

J.B. VAN HOLLEN,

Plaintiff,

THE REPUBLICAN PARTY OF WISCONSIN,

Plaintiff-Intervenor,

vs.

CASE NO. 08-CV-4085

GOVERNMENT ACCOUNTABILITY
BOARD, et al.,

Defendants,

THE DEMOCRATIC PARTY OF WISCONSIN, et al.,

Defendant-Intervenors.

**GOVERNMENT ACCOUNTABILITY BOARD'S
MOTION TO DISMISS REPLY BRIEF**

**I. THE ATTORNEY GENERAL CONCEDES THAT HE HAS NO AUTHORITY
TO ENFORCE THE FEDERAL "HELP AMERICA VOTE" ACT**

**A. The Attorney General's Argument Is Built On An Utterly False Premise:
That He Is Enforcing State Rather Than Federal Law.**

The Attorney General did not respond to the Board argument that only the United States Attorney General may enforce the provisions of HAVA, thereby conceding that point. But, according to the Attorney General, that does not matter because he "is not seeking to enforce federal law." Rather, "he is enforcing obligations imposed on GAB by the Wisconsin Legislature to keep Wisconsin in compliance with federal law." *Attorney General J.B. Van Hollen's Response To Motions To Dismiss*, hereinafter "*A.G.'s Brief*" at 3. He would have the Court

believe that because “[t]here is no question that Congress has conditioned federal funds on Wisconsin’s compliance with HAVA,” *A.G.’s Brief at 4*, the Wisconsin Legislature turned the provisions of HAVA into state law. That is just plain wrong.

What the Legislature did was to take the steps necessary to receive federal funding for election-related activities. To get those funds, the state had to develop a plan to implement certain provisions of HAVA and certify to the Election Assistance Commission that it had done so. *42 U.S.C. §15403*. Important, and not referenced by the Attorney General, is the language of *42 U.S.C. §15403(c)* which states that “the specific choices on the methods of complying with the elements of a State plan shall be left to the discretion of the State.”

In turn, the Legislature passed its discretion to develop the State plan on to the Government Accountability Board:

With the assistance of the election administration council and approval of the joint committee on finance as provided in this subsection, the board shall adopt and modify as necessary a state plan that meets the requirements of P.L. 107-252 to enable participation by this state in federal financial assistance programs authorized under that law. . .

Wis. Stat. 5.05(10).

Pursuant to *Wis. Stat. §5.05(10)*, the Board enacted as an administrative rule the state plan to comply with HAVA. It was approved by the Legislature. What provision of the plan does the Attorney General contend was violated? None. What provision governing the creation and maintenance of the statewide voter list under §6.36 does he claim the Government Accountability Board violated? None. What other state statute, administrative rule or other state law does he claim the Board violated? None.

The Attorney General apparently makes two claims: (1) when a state agency must comply with a federal law that makes the federal law a state law, and (2) despite a federal statute giving

sole enforcement authority of HAVA to the Attorney General of the United States, the Attorney General of Wisconsin may enforce the provisions of that law in state court because the state has accepted federal money pursuant to that law. He cites no legal support for either of those propositions.

The Attorney General's analogy to the federal requirement for a state drinking of age 21 in order to receive federal highway funds reflects his fallacious reasoning. In that situation, the state specifically adopted a statute that required a person to be age 21 before he or she could legally consume alcohol. *See Wis. Stat. § 125.07*. Has the Attorney General cited a state statute that requires the Government Accountability Board to run retroactive "HAVA Checks" on all voter registrations since January 1, 2006, and reconcile any discrepancies, all before November 4, 2008? No. Yet, he comes before the Court asserting that state law requires that action by the Board.

This entire lawsuit is premised on the concept of *ipse dixit: he himself said it*. Just because the Attorney General says that HAVA is a state law, does not make it so. The indisputable fact is this: the Attorney General is trying to enforce a federal statute, behavior which neither Congress nor the Wisconsin Legislature authorized.

B. "Conduct of Elections" Does Not Encompass All Matters Listed In §5.06(1).

The Attorney General criticizes the Board for not providing a definition of "conduct of elections" and "voting qualifications." *A.G.'s Brief at 7*. Although the legislature itself did not provide a definition by statute, it did enact Wis. Stat. §5.06(1) which listed a variety of matters about which an elector may pursue a complaint administratively. One of those is "voting qualifications." Another is "conduct of elections." The Attorney General failed to provide any

basis on which the Court could conclude that all of the items listed in §5.06(1) are subsumed in the phrase “conduct of elections.” Instead he treats every other item listed in §5.06(1) as surplusage. They are not. One fact is unassailable and unrebutted by the Attorney General: had the legislature wanted all of the items listed in §5.06(1) included in the phrase “conduct of elections” it would have said so.

