

Monday, September 13, 2010 – 9:30 A.M.

Open Session\*

G.A.B. Board Room

212 East Washington Avenue, Third Floor

Madison, Wisconsin

**\*The Board may convene in closed session and return to open session to consider any remaining open session items.**

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<b>A. Call to Order</b>	
<b>B. Director’s Report of Appropriate Meeting Notice</b>	
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<b>F. Government Accountability Board – Proposed Agency Budget*</b>	
<b>*To be sent under separate cover</b>	
<b>G. Closed Session</b>	
5.05 (6a) and 19.85 (1) (h)	The Board’s deliberations on requests for advice under the ethics code, lobbying law, and campaign finance law shall be in closed session.
19.85 (1) (g)	The Board may confer with legal counsel concerning litigation strategy.
19.851	The Board’s deliberations concerning investigations of any violation of the ethics code, lobbying law, and campaign finance law shall be in closed session.
19.85 (1) (c)	The Board may consider performance evaluation data of a public employee over which it exercises responsibility.
<b>H. Reconvene in Open Session</b>	

The Government Accountability Board has scheduled its next meeting for Monday, October 11, 2010. The public may attend the meeting at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin, beginning at 9:30 am.

# State of Wisconsin \ Government Accountability Board

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JUDGE GORDON MYSE  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For the Meeting of September 13, 2010

**TO:** Members, Wisconsin Government Accountability Board

**FROM:** Kevin J. Kennedy  
Director and General Counsel  
Government Accountability Board

Prepared and Presented by:  
Jonathan Becker, Ethics and Accountability Division Administrator  
Michael Haas, Staff Counsel

**SUBJECT:** Guidelines Regarding Independent Disbursements and Individual Political Activity

At the August meeting, the Board postponed consideration of two new Guidelines addressing campaign finance issues, so that staff would have additional time to review questions and concerns raised during the public review process, specifically by Attorney Mike Wittenwyler. Following extensive discussion with Attorney Wittenwyler, both draft Guidelines have been revised and are attached, although staff recommends that the Board adopt only the Guideline regarding independent disbursements at this time, and postpone further action on the draft Guideline pertaining to political activity of individuals.

The proposed Guideline regarding independent disbursements of corporations and non-political organizations was drafted in response to numerous questions received by staff following promulgation of GAB 1.28 and the emergency rule GAB 1.91. Staff believes that this revised version can serve as a useful resource for corporations and other entities that are not organized primarily for political purposes but may wish to consider making independent disbursements, as permitted under the U.S. Supreme Court's decision in Citizens United v. FEC. Staff also believes that the revised version corrects and clarifies language in the original draft to address Attorney Wittenwyler's concerns, and we will share any additional feedback he may offer at the Board meeting.

The proposed Guideline regarding individual political activity was drafted in response to numerous questions received by staff following the promulgation of GAB 1.28, many of which were prompted by incorrect media reports and many of which focused on longstanding provisions of the campaign finance statutes rather than the new administrative rule. Staff believed that issuing a new Guideline would be an opportunity to clarify the regulation of political activity of individuals, and to provide a ready resource for individuals to consult.

The revised version of the Guideline regarding individual political activity has also benefitted from the feedback of Attorney Wittenwyler, who has argued that some of the draft language, particularly the last section addressing electronic communications, is not specifically supported by current statutes or administrative rules. Staff agrees that, while the Guideline attempts to update the application of statutes to the electronic age, it also illustrates several issues that may need to be resolved by enacting legislation or by rule-making. Therefore, staff believes that, although the draft Guideline may be a useful tool for the Board to understand questions and issues that are currently posed to staff, the Guideline is not ready for publication at this time.

Board staff recommends adoption of the proposed guideline related to independent disbursements of corporations and other non-political organizations. Staff also recommends that the Board take no action at this time regarding the draft Guideline pertaining to individual political activity.

# Independent Disbursements of Corporations and Non-Political Organizations

This Guideline is provided as an information resource only. For authoritative advice, contact the Wisconsin Government Accountability Board.

Under Wisconsin Statutes and federal case law, independent disbursements may be made by individuals, registered political committees, and other organizations subject to certain registration and reporting requirements. This Guideline summarizes regulations applicable to the latter category of organizations, including corporations, which are not organized primarily for political purposes, and which may make independent disbursements without being subject to all of the restrictions applicable to political committees

**Independent Disbursement Organizations:** This Guideline applies to for-profit and non-profit corporations and other organizations which are primarily organized for non-political purposes, and which are referred to in this Guideline as Independent Disbursement Organizations. This Guideline does not apply to individuals or political committees. Independent Disbursement Organizations are permitted to accept contributions for, and to make, independent disbursements subject to the registration and reporting requirements described in this Guideline.

**What is an independent disbursement?** Wisconsin Statutes define an independent disbursement as a payment used to advocate the election or defeat of a clearly identified candidate for state or local office. To be independent, a disbursement must be made without cooperating or consulting with any candidate or candidate's agent or authorized committee who is supported by the independent disbursement. The disbursement must not be made in concert with, or at the request or suggestion of, any candidate, candidate's agent or authorized committee of a candidate who is supported by the disbursement.

**Reporting and registration requirements for independent disbursements related to candidates:** An Independent Disbursement Organization which accepts contributions for, incurs obligations for, or makes independent disbursements exceeding \$25 in the aggregate in a calendar year in support of or in opposition to a state or local candidate, must comply with the following requirements:

- 1) Designate a depository account for the deposit of all political contributions and payment of all political disbursements.
- 2) Designate a treasurer who must authorize all political disbursements and obligations.
- 3) Register with the Government Accountability Board if independent disbursements are made which advocate the election or defeat of an identified candidate for state office, or register with the local filing office if the disbursements advocate the election or defeat of an identified candidate for local office, using Form GAB-1.

Continued on next page 

- 4) Pay an annual filing fee of \$100 to the Board if the aggregate independent disbursements exceed \$2500 in a calendar year.
- 5) File the oath for independent disbursements with the appropriate filing officer using Form GAB-6.
- 6) File campaign finance reports, using Forms GAB-2 and GAB-7, listing both contributions received and expenditures incurred, for the purpose of making independent disbursements.
- 7) Include an attribution statement in all independent disbursements indicating the source of the disbursement, the name of the treasurer or other authorized agent of the organization, and indicating that the communication is not authorized by any candidate or candidate's agent or committee.

**Regulation of contributions and expenditures:** Independent Disbursement Organizations may receive unlimited contributions from individuals, corporations, and political committees, but may not coordinate disbursements with a candidate benefiting from the disbursement. A corporation or other Independent Disbursement Organization may make political contributions from its corporate account to another Independent Disbursement Organization. The contribution must be reported as a receipt by the receiving organization, and must be deposited into that organization's separate depository account. A separate depository account may be used only to deposit contributions and to make independent disbursements. An Independent Disbursement Organization may not make contributions to candidates or to political action committees.

**Legal references:** §§11.01, 11.05(2), 11.055, 11.06, 11.23, 11.30, 11.38, *Wisconsin Statutes*; GAB 1.91, *Wis. Adm. Code.*, *Citizens United v. FEC*, 558 U.S. \_\_\_, 2010.

## Individual Political Activity

This Guideline is provided as an information resource only. For authoritative advice, contact the Wisconsin Government Accountability Board.

**Introduction:** One of the cornerstones of Wisconsin's campaign finance laws is the principle that the public has a right to know the identity of individuals and organizations spending money in an effort to influence an election. However, Wisconsin Statutes also protect the rights of individuals to participate in the political system through many routine actions without regulation by the government. The political activities of individuals fall into one of three categories – volunteer activities, political contributions, and independent disbursements. Only the last category potentially requires an individual to directly register and report their activities with the Government Accountability Board or a local filing officer.

This Guideline summarizes Wisconsin law regarding political activity of individuals. Additional information can be obtained by consulting the website of the Government Accountability Board at <http://gab.wi.gov>, or by contacting the Board at 608-261-2028.

### Volunteer activities:

Volunteer activities are true examples of First Amendment freedom of speech and association. Common volunteer political activities include attending political rallies and events, assisting in a campaign office, knocking on doors or distributing literature for a candidate, displaying a campaign sign that has been provided by a campaign or political organization, and providing other services to a political campaign or committee without receiving compensation for them. All of these activities are free of regulation and do not require the individual volunteering services to file registration statements or report political activity to a state or local filing officer.

### Contributions:

Individuals may also provide political contributions to a campaign or other political organization in the form of money or in-kind goods or services. Individuals making contributions must provide information such as their name and address to the receiving committee which must include such information in regular campaign finance reports, but the individual contributor is not required to separately register or report such contributions. Wisconsin law prohibits an individual from contributing more than \$10,000 to all state and local political committees in a calendar year.

In addition, contributions to political candidates are limited based on the office sought. For instance, an individual may not contribute more than \$10,000 to candidates for statewide partisan offices in any election cycle, nor more than \$1,000 to a State Senate candidate, nor more than \$500 to a State Assembly candidate in a single election cycle. Other limits apply to contributions to candidates for judicial elections, county, and local offices. Contributions to candidates for federal office are regulated by the Federal Election Commission, not the Government Accountability Board.

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## Independent Disbursements:

Wisconsin law requires registration and reporting directly by individuals only when they spend money exceeding the statutory threshold amount (see below) to support or oppose a candidate through independent disbursements. An independent disbursement is a cost paid directly by an individual to produce any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, email, internet posting, and any other form of communication that clearly identifies a political candidate and advocates the election or defeat of that candidate at an election. The costs of preparation and transmission of personal correspondence is excluded from the definition of independent disbursements, provided that the correspondence is not reproduced by machine for distribution.

To constitute an allowable independent disbursement, the communication must not be coordinated with any candidate or committee of a candidate which is supported by or benefits from the disbursement. While individuals may make unlimited independent disbursements, political communications that are coordinated with, or made at the suggestion of a candidate or campaign committee, are political contributions and are subject to the monetary limits described above.

When an independent disbursement is made by an individual, all of the expenses made to create the political communication must be considered in determining whether it is subject to the reporting and registration requirements described in this Guideline. For instance, an individual who pays for a radio advertisement must account for any costs of producing the ad as well as the charges for air time.

**Threshold amount:** Wisconsin Statutes require individuals to register and report independent disbursements that exceed \$25 in the aggregate in a calendar year. Independent disbursements which total less than \$25 in a calendar year are not subject to registration and reporting requirements. The threshold of \$25 has existed in Wisconsin Statutes since 1974.

**Registration requirements:** Under Wisconsin Statutes, individuals who make independent disbursements in support of or in opposition to a candidate for state office in a calendar year exceeding \$25 are required to file a registration statement with the Government Accountability Board. Individuals who make independent disbursements in support of or in opposition to a candidate for local office in a calendar year exceeding \$25 are required to file a registration statement with the designated local filing officer. Depending upon the elected office targeted by the independent disbursement, the designated local filing officer may be the clerk of a town, village, city, county, or school district. Individuals who make independent disbursements exceeding the threshold amount are also required to file a statement under oath with the appropriate filing officer affirming that the individual is not coordinating the independent disbursements with any candidate or committee of a candidate who is supported by or benefits from the disbursement.

