

# State of Wisconsin\Government Accountability Board

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July 13, 2012

The Honorable Jeff Fitzgerald  
State Representative, 39th Assembly District  
Room 211 West, State Capitol  
Madison, Wisconsin 53702

Dear Representative Fitzgerald:

Thank you for contacting the Government Accountability Board (G.A.B.) regarding your concerns about the administration of the recall election in Wisconsin's 21<sup>st</sup> Senate District, and potential implications for the rest of the State. We assure you that we take your concerns seriously and, as part of our ongoing efforts to improve election administration, we are taking several steps to correct any errors that occurred.

The Racine County Sheriff's Department and District Attorney's Office are completing their investigation and review of complaints surrounding the June election. We would refer you to their findings when they are completed as to whether any criminal violations occurred. In any event, we assure you that we take these issues seriously, and have been at work for several weeks developing a plan to make sure they do not occur in future elections.

We will review the minutes of Racine County's recount canvassing board and any complaints we receive, or media accounts of problems with the process. We will present a report to our Board at its meeting on August 28, 2012 to summarize issues that arose during the recall elections and the Racine recount in particular. In addition, last month, based on lessons learned from this year's four elections, we created a staff team to focus on preparations for this fall's election cycle which includes a significant education and training component for local election officials and the voting public.

We understand your concerns with reports of various alleged irregularities in Election Day procedures. There are several items in your letter that we would like to specifically address:

1. Allegations of Ballot Bag Tampering

Our contacts with local election officials in Racine County have made no mention of unauthorized individuals tampering with ballot bags. In the reports that have been brought to our attention, the bags were securely sealed on Election Night, but had to be re-opened for legitimate reasons. In such a case, the recommended procedure is for the municipal clerk to summon the election inspectors to open the bag, fix the error, and reseal the bag, with the entire process being witnessed and documented to thoroughly avoid the appearance of impropriety.

As far as we are aware at this point, this process was followed with the exception that instead of re-sealing the original ballot bags with new tags, some officials placed the

opened bag inside a new sealed ballot bag. This is not evidence of ballot bag tampering. In fact, it is our understanding that the results determined at the recount matched the results of the voting equipment tapes printed by election inspectors when the polls were closed on Election Night. Unless the recount minutes illustrate other issues related to ballot bags, it appears unlikely that there is evidence of ballot bag tampering indicating fraud on the part of voters or election officials. While we seek to achieve consistency in all of the detailed procedures used to handle ballots, the main objective is to secure ballot bags so that unauthorized persons would not have access to them, and to document those security measures. We will continue to emphasize the importance of ballot security in our training of local election officials.

## 2. Poll Book Issues

The G.A.B. is aware of several instances where newly registered voters were not properly instructed by election inspectors to sign the supplemental poll list as required by Wis. Stat. § 6.79(2). We are also aware that some supplemental poll lists were disorganized. The failure of an election inspector to properly require a newly registered voter to sign the poll book however, is very different than a voter obtaining a ballot under false pretenses or an election official intentionally disregarding the law.

In all of the cases of missing poll book signatures that the G.A.B. is aware of, the voters had signed their voter registration application that same day at the polls, so there is no question that these voters did in-fact exist and that local election officials have a signature for each one. The missing signatures appear to be an administrative oversight despite the municipal clerk's efforts to educate election inspectors on the requirement that all voters must sign the poll book -- not just those who were previously registered. While such mistakes are problematic, they are not unusual. Despite even the best training efforts, there will always be an adjustment period to new procedures before they become firmly instilled in practice for the tens of thousands of election officials who staff polling places and who perform these tasks only occasionally and under a spotlight.

You are correct that voters should not be issued a ballot until signing the poll list. The statutes however, do not provide any direction or specify any penalty or remedy for failing to sign the poll list. Nothing in state law permits the number of ballots to be reduced by the number of people who did not sign the poll list. To the contrary, Wisconsin Statutes have long recognized that voters who do their part to cast a legal ballot after following the instructions of election inspectors must not be disenfranchised due to an administrative error. There is a long line of court cases upholding that principle. We would certainly expect protests from both voters and candidates if ballots were randomly invalidated due to an election official's error. As such, we believe the Racine County Board of Canvassers acted properly during the recount with regard to missing signatures on poll lists. We will work with all municipal clerks to re-emphasize the signature requirement for the fall elections.

## 3. Allegations of Improper Voter Registration

Your letter referred to the need for the G.A.B. to "ensure that [local election officials] understand the proof-of-residency law." The G.A.B. is aware of media reports of alleged improper voter registration, including election officials accepting documents as "proof of residence" that are not enumerated under Wis. Stat. § 6.34(3). If true, errors regarding the

acceptable proof of residency documentation point to the need for a renewed training effort, which we are undertaking and described below.

We can assure you that we will continue to work with local election officials as they process Election Day registrations to identify and reject any voter registrations accepted on Election Day in error. The registration of any voter without proper proof of residence will be cancelled, and they will be required to re-register properly. I would note, however, that much like the failure of election officials to require a voter to sign the poll book, the failure of election inspectors to require proper proof of residence is very different than a voter intentionally procuring registration under false pretenses.

The G.A.B. has already appointed an in-house Fall Election Cycle Strategic Planning Team that has identified various challenges to a successful fall election cycle and developed an action plan to meet those challenges. One of the primary challenges is election official overload. Many election officials have reported being overwhelmed by the number of legislative changes they have been asked to absorb as well as the number of special elections which have occurred recently. Election official turnover is a growing concern. An increasing number of municipal clerks and election inspectors appear to be terminating their service due to the increased complexities and demands of their positions and tasks.

