Mr. Holperin

**Preliminary Findings of Fact.** The Government Accountability Board adopts the attached Report of Investigation as its Preliminary Findings of Fact in this matter. The Board does not possess or have knowledge of any information which would tend to refute or discredit these findings.

**Applicable Statutes and Legal Standard.** The investigation's purpose was to learn if there is probable cause to believe that Keep Our North Strong PAC, Holperin for Senate, and Jim Holperin violated §11.06 (4) or (7) or §11.26, *Wisconsin Statutes*, through the furnishing and receipt of an in-kind campaign contribution. This could have occurred if there had been improper coordination between the PAC and the Holperin campaign.

Coordination is sufficient to treat a communication (or the expenditure for it) as a contribution if the communication is made at the request or suggestion of the campaign (i.e., the candidate or agents of the candidate). In the absence of a request or suggestion from the campaign, if the cooperation, consultation or coordination between the two is such that the candidate or his agents can exercise control over, or there has been substantial discussion or negotiation between the campaign and the spender over, a communication's: (1) content; (2) timing; (3) location, mode, or intended audience (e.g., choice between newspaper or radio advertisement); or (4) "volume" (e.g., number of copies of printed materials or frequency of media spots). Substantial discussion or negotiation is such that the candidate and the spender emerge as partners or joint venturers in the expressive expenditure, but the candidate and spender need not be equal partners.

**Findings.** The Government Accountability Board concludes there is no probable cause to believe that Keep Our North Strong PAC, Holperin for Senate, or Jim Holperin violated §11.06 (4) or (7) or §11.26, *Wisconsin Statutes* in connection with the Fall 2008 campaign.

The State of Wisconsin Government Accountability Board on the unanimous, affirmative vote of the six members meeting on June 22, 2009, adopts these preliminary findings of fact and conclusions.

STATE OF WISCONSIN  
GOVERNMENT ACCOUNTABILITY  
BOARD

By: Michael Brennan, Chair

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In the Matter of	)	
	)	<b>REPORT OF</b>
	)	<b>INVESTIGATION</b>
<b>Keep Our North Strong PAC</b>	)	
<b>Holperin for Senate, and</b>	)	
<b>Jim Holperin</b>	)	GAB Case #2008-40

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**Background.** The Government Accountability Board received a complaint from Keith Gilkes suggesting improper coordination between Keep Our North Strong PAC, Holperin for Senate, and Jim Holperin. The allegation was based on the fact that Roger Breske was the sole funder of the PAC and also was active in Mr. Holperin's Senate campaign. The PAC paid for ads supporting Mr. Holperin.

**Purpose of Investigation.** The investigation's purpose was to learn if there is probable cause to believe that Keep Our North Strong PAC, Holperin for Senate, and Jim Holperin violated §11.06 (4) or (7) or §11.26, *Wisconsin Statutes*, through the furnishing and receipt of an in-kind campaign contribution.

**Legal Standard.** Coordination is sufficient to treat a communication (or the expenditure for it) as a contribution if the communication is made at the request or suggestion of the campaign (i.e., the candidate or agents of the candidate). In the absence of a request or suggestion from the campaign, if the cooperation, consultation or coordination between the two is such that the candidate or his agents can exercise control over, or there has been substantial discussion or negotiation between the campaign and the spender over, a communication's: (1) content; (2) timing; (3) location, mode, or intended audience (e.g., choice between newspaper or radio advertisement); or (4) "volume" (e.g., number of copies of printed materials or frequency of media spots). Substantial discussion or negotiation is such that the candidate and the spender emerge as partners or joint venturers in the expressive expenditure, but the candidate and spender need not be equal partners.

**Investigation Activities.** The investigation was conducted by Shane Falk and Jonathan Becker. We interviewed:

- Senator Jim Holperin
- Former Senator Roger Breske
- Mike Tate, founder and director of Keep Our North Strong PAC
- Jodi Tesch, the PAC's treasurer and Roger Breske's daughter
- Mark Webster, political consultant
- Susan Meinholz, former aide to then-Senator Breske, current aide to Senator Holperin

- Elizabeth Novak, aide to Senator Holperin
- Jason Childress, former executive director of the State Senate Democratic Committee
- Mike Wittenwyler, attorney

We also asked Keith Gilkes whether he possessed any information in addition to that provided in the complaint. He did not

**Findings.** Although the interrelationship of the individuals involved with Senator Holperin's campaign and Keep Our North Strong PAC provides a reasonable basis for suspecting the possibility of improper coordination, we found no evidence of that. Indeed, we found that the individuals involved were extremely careful to avoid any communications that could lead to an inference of coordination.

Roger Breske resigned his Senate seat in June 2008 when he was appointed the Commissioner of Railroads. His campaign committee then had approximately \$76,000. Mr. Breske stated that he told his aide, and campaign treasurer, Susan Meinholz, to find someone to whom to give the money and to make sure it was legal. Mr. Breske stated he hoped the money would go to someone who would use it in his district.