**Reporting and fee requirements:** Individuals who make political disbursements exceeding \$25 in the aggregate in a calendar year are required to file regular campaign finance reports with the Board or the local filing officer. Also, individuals who make political disbursements in support of or in opposition to a candidate for state office and which exceed a total of \$2,500 in a calendar year are required to pay a filing fee of \$100 to the Government Accountability Board.

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**Blogging and electronic communications:** Communications posted on internet sites that require no subscription fee are considered personal correspondence, provided that the individual posting the message is not paid by another individual, committee, or organization to do so. When an individual is not paid, the cost of the individual's computer, server, and internet connection are not considered to be political disbursements.

However, when an individual constructs and maintains a separate website used principally to convey political communications, any costs for developing and hosting the website costs exceeding \$25 in the aggregate in a calendar year are considered independent disbursements. Similarly, if an individual sends political communications to a list of email addresses which the individual has purchased or obtained from another source, the fair market value of such a list is subject to the registration and reporting requirements. In these cases, the individual must also include an attribution statement indicating the source of the funding of any communication which is an independent disbursement.

When an individual posts political communications on internet sites, and is paid for that activity, the payment to the individual as well as any expenses for conveying the message (which exceed \$25 in the aggregate in a calendar year), are subject to registration and reporting requirements. If the individual is paid by a campaign or political committee, that organization, not the individual, must report the payment and associated expenses as expenditures. If the individual's payment and associated expenses are paid by another individual, or by a corporation or other non-political organization, the sponsoring individual or organization must report the costs as independent disbursements. In such cases the blogs or posts must also contain an attribution statement indicating the source of the funding.

**Legal references:** §§11.01, 11.05(2), 11.055, 11.06(7), *Wisconsin Statutes*; GAB 1.28, Wis. Adm. Code.

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KEVIN J. KENNEDY  
Director and General Counsel

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**DATE:** For the September 13, 2010 Meeting

**TO:** Government Accountability Board Members

**FROM:** Kevin J. Kennedy, Director and General Counsel

**SUBJECT:** Brennan Center Request to Provide Guidance on Elector Challenge Procedures and Voter Intimidation

On August 25, 2010, our office received a letter from the Brennan Center for Justice urging the Government Accountability Board to issue clarifying guidance or instructions relating to elector challenges. A copy of the correspondence accompanies this memorandum.

The Brennan Center requests the G.A.B. to issue guidance clarifying those provisions of our challenge rules when a challenger believes a voter "is not a qualified elector;" the provision that requires a challenger to be removed from the polling place if the challenger "abuses the right to challenge;" and the provisions that specify how a poll worker should respond to challenges. A copy of GAB Ch. 9, Wis. Admin. Code setting out the procedure for conducting challenges also accompanies this memorandum.

## **Current Law Governing Elector Challenges and Observers**

GAB 9.01 permits any election inspector (poll worker) to challenge a voter for cause if the inspector knows or suspects the voter is not a qualified elector. The challenge must be based on one of the following criteria set out in the rule:

- 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.

The rule specifies the procedure for administering the challenge. One of the inspectors administers an oath to the voter and proceeds to ask a series of question specified in the rule related to the criteria described above. If the inspector withdraws the challenge, the procedure is stopped. If the challenge is not withdrawn and the voter answers all the questions, the voter is given another oath, an oath of eligibility that establishes the voter is a qualified elector. If the voter refuses to take either of the oaths or the answers given indicate the voter does not meet the eligibility requirements, the inspectors are not permitted to issue a ballot to the voter. If the voter answers fully all the relevant questions, takes both oaths and fulfills any applicable registration requirements; the voter is given a ballot.

A written record is made of the process. The Board has approved a form (GAB 104c) to guide the inspectors through the challenge process and make the required written record. The ballot of the challenged elector is marked with the voter number associated with the voter's name on the poll list so the ballot can be retrieved in a proceeding reviewing the challenge such as a recount.

GAB 9.02 permits any elector to challenge a voter for cause if the elector knows or suspects the voter is not a qualified elector. The same procedures are followed except that before the voter is questioned, the challenging elector is put under oath and asked a series of question specified in the rule related to the basis for the challenging elector's belief the voter is not a qualified elector.

The Brennan Center requests the G.A.B. to issue guidance that clarifies a challenge may not be made in whole or in part on voters' race, ethnicity, national origin, language or religion. The Brennan Center also wants the G.A.B to clarify the challenge may not be based on unreliable grounds such as data matching, voter caging or foreclosure proceedings. Voter caging is a practice where a group of registered voters are sent a mailing. If the mailing is returned as undeliverable, the returned mail piece is offered as evidence the voter is ineligible.

Section 7.41, Wis. Stats. governs the role of observers at the polling place, in the office of municipal clerk or at an alternative voting site during absentees voting. Any member of the public other than a candidate may be an election observer. The chief inspector may remove an observer who commits an overt act which disrupts the operation of the polling place, municipal clerk's office or alternative voting location. Wis. Stats. §7.41 (3). The Board has approved administrative rules which govern the conduct of observers. Proposed GAB Ch. 4, however, those rules have not been promulgated. In 2008, the Board distributed a brochure on the role of election observers. A copy is attached

### **Current Agency Information and Training Practices Relating to Challenges and Observers**

The G.A.B. conducts training for chief election inspectors. During ongoing education, training and technical assistance to our local election official partners, information about voter discrimination, voter fraud and voter intimidation are covered as part of the course curriculum. The basic training course covers the material set out in the *Wisconsin Election Day Manual*, June 2010, which is posted on the agency website at:  
[http://gab.wi.gov/sites/default/files/publication/65/election\\_day\\_manual\\_rev\\_6\\_10\\_pdf\\_81306.pdf](http://gab.wi.gov/sites/default/files/publication/65/election_day_manual_rev_6_10_pdf_81306.pdf)

Municipal clerks are required to train all poll workers (election inspectors) in addition to the training for chief inspectors conducted by the G.A.B. The curricula for both trainings include a focus on elector challenges and election observers. The *Election Day Manual* contains specific instructions on Challenging Electors (Pp 41-43) and Election Observers (Pp 47-49). For each topic, the *Election Day Manual* contains an introduction, discussion and set of frequently asked questions (FAQs) with answers. Under Challenging Electors, two of the FAQs address the issues of abuse of challenges.

#### *13. When is a challenge appropriate?*

Reasons for challenge may include age, residency, citizenship, or disqualification from voting (felony, incompetency, or wager). All challenges should be made with reasonable and appropriate support. If an election inspector believes that an individual is abusing the challenge process, he or she may request that the person leave the

polling place. Any challenge must be brought before a ballot is issued.

#### *14. When is a challenge unacceptable?*

Any challenge based on an individual's appearance, speech, or inability to speak English is unacceptable. A notation of the alleged grounds should be made on the Challenge Documentation form (GAB-104c). The challenge should be dismissed and an unmarked ballot issued to the elector. *Election Day Manual*, Pp 45-46.

The agency has developed information on voter fraud and voter rights required by state and federal law which are posted at each polling place. The GAB-111 and GAB-117 forms are required to be posted in each of Wisconsin's 2,700 polling places. GAB-111 is a notice about Election Fraud required by Wisconsin law. GAB-117 advises voters about Federal laws prohibiting voter intimidation and unequal treatment of voters. Copies of the forms accompany this memorandum.

Through our public outreach initiatives (special notices, communications, news releases, public appearances, etc.) voters are encouraged to become informed of their rights. An informed electorate is probably the most powerful and effective weapon against misleading communications and misinformation, frivolous challenges at the polls, and other acts designed to foment voter confusion, disenfranchisement, intimidation and suppression.

If voter intimidation occurs inside the polling place such as the voter being asked to show a picture ID in order to receive the ballot, or if the voter is challenged on grounds that are not specifically delineated in strict accordance with Wis. Stats. §§6.92 - 6.97, such as property foreclosures, outstanding parking tickets, or a HAVA non-match, the Chief Inspector at the polling place should be notified by the voter of the situation and address any questions or concern the voter may have.

If the voter is not satisfied with the resolution by the Chief Inspector of a problem experienced in the polling place, the voter should contact the municipal clerk, the district attorney and our office. On each election day, we operate a Support and Voter Resolution Center from 6:30 a.m. until at least 9:00 p.m., or until the calls cease.

We have had a "complaint" section on our website since the 1990's, and have had a toll-free voter helpline, 1-866-VOTE-WIS, since implementing the Help America Vote Act of 2002. Based on feedback received from our voter customers and local election partners, we constantly monitor, evaluate and make sure our business processes and practices are responsive to the needs of our customers and partners. Voters and members of the public may call us at the toll-free helpline, or they may e-mail us at [gab@wi.gov](mailto:gab@wi.gov).

We are in the process of revamping the "complaint" section of our website to make it more robust for capturing clearer information from users so we can respond more efficiently and effectively. Part of that overhaul is to expand this section to make it possible for users to report observations and experiences of irregularities at polling places. It will include soliciting reports of voter intimidation and suppression, and it will provide directions on what recourse voters can pursue. We review all such information and make a decision on the proper disposition which may involve initiating investigations or making referrals to local District Attorneys when appropriate.

This expanded voter integrity feature on our website will continue to complement the Board's existing toll-free voter helpline. It is important that incidents be reported promptly so that any necessary assistance and remedies can be offered to protect the right to vote. The efforts of our

office and local law enforcement are frustrated when incidents are not brought to our attention in a timely manner.

As we did before the 2008 November Presidential and General Election, we will reach out to the major Wisconsin political parties and remind them, as they educate and train their respective election observers, to include information not just on potential acts of fraud, but also on avoiding making challenges unrelated to voter qualifications or engaging in activities that have the effect of intimidation of voters or discrimination based on race, ethnicity, national origin, language or religion.

Also as we did in 2008, our training of District Attorneys, in coordination with the Wisconsin Attorney General's Office, will include similar information (as noted in the previous paragraph), and the importance of giving attention and serious consideration to these types of cases once they are referred. This training is scheduled for September 10, 2010. On September 7, 2010, staff will also be meeting by teleconference with the local District Attorneys who are participating in the Wisconsin Department of Justice's Election Integrity Task Force to discuss jurisdictional issues related to election law violations. We will raise the issue of voter intimidation as part of that discussion.

### **Proposed Action**

Current agency practices address the issues raised by the Brennan Center. However, the staff can develop additional information reiterating our position on the issues raised to send to clerks and local prosecutors before the November 2, 2010 election. Clerks can integrate the into their poll worker training. The guidance can also be integrated into our discussions with political parties concerning election observer training.

Attachments:      August 25, 2010 Letter from the Brennan Center for Justice  
                            G.A.B. Chapter 9, Wis. Admin. Code  
                            Election Observer Brochure  
                            G.A.B. 111 Form – Wisconsin Law on Voter Fraud  
                            G.A.B. 117 Form – Provisions of Federal Law related to Voter Fraud and  
                            Intimidation

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August 25, 2010

Kevin Kennedy  
Director and General Counsel  
Wisconsin Government Accountability Board  
P.O. Box 7984  
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Dear Mr. Kennedy:

We write to urge the Government Accountability Board (“G.A.B.”) to issue clarifying guidance or instructions relating to elector challenges under sections 6.925 and 7.41 of the Wisconsin Statutes. In particular, we urge you to issue a Memorandum or other guidance to election officials and poll workers clarifying those provisions of G.A.B. Rules 9.01 and 9.02 that permit challenges when an inspector or elector suspects that a person offering to vote “is not a qualified elector;” the provision of Rule 9.02 that subjects a challenging elector to sanctions if the elector “abuses the right to challenge;” and the provision of Rule 9.02 that addresses how an inspector should respond to challenges. Wis. Admin. Code G.A.B. §§ 9.01, 9.02.