Additionally, the Attorney General’s response completely ignores §5.06(2).¹ That failure concedes the Board’s assertion that electors may file lawsuits, after the administrative proceeding about any of the specific matters listed in §5.06(1). If an elector may file a lawsuit about any of those items, that means an elector may file a lawsuit about the “conduct of elections.” By logical deduction, if an elector can file a lawsuit about all of the items including “voting qualifications” and “conduct of elections,” then those items are not subsumed under the phrase “conduct of elections.” Continuing logically, “conduct of elections” is a matter that is separate from “voting qualifications.”

Wis. Stat. §5.08 is consistent with §5.06(1). It allows an elector to file a complaint in court about the “conduct of elections” and also allows that elector to petition the Attorney General or District Attorney to file a lawsuit regarding the “conduct of elections.” Logically then, if the elector has proceeded under §5.06(1) regarding “voting qualifications,” that elector may not petition the Attorney General to file a lawsuit. That is consistent with §5.07 which limits the attorney general to lawsuits only involving the “conduct of elections.”

¹As for the Attorney General’s claim that he is not a “person” under Wis. Stat. § 5.061, one need only look to ¶5.06(2): “No “*person*” . . . other than the *Attorney General*. . . .”

That the phrase “the laws regulating the conduct of elections” is used in statutes outlining the powers of the Board, does not expand the Attorney General’s power. No statute grants the Attorney General, as §5.06(1) and (2) did to electors, the authority to file lawsuits regarding “voter qualifications.”

II. THE ATTORNEY GENERAL HAS IDENTIFIED NO BASIS FOR A WRIT OF MANDAMUS.

A. The Attorney General Abandons His Preferred Timetable.

In his Complaint, the Attorney General sought a Writ of Mandamus directing the GAB to, “at a minimum” and before November 4, 2008 (1) identify and remove ineligible voters from the statewide voter list, and (2) cross-check registrations received between January 1, 2006 and August 6, 2008 against other agency databases. *Complaint* ¶46. Now that the Government Accountability Board has shown that a writ of mandamus may only issue to compel nondiscretionary duties, the Attorney General concedes the Board has no nondiscretionary duty to do anything on the Attorney General’s preferred timetable. He has identified no law that requires the Board to do any ministerial act by November 4, 2008. He now merely seeks a writ of mandamus “directing GAB to apply the same existing verification, cross-referencing and reconciliation practices to all voter registrations received after the HAVA effective date and not just those received on or after August 6, 2008.” *A.G.’s Brief at 20*. He claims a right to such a writ based on enormous slips of logic, as shown below.

B. There is No Ministerial Duty to Perform Retroactive Checks.

The Board does not dispute that it has a duty to have an agreement with the Department of Transportation to match information between the drivers license database and the voter

registration list enabling the Board to verify the accuracy of the information in the voter registration applications. 42 U.S.C. §14683(a)(5)(B). It also does not dispute a duty to implement and maintain a list that is coordinated with other agency databases. 42 U.S.C. §14683(a)(1)(A)(iv). The Attorney General agrees that the Board has fulfilled these duties since August 6, 2008, when the computer system first became capable of such coordination.

*Complaint ¶¶6, 36.*²

The Attorney General's concern is with registrations prior to August 6, 2008: while he concedes that "the notion of 'retroactive checks' is not directly addressed" by the law, *A.G.'s Brief at 21*, he also asserts that there is a plain, nondiscretionary duty to retroactively check those registrations back to January 1, 2006 against other agency databases, investigate any discrepancies, and remove voters from the list.³ But precisely when the Board updates its list, i.e., when it performs those "checks," and how it manages the resulting information, is left up to the Board's discretion, both by Federal and State law.

Federal law requires that the state system include "*provisions to ensure* that voter registration records in the state are accurate and are updated *regularly*," including both that the system "make a *reasonable effort* to remove registrants who are ineligible to vote," and include "*safeguards* to ensure that eligible voters are not removed in error from the official list of eligible voters." 42 U.S.C. §15483(a)(4) (*emphasis added*). The emphasized language indicates duties,

²On this Motion to Dismiss, we are bound by the facts pled in the Complaint. Should this case proceed beyond this motion, the Board will show coordination with agency databases other than the DOT has been under way since prior to the first federal election in 2006.