Mike Tate came to learn of the availability of the Breske campaign money. Mr. Tate was experienced in putting together independent committees to be involved in campaigns. (Mr. Tate was just elected to be Chair of the State Democratic Party). Mr. Tate states that he first conferred with Mark Webster about whether Mr. Webster was interested in forming an independent PAC. Mr. Webster told him he was not. Mark Webster confirmed the phone call. Mr. Webster states that he told Mr. Tate that he was not interested in obtaining the Breske campaign money and that, while he was not involved with the Holperin campaign, he wanted to preserve that option. Mr. Webster states that, as a result, he and Mr. Tate spoke no further about the matter.

Mr. Tate then consulted with Attorney Mike Wittenwyler about the legality of contacting Mr. Breske. Mr. Wittenwyler, in turn, conferred with the Government Accountability Board's former staff attorney, George Dunst. Mr. Wittenwyler states that he advised Mr. Tate to contact Ms. Meinholz, rather than Mr. Breske.

Mr. Tate contacted Ms. Meinholz and told her of his idea to form a PAC that would be involved in races in northern Wisconsin. Ms. Meinholz decided to provide the money to Mr. Tate's PAC.

Mr. Tate states that no one ever told him where to spend the money. Ms. Meinholz states that she never discussed with Mr. Tate how the money would

be used; however, she stated she told Mr. Tate it would be good if the money was spent in Mr. Breske's district in support of Mr. Holperin. Mr. Tate and Ms. Meinholz had two further conversations – one about the appearance of the transfer of money from the Breske campaign to the Keep Our North Strong PAC and the other about a possible PAC treasurer.

Mr. Tate states that he never conferred with Mr. Breske or anyone connected with the Holperin campaign about the campaign or during the campaign. Mr. Tate asked Jodi Tesch to be the PAC's treasurer on Ms. Meinholz's recommendation. Ms. Tesch states that she asked her father if that would be okay and he said yes, if Ms. Meinholz approved it. Ms. Tesch's only role in the PAC was to sign campaign finance reports.

Mr. Breske states he never talked to Mr. Tate during the campaign and had no information about the Keep Our North Strong PAC. Mr. Breske states that he became aware of the PAC only when he saw a PAC ad on television. Mr. Breske played only a limited role in Senator Holperin's campaign – appearing with him at a few campaign events and authorizing the use of his name as endorsing Mr. Holperin.

Senator Holperin states that he had met Mr. Tate only once, while Senator Holperin was at the Department of Tourism. Senator Holperin had no subsequent contact or communication with Mr. Tate and had no contact or communication with anyone associated with the PAC. Senator Holperin states that he never spoke to Ms. Meinholz about the PAC, although Ms. Meinholz had told him of the Breske campaign money and that it would be used to assist his campaign. Senator Holperin states that when he asked Jason Childress of the State Senate Democratic Committee about the PAC, Mr. Childress said he would not tell him anything.

Susan Meinholz states that she never spoke to Mr. Tate or to anyone about Keep Our North Strong PAC activities and had no further contact with Mr. Tate after the fund transfer from the Breske campaign committee to the PAC. Ms. Meinholz states that she had no conversations with Mr. Childress about PAC activities.

Elizabeth Novak was assigned to assist the Holperin campaign by Mr. Childress and the State Senate Democratic Committee. She states that she never spoke with Mr. Childress about Mike Tate or the PAC.

Jason Childress states that he had discussions with Ms. Meinholz about disposition of the Breske campaign funds after Mr. Breske announced he would resign and not seek reelection. Mr. Childress states they talked in generalities about options for divesting the funds, including the possibility of contributing the money to an independent group. Mr. Childress states that they talked about the leap of faith such a donation would require because one

could not know how an independent group will apply the money or whether its message would be good or bad.

Mr. Childress states that Mr. Webster had told him that he was not interested in forming an independent group to support the Holperin campaign but that Mike Tate might be. Mr. Childress states that Mr. Webster advised him not to speak with Mr. Tate about the Holperin campaign.

Mr. Childress states that at some point during the campaign he learned that an independent group was doing ads in favor of the Holperin campaign. Mr. Childress states that he never talked to Mr. Tate about the Breske campaign funds or about ads for Holperin or anything regarding the Holperin campaign. Mr. Childress states that the State Senate Democratic Committee had a strict policy of having “absolutely no discussion” between a candidate’s operation and any independent group. Mr. Childress states that, although he assumed that Keep Our North Strong PAC had some of Mr. Breske’s money, he did not receive confirmation of that until “after the election when the Republicans griped” about the PAC’s late filing of the oath of independent expenditures (for which the PAC earlier paid a \$500 forfeiture).

Mr. Childress states that he had discussions frequently with Senator Holperin during the campaign, including about third party ads. Mr. Childress did not recall Senator Holperin asking about Keep Our North Strong PAC but states he told Senator Holperin numerous times to have no contact with independent groups for fear of legal consequences.

Submitted June 15, 2009 by:

Shane Falk, Staff Attorney  
Jonathan Becker, Administrator  
Division of Ethics & Accountability