The G.A.B. should issue guidance well in advance of November’s elections because, given past incidents and a highly charged political environment, it is likely that a significant number of voter challenges will be mounted in the fall elections. By offering clarifying guidance, the G.A.B. can avert controversy and disruption and ensure that Wisconsin’s challenger laws are implemented in a manner that is consistent with the protections that state and federal law afford to Wisconsin voters.

Specifically, we urge you to issue clarifying guidance to protect against challenges that are racially targeted or based in whole or in part on impermissible criteria; that are intended to or have the effect of intimidating eligible voters and suppressing voter turnout; or that are based on unreliable data or analysis.<sup>1</sup> We also urge you to ensure that such

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<sup>1</sup> The G.A.B. plainly has the authority to issue the guidance we recommend. The G.A.B. has the authority and responsibility for the administration of WIS. STAT. §§ 5-12, *see* WIS. STAT. § 5.05(1), and may promulgate rules “applicable to all jurisdictions for the purpose of *interpreting* or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration.” *Id.* § 5.05(1)(f) (emphasis added). The G.A.B. could issue the guidance we recommend in the form of regulations,

guidance protects the orderly administration of elections and ensure that challenged voters are afforded equal protection and due process of law.

**I. The G.A.B. Should Protect Against Voter Challenges Based in Whole or in Part on Voters' Race, Ethnicity, National Origin, Language, or Religion**

First, we urge you to issue guidance to make sure a voter's race, ethnicity, national origin, language, or religion do not form the basis, in whole or in part, of a challenge to her eligibility.

Under Rules 9.01 and 9.02, an inspector or elector may challenge for cause any person offering to vote whom the inspector or elector "knows or suspects is not a qualified elector." The race, ethnicity, national origin, language, and religion of a person offering to vote are insufficient bases for mounting a challenge and should not give rise to suspicion that the person is not a qualified elector. We urge you to take prophylactic steps to prevent such challenges not only because they are illegitimate as a policy matter but also because they violate federal and state law.

**A. Discriminatory Challenges Are Illegal**

As a federal court recently affirmed, private individuals violate federal law when they "attempt[] to prevent qualified voters from casting their ballots through . . . screening mechanisms based in whole or in part on their ethnicity."<sup>2</sup> Challenges to voters selected in whole or in part based on their ethnicity or other protected characteristics constitute one form of such prohibited discriminatory conduct.<sup>3</sup>

A number of federal and state laws prohibit discrimination in the voting context based upon voters' race, religion, ethnicity, or national origin — whether the discrimination is perpetrated by state or private actors.

For example, the Fourteenth and Fifteenth Amendments to the U.S. Constitution protect the right to vote from discrimination at the hands of state officials. When state officials give effect to discriminatory challenges mounted by non-state actors, they may violate voters' right to equal protection of the law, regardless of whether they themselves have a discriminatory purpose.<sup>4</sup>

Section 1983 of the Civil Rights Act prohibits anyone acting under color of law from depriving any individual of his or her constitutional rights, including his or her rights to vote and to equal protection of the laws.<sup>5</sup> The Civil Rights Act of 1871 also protects voters' equal

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a formal guideline, or a memorandum to county and municipal clerks in form similar to the March 18, 2010 memorandum to county and municipal clerks regarding the Voter Initiated Photo I.D. Requirement.

<sup>2</sup> *Democratic Nat'l Comm. v. Republican Nat'l Comm.*, 671 F. Supp. 2d 575, 602 (D.N.J. 2009) ("DNC v. RNC").

<sup>3</sup> *Cf. id.* at 580, 582.

<sup>4</sup> *Cf. Batson v. Kentucky*, 476 U.S. 79 (1986).

<sup>5</sup> 42 U.S.C. § 1983.

protection rights from interference by state officials or private individuals acting in concert.<sup>6</sup> And the Voting Rights Act of 1965 prohibits state officials from using discriminatory “standards, procedures, or practices” for determining voter eligibility.<sup>7</sup> Because they perform a public function exclusively reserved to the state, poll watchers and challengers act “under color of state law” for the purposes of enforcing these civil rights statutes.<sup>8</sup>

If two or more individuals agree to challenge voters on the basis of race, ethnicity, national origin, or related characteristics, they may also violate provisions of federal law that prohibit conspiring to prevent voters from exercising the franchise. Federal law makes it a crime for individuals to “conspire to injure, oppress, threaten, or intimidate any person . . . in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.”<sup>9</sup> The right to vote is a central right “secured” by the U.S. Constitution.<sup>10</sup> Federal law also makes it a crime for persons acting under color of law willfully to deprive a person of the right to vote.<sup>11</sup>

**B. The G.A.B. Should Clarify That Challenges Based in Whole or in Part on a Voter’s Race, Ethnicity, National Origin, or Related Characteristics Are Not Valid Under Rules 9.01 and 9.02**

Because discriminatory challenges are unfair and illegal, we urge the G.A.B. to clarify that such challenges are neither permitted nor valid under Rules 9.01 and 9.02. To prevent discriminatory challenges, and to ensure that no person’s voting rights are burdened as a result, we also urge the G.A.B. to instruct election officials that:

- A challenge must be based upon actual evidence that a person is or may be ineligible, not upon discriminatory stereotypes.
- Challenges, including those based upon citizenship, must not be based upon race, national origin, appearance, surname, language, or religion.

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<sup>6</sup> 42 U.S.C. § 1985(3) (providing cause of action if “two or more persons . . . conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws”).

<sup>7</sup> 42 U.S.C. § 1971(a)(2)(A) (“No person acting under color of law shall—(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote.”).

<sup>8</sup> See, e.g., *Tiryak v. Jordan*, 472 F. Supp. 822, 824 (E.D. Pa. 1979); cf. *United States v. Ass’n of Citizens Councils*, 187 F. Supp. 846, 848 (W.D. La. 1960) (when private individual’s actions “trigger[] actions on the part of [state officials] that [a]re ministerial under State law,” those actions constitute state action).

<sup>9</sup> 18 U.S.C. § 241 (carrying penalties of fines and imprisonment up to ten years).

<sup>10</sup> See, e.g., *United States v. Classic*, 313 U.S. 299, 314 (1941) (citing *Ex Parte Yarbrough (The Ku-Klux Cases)*, 110 U.S. 651 (1884)).

<sup>11</sup> 18 U.S.C. § 242; see *United States v. Lanier*, 520 U.S. 259, 264 (1997).

- A challenge is discriminatory and impermissible if it is based in whole or in part on mailings targeted at individuals living in precincts where the majority of voters are members of racial or ethnic minorities,<sup>12</sup> voter challenge lists that over-represent members of racial or ethnic minorities,<sup>13</sup> or factors closely related to a voters' race, ethnicity, or national origin.
- The racial or ethnic composition of a district or polling place may not form any part of a decision to mount challenges in that district or polling place.<sup>14</sup>

**C. The G.A.B. Should Clarify That Challenges Based on Race, Ethnicity, National Origin, or Related Characteristics Constitute an Abuse of the Right to Challenge under Rule 9.02 and That Abusers Will Be Sanctioned**

Because race, ethnicity, national origin, and related characteristics are not legitimate bases to challenge voters' eligibility, the G.A.B. should clarify that elector challenges based on these grounds represent an abuse of the right to challenge. Under G.A.B. Rule 9.02, any elector who abuses the right to challenge "may be subject to sanctions" under Wisconsin Statute § 741(3). That provision of Wisconsin law grants inspectors the right to remove any individual who disrupts the operations of any polling place, clerk's office, or alternative site. An individual who abuses the right to challenge by making challenges targeted based on race, ethnicity, religion, language, or country of origin ought to be removed. We urge the G.A.B. to issue guidance making clear that if an inspector determines that a challenger has brought one or more challenges because of a voter's race, ethnicity, or country of origin, the inspector should remove the challenger from the polling place.

In addition, we urge the G.A.B. to issue guidance requiring election officials to cooperate with state and federal law enforcement in investigating any challenger who violates state or federal law by bringing challenges based on race, ethnicity, national origin, or related characteristics. Under G.A.B. Rule 9.05, inspectors must make a written record of all challenges made at a polling place, including the name and address of the challenger. Such records may provide powerful evidence of a pattern of prohibited challenges, and we urge the G.A.B. to clarify that election officials should scrupulously analyze records of challenges to detect — and refer to the appropriate prosecutors — challenges that violate the federal or state civil rights laws.

**II. The G.A.B. Should Protect Against Challenges That Result in Voter Intimidation**

Second, we urge you to issue guidance to protect against voter intimidation in the challenge process. Because challenges involve confrontation of prospective voters by persons clothed with authority, they present a risk of voter intimidation. This is especially true when challengers directly confront voters, threaten them in any way, or otherwise

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<sup>12</sup> See *DNC v. RNC*, 675 F. Supp. 2d at 579.

<sup>13</sup> See *id.* at 582.

<sup>14</sup> See *id.* at 580.

engage in conduct that deters qualified citizens from voting. Challenges based on race, ethnicity, or national origin are also likely to result in intimidation of challenged voters — and may drive qualified citizens away from the polls, despite their eligibility. As a federal judge noted last year, “[v]oter intimidation presents an ongoing threat to the participation of minority individuals in the political process, and continues to pose a far greater danger to the integrity of that process than . . . voter fraud.”<sup>15</sup>

When a challenge is undertaken with the intent to intimidate a prospective voter — or to injure, oppress or threaten the voter because of his or her exercising the right to vote — the challenger violates Section 1971(b) of the Voting Rights Act, which prohibits intimidating any other person “for the purpose of interfering with the right of such other person to vote or to vote as he may choose.”<sup>16</sup> When such a challenge is undertaken pursuant to an agreement with another person, the challenger may also be criminally liable under Section 241 of the Civil Rights Act.<sup>17</sup> Conduct whose object or purpose is to interfere with the right to vote violates Section 241, regardless of whether it actually causes votes to be lost.<sup>18</sup>

Even in the absence of intent to interfere with voters’ rights, actions that have the effect of intimidating voters violate Section 11(b) of the Voting Rights Act, which provides that “[n]o person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote . . . .”<sup>19</sup> Such conduct also violates Sections 12.09(1)<sup>20</sup> and 12.09(3)<sup>21</sup> of the Wisconsin Statutes, which prohibit actions that induce any voters to refrain from voting.

The G.A.B. should make clear that challenges that are either motivated by or result in the intimidation of voters are not permitted under Rules 9.01 or 9.02 and will result in the immediate removal of the perpetrators. In addition, the G.A.B. should issue guidance to help election officials to identify intimidating conduct in the challenge process, including:

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<sup>15</sup> *Id.* at 578-79.

<sup>16</sup> 42 U.S.C. § 1971(b).

<sup>17</sup> 18 U.S.C. § 241. An intent to intimidate can be established by a challenger’s express statements — as, for example, if the challenger states that she is challenging voters based on race to prevent voting by a particular demographic group, or that she is bringing challenges in order to suppress voting by supporters of a particular political party. In the absence of such express statements, intent may be inferred when challenges are targeted to specific precincts with predominantly minority populations, or when challenges are targeted at voters with surnames typical of specific ethnic groups.