³The January 1, 2006 date is found in 42 U.S.C. §14683(d), which requires Wisconsin to implement its (a) - compliant voter list by then. The facts pled indicate full implementation did not occur until August 6, 2008. The penalty for unapproved late implementation is loss of funds. *See 42 U.S. C. §15403*. Nothing in all of HAVA requires retroactive database coordination.

but precisely how and when those duties are to be executed are left up to the state. Had Congress intended those duties to be ministerial, it would have dictated how the records are to be updated, how often, and what safeguards should be used to protect against disenfranchisement. If Congress had not been clear enough in that section, in §16485 it said: “The specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State.” *See also 42 U.S.C. §15403(c).*

In turn, state law leaves the maintenance of the list, including the identification of proper procedures for such maintenance, up to the Board:

The board is responsible for the design and maintenance of the official registration list under s. 6.36. The board shall require all municipalities to use the list in every election and may require any municipality to adhere to procedures established by the board for proper maintenance of the list.

Wis. Stat. §5.05(15).

Applying its discretion, and balancing the competing duties to make a “reasonable effort” to remove ineligible voters and “ensure that eligible voters are not removed,” the Board carefully considered available information and chose its course: to check registrations against the DOT database as they come in, beginning on August 6. After the fall election it will consider that experience and determine how to further update its list. *See August 27 and 28, 2008 minutes of Board, p. 4, attached to 10/17/08 Affidavit of Counsel.* There is simply no affirmative duty, much less an affirmative ministerial duty, under either federal or state law, requiring the Board to do anything else.

C. The Duty to Remove Unqualified Individuals From the List.

The Board agrees it has a duty to remove ineligible voters from the statewide list, and not add those identified as ineligible to the list. There is no allegation that the Board has identified

any such individuals and not followed this duty. Furthermore, this duty includes no affirmative and nondiscretionary duty to conduct the HAVA checks sought by the Attorney General. Even if it did, that alone would not result in the identification and removal of ineligible voters from the list. The Government Accountability Board, charged with responsibility for the design and maintenance of the statewide voter list, *Wis. Stat. §5.05(15)*, has provided a formal opinion with legal force and effect, pursuant to *Wis. Stat. §5.05(6a)*, that a mismatch of data between the registration list and other agency databases is not sufficient grounds to disqualify an elector and remove his or her name from the voter list. Rather, “a mismatch only means that data in two or more systems do not match,” and “the non-reliability of data matches as a basis for potentially disenfranchising a voter may explain why neither Congress nor the Wisconsin Legislature specifically provided that a mismatch requires” a finding of ineligibility. A copy of that opinion is attached.⁴

III. THE ATTORNEY GENERAL SHOULD NOT BE SO QUICK TO INSULT.

With all due respect, the Attorney General writes off counsel for the Government Accountability Board’s ability to read a statute a bit too quickly. Absent from the Attorney General’s discussion at pages 36 and 37 of his Brief is the language of the NVRA’s 90 day no-removal period and a key portion of the “list maintenance” provisions of HAVA, 42 U.S.C. §15483(a)(2)(A): subsections (ii)(I) and (II). These laws reveal Congress’s intention: to allow removal of felons and dead people from voter rolls at any time, but disallow wholesale removals

⁴To argue that “it doesn’t make sense that the Legislature would allow GAB to be the arbiter of its own compliance,” *A.G.’s Brief*, at 30, displays a fundamental misunderstanding of administrative law. An administrative proceeding that challenges an agency’s interpretation of law allows it to develop a record, consider that challenge and render a formal opinion that can be reviewed by the courts. There is nothing unusual about that process. See *Kramer v. Horton*, 128 Wis. 2d 404, 414, 418, 383 N.W.2d 484 (1986).

in the 90 days prior to a federal election, regardless of whether the State is generally subject to the NVRA.