Further, with all the emphasis being placed on the new procedures and requirements, it appears some of the basics may have been overlooked. Based on this feedback, the Fall Election Cycle Strategic Planning Team is preparing a major "Back to Basics" training component to be delivered to local election officials in the coming weeks as well as prior to the November General Election.

4. Allegations of Late Processing of Voter Verification Postcards

There appears to be some confusion regarding the proper timing of the post-election verification of voters who register on Election Day. Your letter was one of several complaints we received and public comments made that objected to the fact that verification postcards of Election Day registrants had not been mailed within 10 days of the recall election. This concern is unfounded under Wisconsin law. Wis. Stat. § 6.56(3) requires the municipal clerk to make an audit of all electors registering to vote on Election Day, but it does not specify a 10-day timeframe. The 10-day timeframe only applies to forms received by mail or via Special Registration Deputy. See Wis. Stat. § 6.32. Applying the 10-day deadline to Election Day registrants would require the Legislature to amend the Statutes.

In addition, an audit of Election Day registrants cannot practically be accomplished prior to the voter registration applications being entered into the Statewide Voter Registration System (SVRS). Wis. Stat. § 6.33(5)(a) provides election officials 30 days following most elections (45 days after a general election) to enter that registration information into SVRS. Understandably, a recount necessarily diverts election officials who would normally process these registrations, further delaying the post-election processing of voter registrations. As such, the G.A.B. does not consider the delay in processing voter verification postcards in the 21<sup>st</sup> Senate District to be the result of election official negligence. The post-election audit will occur as soon as possible and voters whose postcards are returned undeliverable will have their registrations canceled and their names referred to the district attorney for investigation.

5. The G.A.B.'s Role in Local Election Administration

Your letter expresses concerns about what the G.A.B. is doing “to restore the trust in our election process.” A common thread in questions and comments from elected officials, members of the public and the media has been: “What is the G.A.B. going to do about it?”

We are taking steps in addition to our ongoing training and guidance provided to local election officials, our election administration manuals and other publications, assistance provided to voters and clerks through our Help Desk and Election Day Command Center and hotline, and our authority to review and enforce compliance with election laws. We have initiated efforts focused on learning from the recent recall elections and recount process and preparing for the August and November elections. Those efforts include:

- Consistent with our regular practice, staff will review the minutes of the 21<sup>st</sup> Senate District recount as they become available to determine areas in need of improvement and how we can better address those issues in our training. We will work with city and county election officials to determine the facts, clarify issues, and address problems, including more effective means of managing an increasing number of election observers at polling places. We will present a report to our Board at its August 28 meeting and recommend a plan of action, including any necessary follow-up with election officials in Racine County. You or your staff are welcome to attend the Board meeting and provide any input or perspective you wish to share to member of the Government Accountability Board.
- An in-house Fall Election Cycle Strategic Planning Team is already identifying general and specific program needs. A major education and training initiative is planned for the fall with three primary components:
  - A “Back to Basics” campaign to shore up the fundamentals that may have been neglected in the push to train on the new legislative requirements enacted in 2011-2012.
  - A legislative update is planned to review the new legislative changes that clerks are still experiencing problems with, such as proof of residency, signing the poll book, or changes that have not yet been experienced, such as the removal of straight party voting.
  - New baseline training opportunities will be provided to an increasing number of new clerks and chief inspectors.
- Several municipalities are scheduled to have local recall elections coincide with the August 14<sup>th</sup> Partisan Primary. A special outreach effort is being made to those municipalities.
- Staff will continue to monitor a number of other program areas such as Military and Overseas Voter Empowerment Act compliance, voting system testing/certification, central count absentee, voter data quality, redistricting, new technology initiatives, and Voter Photo ID contingency planning, and will take action as necessary.

## Conclusion

Speaking frankly on behalf of our agency and local election officials, absent direct evidence, I believe continued unsubstantiated allegations of voter fraud tend to unnecessarily undermine the confidence that voters have in election officials and the results of the election. I know we agree that elections should be open and transparent and subject to scrutiny and analysis. I hope that, as an elected official, you would also agree that there is little benefit in promoting unsupported allegations questioning the credibility of the election process and the work of local clerks and election inspectors.

As the non-partisan agency charged with administering Wisconsin's election laws, we view part of our responsibility as ensuring that each candidate elected to office enters upon those responsibilities with an equal degree of legitimacy based upon the votes of qualified electors. It is a responsibility we take seriously for you and your constituents, just as we do for other candidates and voters, regardless of partisan affiliation.

The G.A.B.'s statutory role is to educate local election officials. In addition to verifying the results of elections, we encourage local election officials to use a recount as a learning opportunity. As we did with the 2011 statewide recount, we will take lessons learned from the recount and incorporate them into our action plan for the fall elections.

Thank you again for your inquiry. I hope you have found this information responsive to your concerns and concerns of your constituencies. If you have further questions, I may be contacted at (608) 261-8683, or [Kevin.Kennedy@wi.gov](mailto:Kevin.Kennedy@wi.gov).

Sincerely,

### **GOVERNMENT ACCOUNTABILITY BOARD**



Kevin J. Kennedy  
Director and General Counsel

cc: Members, Government Accountability Board

Nathaniel E. Robinson  
Elections Division Administrator  
Government Accountability Board