<sup>18</sup> *United States v. Tobin*, No. 04-CR-216-01-SM, 2005 WL 3199672, at \*4 (D.N.H. Nov. 30, 2005) (“The gravamen of the conspiracy offense . . . is an unlawful agreement — an agreement to interfere with voting rights — not its eventual success or failure, and not the specific ways or means employed to achieve the conspiracy’s purpose.”).

<sup>19</sup> 42 U.S.C. § 1973i(b) (2006).

<sup>20</sup> Section 12.09(1) of the Wisconsin Statutes provides that “[n]o person may personally or through an agent make use of or threaten to make use of force, violence, or restraint in order to induce or compel any person to vote or refrain from voting at an election.” WIS. STAT. § 12.09(1).

<sup>21</sup> Section 12.09(3) of the Wisconsin Statutes provides that “[n]o person may personally or through an agent, by any act compel, induce, or prevail upon an elector either to vote or refrain from voting at any election for or against a particular candidate or referendum.” WIS. STAT. § 12.09(3).

direct confrontation of prospective voters by challengers or poll watchers; the use of insulting, offensive, or threatening language; raised voices; and the use of law enforcement or other official attire.<sup>22</sup>

### **III. The G.A.B. Should Protect Against Challenges That Are Based on Unreliable Data or That Circumvent Federal Requirements**

Third, we urge the G.A.B. to make clear that suspicion of a voter's ineligibility cannot be grounded on a range of notoriously unreliable grounds which, unfortunately, have been invoked in previous elections to question voters' eligibility. Specifically, the G.A.B. should issue guidance that elector challenges cannot be based solely on: (1) data discrepancies between the voter registration database and other state or federal databases; (2) returned mail; or (3) the inclusion of a voter's information on a list of homes subject to foreclosure proceedings.

For the reasons set forth below, each of these criteria are unreliable indicators of voter ineligibility and, if used as the sole basis for challenges, would lead to widespread challenges to eligible voters. As one court found, "the risks created by poorly-designed ballot security initiatives, undertaken with the ostensible purpose of safeguarding against fraud, are a greater threat to the electoral process than the in-person fraud they are meant to prevent."<sup>23</sup>

Upholding a challenge based on unreliable data may also run afoul of the Voting Rights Act's prohibition against "deny[ing] the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election."<sup>24</sup> Challenges based on unreliable data may violate other federal law requirements as well, as discussed below.

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<sup>22</sup> See *DNC v. RNC*, 671 F. Supp. 2d at 580 (describing consent decree provisions); *id.* at 581, 590 (describing past instances of voter intimidation and their methodology).

<sup>23</sup> *Id.* at 612.

<sup>24</sup> 42 U.S.C. § 1971(a)(2)(B). See generally *Washington Ass'n of Churches v. Reed*, 492 F.Supp.2d 1264 (W.D. Wash. 2006); *Friedman v. Snipes*, 345 F. Supp. 2d 1356 (S.D. Fla. 2004); *Condon v. Reno*, 913 F. Supp. 946 (D.S.C. 1995).

## A. The G.A.B. Should Make Clear That Voter Challenges May Not Be Based Solely on Unreliable Grounds

### 1. Unreliable Data Matching

Wisconsin's experience with so-called HAVA checks during the 2008 election season reveals the dangers of conditioning the right to vote on successfully matching data on the voter rolls with information in other government databases. As the G.A.B. reported in January 2009, if eligibility to cast a ballot that counted were dependent on a successful HAVA match, as many as 24,000 voters might have been at risk of being forced to vote provision ballots or having their votes go uncounted if they did not bring proof of residence to the polls.<sup>25</sup> The G.A.B.'s judicious approach to the use of HAVA check data in 2008 ensured that no eligible voters were wrongfully disenfranchised. Now, the G.A.B. should clarify that no private individuals may use the challenge process to subvert the policies that the G.A.B.'s reasoned approach to HAVA checks has brought about.

When the G.A.B. began conducting HAVA matches — in which the data in voters' registration records is matched against information contained in the Department of Transportation ("DOT") or Social Security Administration ("SSA") databases — the failed match rate was 25%. As the G.A.B. steadily improved the matching system, the initial non-match rate was reduced to 12%; after the G.A.B. made further corrections, the overall non-match rate dropped to 10%. While it is promising that 9 out of every 10 registrants is successfully matched, because of flaws inherent in *any* matching protocol, 10% of all voters are still not successfully matched. As the G.A.B. properly recognized, the reason these voters are not successfully matched is not that they are ineligible voters, or that they provide fraudulent information to election officials; rather, clerks have confirmed that non-matches are most frequently attributable to typographical errors, name variations, and errors with driver license numbers.<sup>26</sup>

These clerical and typographical errors do not indicate that voters are ineligible, and do not provide a legitimate basis for a voter challenge. Therefore, to ensure that private actors cannot indirectly disenfranchise eligible voters through the challenge process, the G.A.B. should issue guidance making clear that a failed HAVA match may not be used to challenge a voter's eligibility.

### 2. Voter Caging

Voter caging is the practice of sending mail to addresses on the voter rolls, compiling a list of the mail that is returned undelivered, and using that list to attempt to purge or challenge voter registrations on the grounds that the voters on the list do not legally reside at their registered addresses. While supporters of voter caging defend the practice as a means of preventing votes cast by ineligible voters, the practice is notoriously unreliable. Because voter caging is inherently inaccurate, the G.A.B. should make clear a returned mailing does

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<sup>25</sup> See *A Report of the Government Accountability Board: A Statistical Analysis of HAVA Checks in Wisconsin August 6, 2008 through January 4, 2009*, Jan. 15, 2009.

<sup>26</sup> See *id.*

not, standing alone, provide a sufficient basis for suspecting that a voter is not a qualified elector.

Federal law provides that states may not rely on an undeliverable mailing to disenfranchise voters. Thus, in the National Voter Registration Act of 1993,<sup>27</sup> Congress carefully regulated the circumstances under which a state may purge a registered voter from the voter rolls based only on undelivered mail. Mail used for this purpose must be forwardable, with a notice to the voter to return an enclosed postage-paid card to the relevant registrar — and if the voter does not return the card, her registration cannot be canceled. Rather, the voter can only be flagged on the voter rolls — while remaining eligible to vote — and so long as the voter appears to vote within one of the next two federal elections (and confirms her address), she remains an active voter.<sup>28</sup> In other words, an undelivered mailing may not be used to deny a registered voter the right to vote unless she fails to vote for at least two federal election cycles. States may not circumvent this federal protection by allowing challengers indirectly to accomplish what the state may not — disenfranchising a voter based on an undelivered mailing.<sup>29</sup>

Congress strictly regulated the conditions under which undelivered mail can be used to prevent citizens from voting because it recognized that voter caging is intrinsically unreliable for a number of reasons. Voter rolls — like other government lists — suffer from typos and other clerical errors that can cause mail to be returned as undeliverable. Indeed, previous investigations have revealed such errors, which cause mail delivery problems, in Wisconsin’s voter rolls. For example, in Milwaukee in 2004, extensive allegations of fraud instead revealed extensive data entry errors on the registration lists; in one spot-check of a list of allegedly invalid addresses, for example, about 20% of the addresses checked were attributed to data entry error.<sup>30</sup> If returned mail sent to these addresses were used as the basis for a challenge to these voters, there would be a serious risk of disenfranchisement for qualified, eligible citizens.

There are many other reasons why mail sent to a voter may be returned as undeliverable even though the voter has provided accurate address information to election

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<sup>27</sup> 42 U.S.C. § 1973gg *et seq.*

<sup>28</sup> 42 U.S.C. § 1973gg-6(d)(1)(B)(i)-(ii).

<sup>29</sup> *Cf. Smith v. Allwright*, 321 U.S. 649, 765 (1944) (“This grant to the people of the opportunity for choice is not to be nullified by a state through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election. Constitutional rights would be of little value if they could be thus indirectly denied.”) (citation omitted).

<sup>30</sup> Greg J. Borowski, *Over 1,200 Voters Addresses Found Invalid*, MILWAUKEE J. SENTINEL, Jan. 25, 2005; Brennan Center for Justice, Wisconsin 2004, [http://www.truthaboutfraud.org/case\\_studies\\_by\\_state/wisconsin\\_2004.html](http://www.truthaboutfraud.org/case_studies_by_state/wisconsin_2004.html). Victor Moy was listed on the rolls as living at 8183 W. Thurston Avenue, but he actually resided at number 8153. Greg J. Borowski, *GOP Fails To Get 5,619 Names Removed From Voting Lists*, MILWAUKEE J. SENTINEL, Oct. 29, 2004, at 1. 3130 S. 15th Place was incorrectly listed as 3130 S. 15th St., and S. 68th St. was incorrectly listed as S. 63rd St. Greg Borowski, *GOP Demands IDs of 37,000 in City*, MILWAUKEE J. SENTINEL, Oct. 30, 2004. In other cases, a check of the original handwritten registration cards showed digits had been transposed by clerks. *Id.* Still other addresses were missing digits, so otherwise valid addresses showed up as non-existent. Greg J. Borowski & Steven Walters, *Vote Inquiry Sharpens Focus*, MILWAUKEE J. SENTINEL, Oct. 30, 2004, at 1.

officials and is eligible to vote. A voter may not be listed on the mailbox of her residential voting address, leading the postal service to conclude — incorrectly — that the voter does not reside at his or her address. A voter may be temporarily away from his or her permanent address — as, for example, when a college student is away at school, or when a member of the armed forces has been temporarily reassigned from his or her permanent voting address. In these cases, mail may be returned by the postal service despite the fact that the voter’s permanent voting address is accurately reflected on the voter rolls.<sup>31</sup> Other voters may similarly have a permanent mailing address that differ from their residential voting address; when individuals register to vote, they list their physical residence, but not all Americans receive mail at their residential addresses. And sometimes, of course, mail sent to a listed registration address is returned as undeliverable because it was not delivered properly, through no fault of the voter. Mail can be lost or misrouted, causing it to be returned to the sender. In larger group residential homes, the voting residence may quite properly list the street address, but mail will not be delivered without a unit number. For further information, the Brennan Center has documented cases in which mail is returned as undeliverable, despite the fact that the voter rolls contain the voter’s permanent voting address.<sup>32</sup>

The fact that voter caging has been proven to be unreliable is sufficient reason to prohibit challenges based on undelivered mail. There is, however, additional reason to clarify that caging is not a sufficient reason to suspect a voter’s ineligibility. Voter caging is almost always pursued with partisan aims, and caging lists are often targeted expressly at registered members of the opposing party. Moreover, the practice has often been targeted at minority voters, making the effects even more pernicious. In 1986, for example, a notorious memorandum unearthed in litigation, sent from one regional party political director to another, described the likely effect of a voter caging program on the upcoming Senate race in Louisiana:

I know this race is really important to you. I would guess that this program will eliminate at least 60-80,000 folks from the rolls. . . . If it’s a close race, which I’m assuming it is, this could keep the black vote down considerably.<sup>33</sup>

Voter caging operations motivated to suppress voting by supporters of political opponents and/or racial minorities have resulted in consent decrees that have prohibited racially targeted caging operations by a national political party.<sup>34</sup> The G.A.B. should ensure that no state-based or local individuals or groups violate Wisconsin voters’ rights through conduct that the federal courts have prohibited on the part of national political parties.