The first indication of this intention is in the language used in the “list maintenance” provisions of HAVA. Under §15483(a)(2)(A)(i), “If an *individual is to be removed* from the list, such individual shall be removed in accordance with the provisions” of the NVRA. Subsections (ii)(I) and (II), however, provide that “For purposes of *removing names of ineligible voters* from the official list” due to (I) felony status or (II) death, the State is to coordinate with other state agency records. Subsection (iii) says “Notwithstanding the preceding provisions of this subparagraph,” Wisconsin and several other states “shall *remove the names of ineligible voters* from the computerized list in accordance with State law.” The different language used in (i), “individual is to be removed,” versus in (ii) and (iii), “remov[ing/e the] names of ineligible voters” signals an intention to treat removals due to death or felony conviction differently from removals for other reasons. That is, the “preceding provisions” referred to in (iii) are (ii)(A) and (B), and not (i). Thus, Wisconsin is not required to remove felons and dead people from the voter rolls in the way prescribed in the NVRA, but instead as provided under state law. However, removal of individuals for other reasons is to be consistent across the country, i.e., systematic removals are not to occur in the 90 days prior to a federal election, regardless of whether a state is otherwise subject to the NVRA.

This reading is strengthened by the language of the NVRA itself. 42 U.S.C. § 1973gg-6(c)(2) prohibits, in paragraph (A), systematic removals in the 90 days preceding the election, but in paragraph (B), provides that (A) is not to be construed to preclude removals based on (i) voter request, criminal conviction, mental incapacity, or death, or (ii) correction of registration records.

Yet even if the Attorney General's interpretation of 42 U.S.C. §15483(a)(2)(A) is right, and state law governs removals, the Board's initial Brief shows at pages 18 through 20 that Wisconsin public policy is to provide voters in question with 30 days' notice and an opportunity to clarify their registration status. Thus, removing voters at this late date would also be illegal under Wisconsin public policy. The Attorney General did not even attempt to refute that argument, and therefore conceded it. Arguments not refuted are deemed admitted. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493, 499 (Ct. App. 1979).

IV. INJUNCTIVE AND DECLARATORY RELIEF ARE AVAILABLE TO A PROPER PARTY WHEN THE MERITS ARE BEFORE THE COURT FOR FINAL DETERMINATION.

The Board moved to dismiss the mandamus relief, but not the injunctive or declaratory relief sought by the Attorney General. That is because there is no prohibition on injunctive or declaratory relief in a dispute like this one when brought by a proper party and when correctly situated before the court for a final determination on the merits. However, because (a) the Attorney General has no authority to bring this case, (b) the case cannot yet be finally decided on the merits due to the Attorney General's premature filing for summary judgment,⁵ and (c) neither the Attorney General nor the Republican Party of Wisconsin have sought any preliminary or interim relief, the Court should not waste its time providing an advisory opinion on the question of what relief could be granted at some point in the future.

⁵See the Government Accountability Board's Brief in Opposition to the Attorney General's and Republican Party of Wisconsin's Motions for Summary Judgment, filed on October 17, 2008.

V. CONCLUSION.

The Government Accountability Board's Motion to Dismiss should be granted.

Dated this 20th day of October 2008.

CULLEN WESTON PINES & BACH LLP

By:  _____

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

October 6, 2008

Susan Edman, Executive Director
City of Milwaukee Board of Election Commissioners
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200 East Wells Street
Milwaukee, WI 53202

Request for Formal Opinion of the Government Accountability Board Relative to "HAVA Checks" and Special Registration Deputies

Dear Ms. Edman:

This letter is in response to your inquiry that our office received on October 3, 2008, and that is excerpted or summarized below, to wit:

We seek your formal legal opinion on two election issues relating to the upcoming presidential election. First, as you know, pursuant to Wis. Stat. § 6.48, in the City of Milwaukee any individual may challenge the registration of any elector on the Wednesday before the election. A challenge may also be made at the polling place on Election Day. Our question is whether, in the opinion of the Government Accountability Board (GAB), the fact of a "HAVA mismatch" is sufficient grounds to disqualify an elector and remove his or her name from the voter list.

Our second question relates to special registration deputies. Just this week, we were provided with a copy of the April 3, 2008 memo to GAB staff written by GAB Legal Counsel George Dunst, in which he concludes that, despite the language of Wis. Stat. § 6.26, any individual who has been convicted of a felony and who has not been pardoned is not eligible to act as an election official. Election officials, according to the memo, include special registration deputies.

We seek your formal legal opinion as to whether the fact that an elector has been registered by an SRD who is an unpardoned felon, although a qualified elector, would invalidate that elector's registration.

With respect to your first question – "whether, in the opinion of the Government Accountability Board (G.A.B.), the fact of a 'HAVA mismatch' is sufficient grounds to disqualify an elector and remove his or her name from the voter list" – the Board's answer is an unqualified no.