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<sup>31</sup> See, e.g., *Montana Democratic Party v. Eaton*, 581 F. Supp. 2d 1077 (D. Mont. 2008).

<sup>32</sup> See generally Justin Levitt & Andrew Allison, *A Guide to Voter Caging*, June 29, 2007, at [http://www.brennancenter.org/content/resource/a\\_guide\\_to\\_voter\\_caging/](http://www.brennancenter.org/content/resource/a_guide_to_voter_caging/).

<sup>33</sup> Thomas B. Edsall, *Ballot Security Effects Calculated*, WASH. POST, Oct. 24, 1986, at A1; Martin Tolchin, *G.O.P. Memo Tells of Black Vote Cut*, N.Y. TIMES, Oct. 25, 1986, at 17.

<sup>34</sup> *DNC v. RNC*, No. 81-3876 (D.N.J. Nov. 1, 1982) (consent order); *DNC v. RNC.*, No. 86-3972 (D.N.J. July 27, 1987) (settlement stipulation and order of dismissal); *United States v. Republican Party of North Carolina*, No. 92-161-CIO-5F (E.D.N.C. Feb. 27, 1992).

For these reasons, we respectfully urge the G.A.B. to issue guidance prohibiting voter challenges based solely on voter caging lists, as well as challenges based in part on voter caging lists targeting members of particular racial, ethnic, or political groups.

### 3. Foreclosure Proceedings

More than two-thirds of Americans own their own homes,<sup>35</sup> and one of the most pernicious effects of the recent recession has been that millions of Americans have lost, or are threatened with losing, their homes. Over 1 million homes entered foreclosure in 2007, and in 2008, over three million foreclosures were filed: one in 54 homes received at least one foreclosure filing during that year.<sup>36</sup> In 2009 and 2010, large numbers of Americans continued to be threatened with foreclosure, with Wisconsin being no exception. Foreclosure filings in May, 2010 rose about 5% in Wisconsin from the same month last year,<sup>37</sup> and while the rate of foreclosures moderated slightly this summer, thousands of Wisconsin voters continue to be threatened with foreclosure each month — a number that economists suspect will not dramatically improve until Wisconsin's unemployment rate improves.<sup>38</sup>

Unfortunately, the growing foreclosure crisis has presented an opportunity for political operatives. In 2008, partisans threatened to seize on voters' economic struggles to suppress voting by voters facing foreclosure proceedings. In the Midwestern states of Michigan<sup>39</sup> and Ohio,<sup>40</sup> for example, political party officials threatened to challenge voters who had received foreclosure notices, creating a risk of mass disenfranchisement of eligible citizens. Fortunately, in 2008, pre-election litigation resulted in an agreement in which the Republican National Committee and the Democratic National Committee agreed not to use foreclosure lists as the basis for voter challenges.<sup>41</sup>

The G.A.B. should issue guidance making clear that no individuals or state or local groups are permitted to do what the national political parties have agreed not to do. Information indicating that foreclosure proceedings have been initiated on an individual's home is not sufficient to raise suspicion that the individual is not qualified to vote. People frequently remain in their homes after foreclosure proceedings are commenced — often for

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<sup>35</sup> See Melanca Clark with Maggie Barron, *Foreclosures: A Crisis in Legal Representation* 6 (2009), at <http://www.brennancenter.org/content/resource/foreclosures/>.

<sup>36</sup> *Id.*

<sup>37</sup> See Paul Gores, *Wisconsin foreclosure filings rise 5% in May*, MILWAUKEE J. SENTINEL, June 1, 2010, at <http://www.jsonline.com/business/95327219.html>.

<sup>38</sup> See Paul Gores, *June foreclosure filings fell 13.4% in Wisconsin*, MILWAUKEE J. SENTINEL, July 6, 2010, at <http://www.jsonline.com/business/97860299.html>.

<sup>39</sup> See Eartha Jane Melzer, *Lose your house, lose your vote*, MICHIGAN MESSENGER, Sept. 10, 2008, at <http://michiganmessenger.com/4076/lose-your-house-lose-your-vote>.

<sup>40</sup> See Robert Vitale, *Foreclosed-on voters using old addresses could snag election*, COLUMBUS DISPATCH, July 6, 2008, at [http://www.dispatch.com/live/content/local\\_news/stories/2008/07/06/vacant.ART\\_ART\\_07-06-08\\_A1\\_5UAL914.html?sid=101](http://www.dispatch.com/live/content/local_news/stories/2008/07/06/vacant.ART_ART_07-06-08_A1_5UAL914.html?sid=101).

<sup>41</sup> See Ed Brayton, *Democrats and Republicans settle foreclosed voter lawsuit*, MICHIGAN MESSENGER, Oct. 20, 2008, at <http://michiganmessenger.com/6644/democrats-and-republicans-settle-foreclosed-voter-lawsuit>.

extended periods of time — and many are able to resolve the issues that led to foreclosure by negotiating with their creditors or refinancing their mortgages. Moreover, most of those who have in fact moved remain eligible to vote in their old polling places under federal and state law.<sup>42</sup> Therefore, the inclusion of a voter’s information on a list of foreclosed properties is insufficient to suggest the voter is not a qualified elector. Challenges based on foreclosure information must not be permitted.

**B. The G.A.B. Should Make Clear that Bringing Challenges Based on Unreliable Grounds is an Abuse of the Right to Challenge and Will Subject the Challenger to Removal and Other Sanctions**

As with challenges that intimidate voters, or that are based on race, ethnicity, country of origin, or related characteristics, voter challenges that rely on unreliable data matching, the return of a mailing, or the inclusion of a voter’s information on a list of homes in foreclosure proceedings are inherently unreliable. We therefore urge the G.A.B. to clarify that elector challenges based on these grounds represent an abuse of the right to challenge; and that any elector bringing challenges on these bases, therefore, should be subject to sanctions, including removal. Moreover, the G.A.B. should make clear that election officials must cooperate with state and federal law enforcement in investigating patterns of challenges based on unreliable indicators which indicate conduct designed to suppress voting in violation of federal and state civil rights laws.

**IV. The G.A.B. Should Ensure That Inspectors Do Not Give Effect to Challenges Based on Unlawful or Unreliable Criteria**

Finally, the G.A.B. should issue guidance clarifying that a challenge cannot be upheld, that a voter cannot be refused a ballot, and that a challenged ballot must be counted, unless the person offering to vote refuses to take the oath or there is affirmative, clear and convincing evidence that the elector is ineligible to vote. Pursuant to Wis. Stat. § 7.51(2)(c), challenged ballots must be counted which states, “the inspectors *shall* count those ballots cast by challenged electors *the same* as the other ballots.”<sup>43</sup>

**V. The GAB Should Prevent Challengers From Disrupting the Orderly Functioning of Elections**

Multiple challenges have the potential to disrupt polling operations. As one federal judge recently stated, “it is all but certain that anti-fraud initiatives in which challengers are deployed at polling places will result in the disenfranchisement of many individuals whose

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<sup>42</sup> 42 U.S.C. § 1973gg-6(e) (describing circumstances under which registrants who move are entitled to vote “notwithstanding [their] failure to notify the registrar” of their address change). The vast majority of Americans who move do so within the same county. For example, of 40 million Americans who moved within the same state in 2006, approximately 10 million relocated to another county, while about 30 million moved within the same county. See U.S. Census Bureau, American Factfinder: Residence 1 Year Ago by Age in the United States; 2006 American Community Survey, *available at* <http://tinyurl.com/btwbne>.

<sup>43</sup> WIS. STAT. § 7.51(2)(c) (emphasis added).

eligibility is not in question. Some voters . . . may choose to refrain from voting rather than wait for the qualifications of those ahead of them to be verified . . . .”<sup>44</sup>

Challengers should not be permitted to disrupt the orderly functioning of elections. Accordingly, we urge the G.A.B. to clarify procedures for challenges so as to minimize their disruption. For example, election officials should be instructed to halt challenges if the challenges are causing long waits or other disruptions. In addition, they should be instructed to ensure that voters waiting behind the challenged voter do not have to wait for the challenge process to be complete before voting, such as by setting aside a location for challenges. Moreover, the process should be completed as quickly as possible.

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For all the foregoing reasons, we respectfully urge the G.A.B. to issue guidance to make clear that existing state and federal law prohibit challenges that target voters based on their race, ethnicity, national origin, language or religion; that result in voter intimidation; and that are based on unreliable data or analysis, and that challenges based on those grounds constitute an abuse of the right to challenge. By doing so, the G.A.B. will help ensure the orderly administration of elections and ensure that Wisconsin’s voter challenger laws are not used to undermine voter protections enshrined in state and federal law.

Respectfully Submitted,



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<sup>44</sup> *DNC v. RNC*, 671 F. Supp. 2d at 612.

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## Chapter GAB 9

### CHALLENGES AT A POLLING PLACE

GAB 9.01 Inspector making challenge.  
GAB 9.02 Elector making challenge in person.  
GAB 9.03 Voting procedure for challenged electors.

GAB 9.04 Challenging the absent elector.  
GAB 9.05 Recording the challenge.  
GAB 9.06 Review by a board of canvassers.

Note: Chapter EIBd 9 was renumbered chapter GAB 9 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628.

**GAB 9.01 Inspector making challenge.** Any inspector may challenge for cause any person offering to vote whom the inspector knows or suspects is not a qualified elector. An inspector has cause to challenge a person as being unqualified to vote if the challenging inspector 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. If a person is challenged as unqualified by an inspector, the following procedure shall be followed:

(1) One of the inspectors shall administer the following oath or affirmation of veracity to the person: "You do solemnly swear (or affirm) that you will fully and truly answer all questions put to you regarding your place of residence and qualifications as an elector of this election."

(2) The inspector shall then ask only those of the following questions which are appropriate to test the person's qualifications based on the cause for the challenge:

- (a) Are you a United States citizen?
- (b) Are you at least 18 years of age?

(c) For at least the 10 days before this election, have you resided in, or been a resident of, the ward or election district from which you seek to vote?

(d) Are you currently disqualified from voting for any of the following reasons:

- 1. A felony conviction for which you are still serving probation or are on parole or extended supervision?
- 2. A judge's ruling that you are incapable of voting?
- 3. Having made a bet or wager on this election?
- 4. Having voted previously in this election?

(3) If the challenge is withdrawn by the inspector, the challenge procedure shall be halted, but a written record of the procedural steps taken, up to the withdrawal, shall be preserved in accordance with s. GAB 9.05.

(4) If the challenge is not withdrawn by the inspector after the person offering to vote has answered the questions asked under sub. (2), one of the inspectors, before issuing the ballot, shall administer to the challenged elector the following oath or affirmation of eligibility: "You do solemnly swear (or affirm) that: you are 18 years of age; you are a citizen of the United States; you are now and for 10 days have been a resident of this ward except under s. 6.02 (2), Stats.; you have not voted at this election; you have not made any bet or wager or become directly or indirectly interested in any bet or wager depending upon the result of this election; you are not on any other ground disqualified to vote at this election."

(5) If the person challenged refuses to take the oath or affirmation of eligibility under sub. (4), the inspectors shall not issue a ballot to the person challenged.

(6) If the person challenged refuses to answer fully any relevant questions put to him or her by the inspector under sub. (2), or the answers to the questions given by the person indicate that the person does not meet the voting qualification requirements of ss. 6.02 and 6.03, Stats., the inspectors shall not issue a ballot to the person challenged.

(7) If the person challenged answers fully all relevant questions put to the elector by the inspector under sub. (2), takes the oath or affirmation of eligibility under sub. (4), fulfills the registration requirements, where applicable, and the answers to the questions given by the person indicate that the person meets the voting qualification requirements of ss. 6.02 and 6.03, Stats., the challenged elector shall be issued a ballot and the voting procedure under s. GAB 9.03 shall be followed.

History: CR 02-071: cr. Register September 2002 No. 561 eff. 10-1-02.

**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. If a person is challenged as unqualified by an elector, the following procedure shall be followed:

(1) One of the inspectors shall administer the following oath or affirmation of veracity 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."

(2) The inspector shall ask the challenger if he or she is an elector and then ask only those of the following questions which are appropriate to determine the qualifications of the challenged elector:

(a) Why do you believe that the challenged elector is not a United States citizen?

(b) Why do you believe that the challenged elector is not at least 18 years of age?

(c) Why do you believe that the challenged elector has not, for at least the 10 days before this election, resided in, or been a resident of, the ward or election district from which he or she seeks to vote?

(d) For which of the following reasons, and why, do you believe the challenged elector is currently disqualified from voting:

- 1. A felony conviction for which the challenged elector is still serving probation or is on parole or extended supervision?
- 2. A judge's ruling that he or she is incapable of voting?
- 3. Having made a bet or wager on this election?
- 4. Having voted previously in this election?

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

(3) One of the inspectors shall then administer the oath or affirmation of veracity to the challenged elector under sub. (1) and ask the challenged elector only the questions under s. GAB 9.01 (2) which are appropriate to test the elector's qualifications based on the cause for the challenge.

(4) One of the inspectors shall then ask the challenging elector if he or she withdraws the challenge. If the challenge is withdrawn by the challenging elector, the challenge procedure shall be halted, but a written record of the procedure up to the withdrawal shall be preserved in accordance with s. GAB 9.05.

(5) If the challenge is not withdrawn after the person offering to vote has answered the questions under s. GAB 9.01 (2), one of the inspectors, before issuing the ballot, shall administer to the challenged elector the following oath or affirmation of eligibility: "You do solemnly swear (or affirm) that: you are 18 years of age; you are a citizen of the United States; you are now and for 10 days have been a resident of this ward except under s. 6.02 (2), Stats., you have not voted at this election; you have not made any bet or wager or become directly or indirectly interested in any bet or wager depending upon the result of this election; you are not on any other ground disqualified to vote at this election."

(6) If the person challenged refuses to take the oath or affirmation of eligibility under sub. (5), the inspectors shall not issue a ballot to the person challenged.

(7) If the person challenged refuses to answer fully any relevant questions put to him or her by the inspector under sub. (2), or the answers to the questions given by the person indicate that the person does not meet the voting qualification requirements of ss. 6.02 and 6.03, Stats., the inspectors shall not issue a ballot to the person challenged.

(8) If the person challenged answers fully all relevant questions put to the elector by the inspector under s. GAB 9.01 (2), takes the oath or affirmation of eligibility under sub. (5), fulfills the registration requirements, where applicable, and the answers to the questions given by the person indicate that the person meets the voting qualification requirements of ss. 6.02 and 6.03, Stats., the challenged elector shall be issued a ballot and the voting procedure under s. GAB 9.03 shall be followed.

History: CR 02-071: cr. Register September 2002 No. 561 eff. 10-1-02.

**GAB 9.03 Voting procedure for challenged electors.**

Whenever the inspectors under ss. 6.92 to 6.94, Stats., determine to receive the vote of a person who has been challenged, they shall give the elector a ballot. Before giving the elector the ballot, the inspectors shall write on the back of the ballot the serial number of the challenged person corresponding to the number kept at the election on the registration or poll list, or other list maintained under s. 6.79, Stats. If lever or direct record voting machines are used in the municipality where the person is voting, the person's

vote may be received only upon an absentee ballot furnished by the municipal clerk which shall have the corresponding serial number from the registration or poll list or other list maintained under s. 6.79, Stats., written on the back of the ballot before the ballot is deposited. The inspectors shall indicate on the voter list the reason for the challenge. The challenged ballots shall be counted under s. 5.85 or 7.51 (2) (c), Stats.

History: CR 02-071: cr. Register September 2002 No. 561 eff. 10-1-02.

**GAB 9.04 Challenging the absent elector.** The vote of any absent elector may be challenged for cause by an inspector or by an elector and the inspectors shall have all the power and authority given them under ss. GAB 9.01 and 9.02 to hear and determine the legality of the ballot the same as if the ballot had been voted in person. One of the inspectors shall administer the following oath or affirmation of veracity to the elector challenging the absentee elector's ballot: "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 ask the challenger if he or she is an elector and then shall ask only those questions provided in s. GAB 9.01 (2) which are appropriate to test the qualifications of the challenged elector.

History: CR 02-071: cr. Register September 2002 No. 561 eff. 10-1-02.

**GAB 9.05 Recording the challenge.** The inspectors shall make a written record of all challenges at the polling place, whether or not a ballot is issued to the challenged elector. The written record shall contain the name and address of the challenger; the name, address and serial number of the challenged elector; the cause for the challenge; the questions asked of the elector and the elector's responses to those questions. The written record also shall contain the questions asked of the challenger; the challenger's responses to those questions and whether or not the challenge was withdrawn. The record shall note whether or not the challenged elector took the oath or affirmation of eligibility.

History: CR 02-071: cr. Register September 2002 No. 561 eff. 10-1-02.

**GAB 9.06 Review by a board of canvassers.** The municipal board of canvassers may decide any challenge when making its canvass under s. 7.53, Stats. If the returns are reported under s. 7.60, Stats., a challenge may be reviewed by the county board of canvassers. If the returns are reported under s. 7.70, Stats., a challenge may be reviewed by the chairperson of the board or the chairperson's designee. The decision of any board of canvassers or of the chairperson or chairperson's designee may be appealed under s. 9.01, Stats. The standard for disqualification specified in s. 6.325, Stats., shall be used to determine the validity of challenged ballots.

History: CR 02-071: cr. Register September 2002 No. 561 eff. 10-1-02.

# State of Wisconsin\Government Accountability Board

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JUDGE GORDON MYSE  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

## NOTICE OF ELECTION FRAUD

### **An elector, who is any person qualified to vote, may not intentionally do any of the following acts:**

1. Falsely register to vote in any election;
2. Register to vote in more than one place for the same election;
3. Make false statements to the municipal clerk, board of election commissioners, or any other election official, whether or not under oath;
4. Vote at any election or meeting if he or she is not a qualified elector and does not meet applicable residence requirements;
5. Vote more than once in the same election;
6. Impersonate a registered voter to vote at an election;
7. Pose as another person to vote at an election;
8. Obtain an official ballot and neglect or refuse to cast or return the ballot unless an absentee ballot;
9. Show his or her marked or punched ballot to any person;
10. Mark his or her ballot so it is identifiable as his or her ballot;
11. Procure, assist, or advise another person to do any one of the acts described in paragraphs 1 through 10 above.

A person who does any one of the above acts commits election fraud and may be fined a maximum of \$10,000 or confined in the state prison for a maximum of 3 years, or both. Sec. 12.13(1)(a) to (h), Wis. Stats.

### **No person may do any of the following acts:**

1. Forge or falsely make the official endorsements on a ballot;
2. Deliver to an elector an official ballot with a mark, label, or punch opposite the name of a candidate or referendum question that may be counted as for or against a candidate or a question;
3. Knowingly deposit in the ballot box a ballot on which the initials of the election inspectors or the municipal or deputy clerk do not appear;
4. Tamper with voting machines, voting devices, or automatic tabulating equipment prepared for voting or counting the votes before or during any election;
5. Deface, disarrange, injure, or impair any voting machines, devices, or equipment;
6. Mutilate, injure, or destroy a ballot placed, or displayed, or to be placed or displayed on a voting machine, voting device, or automatic tabulating equipment or any appliance used in connection with the machine, device or equipment;
7. Break open or violate the seals or locks on a ballot box containing election ballots without authorization during or after the election;
8. Obtain possession of a ballot box with ballots without authorization during or after an election;
9. Conceal, withhold, or destroy a ballot box or ballots without authorization during or after an election;

10. Add fraudulently or forcibly to the ballots legally deposited in a ballot box without authorization during or after an election;
11. Reduce the number of legally deposited ballots in a ballot box without authorization during or after an election;
12. Aid or abet another person to do any of the acts described in paragraphs 7 through 11 above.

A person who does any of the above acts commits election fraud and may be fined a maximum of \$10,000 or confined in the state prison for a maximum of 3 years, or both. Sec. 12.13(3)(f), (k) and (L), Wis. Stats.

**No person may do any of the following acts:**

1. Present false identification to induce an election official to permit the person to vote;
2. Corroborate any information offered by a proposed elector to permit the person to register to vote or to vote, knowing such information to be false;
3. Falsify any affidavit or other statement relating to voter registration under chs. 5 to 12 of the election laws;
4. Remove or destroy any supplies or conveniences placed in compartments or polling booths;
5. Vote or offer to vote a ballot other than a ballot received from one of the inspectors;
6. Ask a person to show how he or she voted on a ballot;
7. Remove a ballot from a polling place before the polls are closed;
8. Refuse to obey a lawful order of an election inspector made to enforce the election laws;
9. Engage in disorderly behavior at or near a polling place;
10. Interrupt or disturb the voting or canvassing proceedings.

A person who does any of the above acts commits election fraud and may be fined a maximum of \$1,000 or imprisoned not more than 6 months, or both. Sec. 12.13 (3)(d), (g), (o), (q), (r), (u), (v), and (x), Wis. Stats.

# NOTICE

## General Information on Voting Rights under Federal Laws as Applied to Wisconsin Voters

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Voters whose names do not appear on the poll list are entitled to register to vote at the polling place by completing a voter registration application and providing acceptable proof of residence or having a resident of the municipality with acceptable proof of residence corroborate the voter registration application.

*S. 6.55 Wis. Stats.*

Voters who are unable to comply with identification requirements for mail-in registrants, are entitled to register to vote at the polling place by completing a voter registration application and providing acceptable proof of residence or having a resident of the municipality with acceptable proof of residence corroborate the voter registration application. *42 U.S.C. 15482(a), 15483(b)*

Voters who vote in an election for federal office after the established time for polls to close due to a court order or other order requiring the polls to remain open extended hours will have to vote by provisional ballot (unless those voters were in line at the time polls closed). *42 U.S.C. 15482(c)* **Note:** Section 6.96, Wis. Stats., provides that in the case of a court order extending the closing hour of the polling place, the ballot of an elector who is allowed to vote after the normal closing time will be marked with the statutory reference “s. 6.96,” and the ballot will be placed in the ballot box or container and counted with the other ballots.