A HAVA mismatch occurs when voter information entered in the Statewide Voter Registration System (SVRS) is compared with similar information in the driver record files maintained by the Wisconsin Department of Transportation or information maintained by the Social Security Administration and information related to the voter's name, date of birth,

drivers license or social security number does not match in whole or part. A mismatch is not sufficient grounds to disqualify an elector and remove his or her name from the voter list, or provide a basis for a challenge to the elector's ballot at a polling place, or to challenge an elector's registration under § 6.48, Stats.

Because no provision in the Help America Vote Act, nor in subchapter II of Chapter 6 of the Wisconsin statutes (governing voter registration), directs or authorizes the Board to change a voter's status from eligible to ineligible because of the failure of the voter's registration data to match comparable data in other designated data bases, the question becomes whether a mismatch constitutes cause to challenge an elector's voting eligibility under Wisconsin's statutes and the Board's challenge rule.

Wisconsin's statute governing challenges by an elector to the voting eligibility of another elector is § 6.925, Stats., reading in pertinent part as follows:

6.925 Elector making challenge in person. Any elector may challenge for cause any person offering to vote whom the elector knows or suspects is not a qualified elector. If a person is challenged as unqualified by an elector, one of the inspectors may administer the oath or affirmation to the challenged elector under s. 6.92 and ask the challenged elector the questions under that section which are appropriate to test the elector's qualifications. In addition, one of the inspectors shall administer the following oath or affirmation to the challenging elector: "You do solemnly swear (or affirm) that you will fully and truly answer all questions put to you regarding the challenged person's place of residence and qualifications as an elector of this election"; and shall then ask questions which are appropriate as determined by the board, by rule, to test the qualifications of the challenged elector. . . .
(Emphasis supplied)

Pursuant to that statute, the Elections Board (now Government Accountability Board) adopted a rule, chapter EIBd 9 (now chapter GAB 9), to administer challenges to ballots (voter eligibility) at Wisconsin elections. GAB 9.02, Wis. Adm. Code, is the subsection of the Board's rule that establishes the six criteria that are a basis for "cause" to challenge an elector's eligibility to vote at a Wisconsin election, and reads as follows:

GAB 9.02 Elector making challenge in person.

Any elector may challenge for cause any person offering to vote whom the elector knows or suspects is not a qualified elector. Any elector who abuses the right to challenge under s. 6.925, Stats., may be subject to sanctions available to inspectors under s. 7.41 (3), Stats. An elector has cause to challenge a person as being unqualified to vote if the challenging elector knows or suspects that any one of the following criteria apply to the person being challenged: 1) the person is not a citizen of the United States; 2) the person is not at least 18 years of age; 3) the person has not resided in the election district for at least 10 days; 4) the person has a felony conviction and has not been restored to civil rights; 5) the person has been adjudicated incompetent; 6) the person has voted previously in the same election.

(Emphasis supplied)

Each of the six criteria constituting cause for a challenge to a voter's eligibility under the rule are derived from Wisconsin's statutes establishing qualification (and disqualification) to vote in a Wisconsin election, §§ 6.02, 6.03, Stats.

6.02 Qualifications, general.

(1) Every U.S. citizen age 18 or older who has resided in an election district or ward for 10 days before any election where the citizen offers to vote is an eligible elector.

(2) Any U.S. citizen age 18 or older who moves within this state later than 10 days before an election shall vote at his or her previous ward or election district if the person is otherwise qualified. If the elector can comply with the 10-day residence requirement at the new address and is otherwise qualified, he or she may vote in the new ward or election district.

6.03 Disqualification of electors.

(1) The following persons shall not be allowed to vote in any election and any attempt to vote shall be rejected:

(a) Any person who is incapable of understanding the objective of the elective process or who is under guardianship, unless the court has determined that the person is competent to exercise the right to vote;

(b) Any person convicted of treason, felony or bribery, unless the person's right to vote is restored through a pardon or under s. 304.078 (3).

(2) No person shall be allowed to vote in any election in which the person has made or become interested, directly or indirectly, in any bet or wager depending upon the result of the election.

(3) No person may be denied the right to register to vote or the right to vote by reason that the person is alleged to be incapable of understanding the objective of the elective process unless the person has been adjudicated incompetent in this state

Under this statute, a mismatch is not one of the criteria for being qualified to vote or for being disqualified to vote. Consequently, a mismatch was not made one of the criteria for challenging an elector's eligibility to vote under the Board's rule, GAB 9.02. Therefore, a mismatch is not the basis for a challenge to an elector's ballot at any polling place in Wisconsin or for a challenge to an elector's registration under § 6.48, Stats.