Voters may have to show identifying information the first time they vote in an election, if they registered to vote for the first time in Wisconsin by mail and have not provided identifying information to the municipal clerk before election day, unless they are entitled to vote absentee under federal law. *42 U.S.C. 15483(b)*

Voters are entitled to notice of the disposition of their voter registration application. *42 U.S.C. 1973gg-6(a)(2)*

Voters otherwise qualified to vote in an election for President or Vice-President may not be denied the right to vote for those offices due solely to a failure to satisfy a durational residency requirement. *42 U.S.C. 1973aa-1*

Voters who are otherwise qualified to register and vote may be entitled to register and vote absentee in an election for federal office if they are in the military or are residing overseas. *42 U.S.C. 1973ff-1*

Voters who require assistance in voting due to blindness, disability or inability to read or write may receive assistance from a person of the voter's choice other than the voter's employer (or agent thereof) or an officer of the voter's union (or agent thereof). *42 U.S.C. 1973aa-6*

Jurisdictions must not apply standards or practices which deny or abridge the right to vote on account of race, must not deny any individual the right to vote on account of errors or omissions in registration applications which are not material to determining whether such individual is qualified to vote, and must not apply different standards and procedures to voters in determining whether they are qualified to vote. *42 U.S.C. 1971(a); 1973*

Jurisdictions must take steps to make the registration and voting process accessible to the elderly and to individuals with disabilities. *42 U.S.C. 1973ee-1, 1973ee-2, 1973ee-3*

Persons must not intimidate, threaten or coerce any other person: for registering or voting; for urging or aiding persons in registering or voting; for purposes of interfering or influencing how a person chooses to vote or not vote; or for purposes of preventing a person from voting. *U.S.C. 1971(b), 1973i(b), 1973gg-10(1); 18 U.S.C. 241, 242, 245, 594*

Election officials must not fail or refuse to permit a person to vote who is entitled to vote and must not refuse to tabulate, count and report such person's vote. *42 U.S.C. 1973i(a); 18 U.S.C. 241, 242, 608(a)*

Election officials must not deny persons of any right secured by the 26<sup>th</sup> Amendment to the U.S. Constitution (regarding not denying the right to vote to citizens 18 years of age and older on account of age). *42 U.S.C. 1973bb*

Election officials must retain and preserve for 22 months after any election that includes a federal candidate all records and papers relating to registration and voting in that election. *42 U.S.C. 1974*

## **General Information on Federal Laws Regarding Prohibitions on Acts of Fraud and Misrepresentation**

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### **Prohibited Acts of Fraud and Misrepresentation**

Persons must not make any false statement or claim that they are citizens of the United States in order to register or vote in any Federal, State, or local election. *42 U.S.C. 15544(b); 18 U.S.C. 611, 911, 1015(f)*

Persons must not vote more than once in any election that includes a federal candidate (note: this does not include voting a replacement ballot after a spoiled ballot was invalidated). *42 U.S.C. 1973i(e)*

Persons must not procure or submit materially false, fraudulent or fictitious voter registration applications in any election that includes a federal candidate. *42 U.S.C. 1973gg-10(2)(A)*

Persons must not submit false information as to name, address or period of residence in a voting district for the purpose of establishing eligibility to register or vote in any election that includes a federal candidate. *42 U.S.C. 1973i(c), 15544(a); 18 U.S.C. 608(b)*

Persons must not procure, cast or tabulate materially false, fraudulent or fictitious ballots in any election that includes a federal candidate. *42 U.S.C. 1973i(c),(e), 1973gg-10(2)(B); 18 U.S.C. 242*

Persons must not pay, offer to pay or accept payment for voting, registering to vote, withholding their vote, or voting for or against any candidate in any election that includes a federal candidate. *42 U.S.C. 1973i(c), 18 U.S.C. 597, 608(b)*

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**NOTE:** The information on this form is required by HAVA Section 302(b) and Section 5.35(6)(a)2m., 4b., Wis Stats.

#### **PRINTING INSTRUCTIONS:**

*It is recommended that the information on this form be printed on durable paper with minimum dimensions of 14" x 9½".*

## Government Accountability Board

### Wisconsin Administrative Rule GAB Chapter 4 Election Observers

#### GAB 4.01 Observers at the Polling Place

- (1) In this chapter:
  - (a) "Board" means the Government Accountability Board.
  - (b) "Chief inspector" means the chief inspector at a polling place, under s. 7.30(5)(b), Stats., or the election official that the chief inspector designates to carry out the responsibilities of the chief inspector under this chapter.
  - (c) "Clerk" means the municipal or county clerk, the executive director of the board of election commissioners, or the official designated by the clerk or director to carry out the election responsibilities under this chapter.
  - (d) "Communications media" has the meaning given in s. 11.01(5), Stats.
  - (e) "Electioneering" has the meaning given in s. 12.03(4), Stats.
  - (f) "Member of the public" means any individual who is present at any polling place, or in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.85, Stats., on any day that absentee ballots may be cast at that site, for the purpose of observation of an election or the absentee ballot voting process, excluding a candidate appearing on the ballot at that polling place or a registered write-in candidate, for an office voted on at that polling place or other location.
  - (g) "Public aspects of the voting process" means the election activities that take place at a polling place, or other observation location, that includes waiting in line to vote by inspectors, the election day registration process, the recording of electors under s. 6.79 Stats., the elector's receipt of a ballot, the deposit of the ballot into the ballot box, a challenge to an elector's right to vote, the issuing of a provisional ballot, and the counting and reconciliation process.

- (2) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the chief inspector of that intent upon entering the voting area of a polling place. The observers shall sign a form acknowledging they understand the applicable rules and will abide by them. The observers shall also list their full name, street address and municipality, and the name of the organization or candidate the observer represents, if any, on the form. The inspector shall attach the form to the inspectors' Statement, EB-104. The chief inspector shall provide the observer with a name tag supplied by the board which reads "Election Observer." Observers shall wear this name tag at all times when they are inside the polling place.
- (3) To ensure the orderly conduct of the election, the chief inspector may reasonably limit the number of observers representing a particular organization or candidate.
- (4) The chief inspector shall direct the observer to an area of the polling place designated by the chief inspector as an observation area.
- (5) The observation area shall be situated to enable observers to observe all public aspects of the voting process during the election. When physically feasible within the polling place, the observation area shall be not less than 6 feet nor more than 12 feet from the table at which electors are announcing their name and address and being issued a voter number. If observers are unable to hear the electors stating their name and address, the poll workers shall repeat the name and address. If necessary to ensure all public aspects of the process are readily observable, the chief inspector shall set up additional observation areas near the election-day registration table and area where elector challenges are handled.
- (6) Observers shall comply with the chief inspector's lawful commands or shall be subject to removal from the polling place.
- (7) All of the observers' questions and challenges shall be directed to the chief inspector.
- (8) Upon receiving a challenge to a voter's ballot at the polling place, the chief inspector shall follow the challenge procedure in Chapter GAB 9, Wis. Adm. Code. The challenge shall be recorded on the Challenge Documentation Form, EB-104c.

- (9) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the chief inspector, threatens the orderly conduct of the election or interferes with voting, the chief inspector shall warn the offending observer(s) that such conduct shall cease or the observer shall have to leave the polling place.
- (10) If, after receiving the warning provided in sub. 9, the offending observer does not cease the offending conduct, the chief inspector shall order the offending observer to depart the polling place. If the offending observer declines or otherwise fails to comply with the chief inspector's order to depart, the chief inspector shall summon local law enforcement to remove the offending observer.
- (11) While in the polling place, observers shall keep conversation to a minimum and shall try to conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and to the election inspectors and any other election officials. Failure to adhere to this subsection shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10.
- (12) Observers shall be permitted to view the poll lists, excluding the confidential portions of the lists maintained under ss. 6.35(4) and 6.79(6), Stats., as long as doing so does not interfere with or distract electors under s. 5.35(5) Stats. Observers shall not be permitted to make a photocopy or take photographs of the poll lists on election-day.
- (13) Observers shall not be permitted to handle an original version of any official election document.
- (14) Observers shall not engage in electioneering as defined in s. 12.03, Stats. If an observer violates s. 12.03, Stats., the chief inspector shall issue a warning under sub. 9 and, if the conduct continues, shall order the offending observer to depart the polling place or suffer removal under sub. 10.
- (15) Observers shall not use a cellular telephone or other wireless communication device inside the voting area to make voice calls. Such use shall result in a warning under sub. 9 and, if the conduct continues, shall result in removal under sub. 10. Text messaging and other non-audible uses of such a device are permissible.
- (16) Observers shall not engage in any conversa-

tion with election officials or other electors concerning a candidate, party, or question appearing on the ballot. Such conversation constitutes electioneering under s. 12.03, Stats., and shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10. The chief inspector may order that other conversation be minimized if it is disruptive or interferes with the orderly conduct of the election.

(17) The restrictions on voter contact under sub. 16 shall not be construed to prevent any observer from assisting an elector under s. 6.82, Stats., provided that the elector requests the observer's assistance, and provided that the assistance meets the other requirements of s. 6.82, Stats., and the observer qualifies to provide assistance under that statute.

(18) Observers shall not wear any clothing or buttons having the name or likeness of a candidate, party, or referendum group appearing on the ballot or having text which describes, states, or implies that the observer is a governmental official or has any authority related to the voting process. Wearing such apparel at the polling place constitutes a violation of s. 12.03, Stats., and shall result in a warning under sub. 9 and, if the observer refuses to comply with the chief inspector's order, shall result in removal under sub. 10.

(19) Observers may not use any video or still cameras inside the polling place while the polls are open for voting. Failure to adhere to this subsection shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10.

(20) After the polls close, candidates are allowed to be present and the prohibition of video and still cameras does not apply unless it is disruptive or interferes with the administration of the election.

#### GAB 4.02 Observers at the Municipal Clerk's Office

Elections Division  
Wisconsin Government  
Accountability Board  
Telephone: 608-265-8005  
Fax: 608-267-0500  
Help Desk: 608-261-2028  
E-mail: gab@wi.gov  
Internet: http://gab.wi.gov

August 2008

(1) Observers shall be permitted to be present at the municipal clerk's office, provided the clerk's office is located in a public building, or an alternate site for absentee voting designated under s. 6.875, Stats., on any day that absentee ballots may be cast in the office.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to view all public aspects of the absentee voting process. The observers need not be allowed behind the counter in the clerk's office.

(4) All of the observers' questions shall be directed to the clerk.

(5) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the election or interferes with voting, the clerk shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).

(6) Observers may not use any video or still camera inside the clerk's office.

**GAB 4.03 Observers at the Central Counting Location**

(1) In a municipality using a central counting location under s. 5.86, Stats., observers shall be permitted to be present at the central counting location.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to view all public aspects of the counting process.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the election or interferes with voting, the clerk shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).

(5) Observers may not use any video or still camera inside the clerk's office.

**GAB 4.04 Observers at Absentee Ballot Canvass**

(1) In a municipality using a central absentee ballot canvass location under s. 7.32, Stats., observers shall be permitted to be present at the canvass location.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of absentee ballot canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The board of absentee ballot canvassers shall establish observation areas to allow observers to view all public aspects of the canvassing process.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of absentee ballot canvassers, threatens the orderly conduct of the count, the board of absentee ballot canvassers shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).

**GAB 4.05 Observers at Absentee Voting Locations described in s. 6.875, Stats.**

(1) One observer from each of the two political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats.