The Government Accountability Board, in determining that it will only require HAVA checks beginning on August 6, 2008, also declined to direct clerks to make any change in a voter's eligibility status because of a mismatch¹. The Board found that the failure of two databases to match information with respect to a particular voter does not necessarily mean that that voter is not eligible to vote in Wisconsin or even that that voter is not eligible to vote from the address shown in the state voter registration database. A mismatch only means that data in two or more systems do not match. There are many possible reasons why the data in two different systems do not match besides the reason that the voter has changed his or her residence to a location outside of the municipality, or is otherwise ineligible to vote. Data entry error (in either system) and voter application error are two common, prevalent reasons. In fact, the non-reliability of data matches as a basis for potentially disenfranchising a voter may explain why neither Congress nor the Wisconsin Legislature specifically provided that a

¹ Under § 6.325, Stats., "No person may be disqualified as an elector unless the municipal clerk, board of election commissioners or a challenging elector under s.6.48 demonstrates beyond a reasonable doubt that the person does not qualify as an elector or is not properly registered."

mismatch requires that the appropriate election official shall change the elector's registration from eligible to ineligible status, which action either Congress or the Legislature could have taken in its applicable legislation.

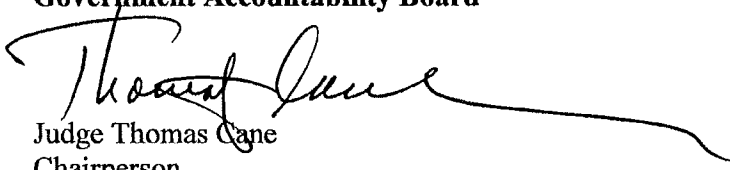
The Board's response to your second question – "whether the fact that an elector has been registered by an SRD who is an unpardoned felon, although a qualified elector, would invalidate that elector's registration" – is also an unqualified no. The fact that an elector has been registered by a special registration deputy (SRD) who is an unpardoned felon will not, of itself, invalidate that elector's registration. If the elector is a qualified elector who has duly completed a registration application, that registration is unaffected by the special registration deputy's lack of qualification. The special registration deputy is considered to be a de facto election official acting under the "color of office" or "color of law." Under doctrine established in those circumstances, the validity of actions taken by a person who has been duly appointed to an office, acting under the authority of that office, is unaffected by the ineligibility of the officeholder to that office. A more common example of this doctrine would be the validity of votes cast by an elected or appointed official who is later found to have been ineligible to hold his or her office (including at the time the vote was cast). Those votes are still valid notwithstanding that ineligibility.

Because the special registration deputy, in the circumstances of your request, was duly appointed under the belief that he or she was entitled to hold the office, that person is considered a de facto officer, which is defined in 43 Am Jur, Public Officer, Sec. 471, pp 225, 226, as follows:

A person is a de facto officer where the duties of the office are exercised . . . (2) under color of a known and valid appointment or election, but where the officer had failed to conform to some precedent, requirement, or condition, as to take an oath, give a bond, or the like; (3) under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power, or defect being unknown to the public; (4) under color of an election or an appointment by or pursuant to a public, unconstitutional law, before the same is adjudged to be such.

In general, "the acts of a de facto officer are valid as to third persons and the public and third persons are entitled to rely on the actions of de facto officers without the necessity of investigating their title." American Jurisprudence 2nd Ed., "Public Officers and Employees" at s.243, citing cases; and "The de facto officer doctrine confers validity upon acts performed by a person acting under the color of official title, even though it is later discovered that the legality of that person's appointment is deficient." (*Ryder v. United States* 515 U. S. 177,132 L Ed 2d 136, 115 S. Ct. 2031, 1995)

Government Accountability Board



Judge Thomas Cane
Chairperson

CAPTION:

The fact information in a voter's registration records do not match similar information in other databases is not sufficient grounds to disqualify an elector and remove his or her name from the voter list and does not provide a basis for a challenge to the elector's ballot under § 6.925, Stats., or under chapter GAB 9, Wis. Adm. Code, or to the elector's registration under § 6.48, Stats. The fact that an individual has been registered by a special registration deputy who, although a qualified elector, is an unpardoned felon, does not invalidate that individual's registration.