(2) Observers shall be permitted to use a video or still camera inside the absentee canvass location unless it is disruptive or interferes with the administration of the absentee ballot canvass.

(3) All of the observers' questions and challenges shall be directed to the member of the board of absentee ballot canvassers designated to receive questions and challenges.

**GAB 4.06 Observers at a Recount**

(1) Pursuant to s. 9.01(1)(b)11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of canvassers, threatens the orderly conduct of the count, the board of canvassers shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).

(5) Observers shall be permitted to use a video or still camera inside the voting location.

(6) All of the observers' questions shall be directed to the special voting deputies.

**GAB 4.07 Communications Media Observers**

(1) Observers from communications media organizations shall identify themselves and the organization they represent to the chief inspector upon arriving at the polling place. The inspector shall record that information on the inspectors' statement, EB-104.

(2) Communications media observers shall be permitted to use video and still cameras provided there is no objection from the chief inspector or a voter who may be photographed and the cameras are not used in a manner that allows the observer to see or record how an elector has voted.

**GAB 4.08 Polling Place Accessibility Assessments**

(1) This section applies to disability advocates and other individuals authorized by the board to assess the compliance of a polling place with s. 5.25(4)(a), Stats.

(2) When practical, groups and individuals observing under this section shall notify the clerk at least 24 hours in advance of their intent to assess polling place accessibility.

(3) Disability advocate observers shall be allowed out of the designated observation area to take accessibility measurements to ensure compliance with polling place accessibility requirements unless it is disruptive or interferes with the administration of the election.

(4) Disability advocate observers shall be allowed to take photos and video to document compliance with the accessibility requirements unless it is disruptive or interferes with the administration of the election.

(5) Disability advocate observers shall be allowed to wear shirts or name tags identifying themselves as disability advocate observers.

(6) Election officials, including poll workers, shall facilitate the work of disability advocates in making their accessibility assessments. ###

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The special voting deputies shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The special voting deputies shall establish observation areas to allow observers to view all public aspects of the absentee voting process.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the special voting deputies, threatens the orderly conduct of the absentee voting process, the special voting deputies shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).

(5) Observers shall not be permitted to use a video or still camera inside the voting location.

(6) All of the observers' questions shall be directed to the special voting deputies.

**GAB 4.09 Observers at a Recount**

(1) Pursuant to s. 9.01(1)(b)11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of canvassers, threatens the orderly conduct of the count, the board of canvassers shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).

(5) Observers shall be permitted to use a video or still camera inside the voting location.

(6) All of the observers' questions shall be directed to the special voting deputies.

**GAB 4.10 Observers at a Recount**

(1) Pursuant to s. 9.01(1)(b)11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of canvassers, threatens the orderly conduct of the count, the board of canvassers shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).

(5) Observers shall be permitted to use a video or still camera inside the voting location.

(6) All of the observers' questions shall be directed to the special voting deputies.

**GAB 4.11 Observers at a Recount**

(1) Pursuant to s. 9.01(1)(b)11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of canvassers, threatens the orderly conduct of the count, the board of canvassers shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).

(5) Observers shall be permitted to use a video or still camera inside the voting location.

(6) All of the observers' questions shall be directed to the special voting deputies.

**GAB 4.12 Observers at a Recount**

(1) Pursuant to s. 9.01(1)(b)11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of canvassers, threatens the orderly conduct of the count, the board of canvassers shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).

(5) Observers shall be permitted to use a video or still camera inside the voting location.

(6) All of the observers' questions shall be directed to the special voting deputies.

**GAB 4.13 Observers at a Recount**

(1) Pursuant to s. 9.01(1)(b)11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of canvassers, threatens the orderly conduct of the count, the board of canvassers shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).

(5) Observers shall be permitted to use a video or still camera inside the voting location.

(6) All of the observers' questions shall be directed to the special voting deputies.

# State of Wisconsin \ Government Accountability Board

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JUDGE GORDON MYSE  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

## MEMORANDUM

**DATE:** For the September 13, 2010 Meeting

**TO:** Members, Wisconsin Government Accountability Board

**FROM:** Kevin J. Kennedy  
Director and General Counsel  
Government Accountability Board

Prepared and Presented by:  
Michael R. Haas, Staff Counsel

**SUBJECT:** Promulgation of Emergency and Permanent Rule Repealing and Recreating Chapter GAB 4

In anticipation of the 2008 General Election, the Board promulgated an emergency rule to repeal and recreate Chapter GAB 4 of the Administrative Code, related to the regulation of election observers. The rule was widely credited with assisting election inspectors with maintaining order at polling places during the heavy voter turnout in the fall of 2008. The emergency rule expired in February 2009, and in August 2009, the Board authorized a Statement of Scope to initiate promulgation of Chapter 4 as a permanent rule. The permanent rule has not been promulgated. Staff recommends that the Board again enact an emergency rule to be in effect during the 2010 General Election, and also authorize a public hearing for both the emergency rule and permanent rule revisions to Chapter GAB 4.

The text of the proposed emergency rule and permanent rule is identical to the language approved by the Board at its meeting of March 30, 2009, and incorporates changes directed by the Board after its public hearing on the original emergency rule in November, 2008.

### **Recommendation and Proposed Motion:**

Staff recommends adoption of the following motions:

- 1. MOTION:** Pursuant to §§5.05(1)(f), 227.11(2)(a) and 227.24, Wis. Stats., the Board approves the attached Notice of Order to Repeal and Recreate Chapter GAB 4, Wis. Adm. Code as an emergency rule and directs the staff to publish the Order.
- 2. MOTION:** Pursuant to § 227.24(4), Stats., the Board approves the attached Notice of Hearing and directs staff to schedule a public hearing regarding the adoption of the emergency rule and permanent rule repealing and recreating Chapter GAB 4 and to proceed with all other steps necessary to promulgate the permanent rule.

**NOTICE OF ORDER**  
**OF THE**  
**GOVERNMENT ACCOUNTABILITY BOARD**

To adopt an emergency rule repealing and re-creating chapter GAB 4, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

FINDING OF EMERGENCY:

The Government Accountability Board repeals and recreates chapter GAB 4, Election observers, to establish guidelines for election inspectors and observers alike regarding observation by “any member of the public” of the public aspects of the voting process and regarding the conduct of observers at polling places and other locations where observation of the public aspects of the voting process may take place. The Board finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

Pursuant to §227.24, Stats., the Government Accountability Board finds that an emergency exists in the Board’s May 5, 2008 decision to decline to reaffirm the administrative rule EIBd 4.01 because the rule was inconsistent with the requirements of its enabling statute, s. 7.41, Stats. The statute states that any member of the public is allowed to be present at the polls on Election Day to observe; however, it does not specify standards of conduct by which observers must abide.

The Board further finds that given the public interest in the 2010 General Election, the expected high turnout, the increasing use of observers in the polling place, and the comments of municipal and county clerks regarding the obstacles observers can pose to the orderly conduct of elections, it is necessary to codify standards to regulate the observers’ conduct and that the attached rule governing observer conduct must be adopted prior to the General Election to ensure the public peace and safety with respect to the administration of the fall elections.

ANALYSIS PREPARED BY THE GOVERNMENT ACCOUNTABILITY BOARD:

1. Statutes interpreted: Section 7.41 of the Wisconsin Statutes
2. Statutory authority: ss.5.05(1)(f), 7.41(5), and 227.11(2)(a), Stats.
3. Explanation of agency authority: This rule repeals and re-creates Chapter GAB 4, Election observers, interpreting s.7.41 of the Wisconsin Statutes – Public’s right to access. Express rule-making authority to interpret the provisions of statutes the

Board enforces or administers is conferred on it pursuant to s. 227.11(2)(a), Stats. In addition, s. 5.05(1)(f), Stats., provides that the Board may promulgate rules under ch. 227, Stats., for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration. Furthermore, the Board is empowered by s. 7.41(5), Stats., to promulgate rules consistent with the supervisory authority of a chief inspector at any polling place on election day, regarding the proper conduct of individuals exercising the right under s. 7.41, Stats., to readily observe all public aspects of the voting process in an election.

4. Related statute(s) or rule(s): Sections 5.35 (5), 7.37 (2) and 12.13 (3) (x), Stats., relating to maintaining order at the polling place, and other locations where observation of the public aspects of the voting process is taking place, and enforcing compliance with the lawful commands of the inspectors at the polling place.
5. Plain language analysis: This rule repeals and recreates rule chapter GAB 4, relating to observers and observation of the public aspects of the voting process at polling places and other locations where observation of the public aspects of the voting process is taking place.
6. Summary of, and comparison with, existing or proposed federal regulations: Observers and observation of the voting process is a matter of state regulation, not federal regulation. Consequently, no federal legislation or regulation applies to observers in Wisconsin or any other state.
7. Comparison with rules in adjacent states: The States of Illinois, Iowa, Michigan and Minnesota all have legislation that allows persons to observe at the polling places in that state, but none of those states allows any member of the public to show up at a polling place and observe because each of those states requires prospective observers to register with the municipal clerk before the election and receive authorization to observe.
8. Summary of factual data and analytical methodologies: Adoption of the rule was not predicated on any factual data or analytical methodologies, but on observation eliminating provisions of the former Ethics Board's and Elections Board's rules that were inconsistent with the provisions or intent of the new law merging those agencies into the new Government Accountability Board.
9. Analysis and supporting documents used to determine effect on small business: Preparation of an economic impact report is not required. The Government Accountability Board does not anticipate that the repeal and recreation of the described provisions will have an economic impact.
10. Small Business Impact: The creation of this rule does not affect business.

11. Agency Contact Person: Michael Haas, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3<sup>rd</sup> Floor, Madison, Wisconsin 53707-7984; Phone 608-266-0136; [Michael.haas@wi.gov](mailto:Michael.haas@wi.gov).
12. Submission of Written Comments: Comments may be submitted by October 10, 2010, to the Government Accountability Board, 212 E. Washington Ave. Third Floor, P.O. Box 7984, Madison, WI 53707-7984; ([gab.wi.gov](http://gab.wi.gov)).
13. Fiscal Estimate: The creation of this rule has no fiscal effect.
14. Initial Regulatory Flexibility Analysis: The creation of this rule does not affect the normal operations of business.

TEXT OF PROPOSED RULE:

Pursuant to the authority vested in the State of Wisconsin Government Accountability Board by ss.5.05(1)(f) and 227.(11)(2)(a), Stats., the Government Accountability Board hereby repeals Chapter GAB 4, Election observers, and creates new Chapter GAB 4, Election observers, as follows:

SECTION 1. Chapter GAB 4 is repealed.

SECTION 2. Chapter GAB 4 is created to read:

**Chapter GAB 4 Election Observers**

**GAB 4.01 Observers at the polling place.**

(1) In this chapter:

(a) “Board” means the Government Accountability Board.

(b) “Chief inspector” means the chief inspector at a polling place, under s. 7.30 (6) (b), Stats., or the election official that the chief inspector designates to carry out the responsibilities of the chief inspector under this chapter.

(c) “Clerk” means the municipal or county clerk, the executive director of the board of election commissioners, or the official designated by the clerk or director to carry out the election responsibilities under this chapter.

(d) “Communications media” has the meaning given in s. 11.01(5), Stats.

(e) “Electioneering” has the meaning given in s. 12.03 (4), Stats.

(f) “Member of the public” means any individual who is present at any polling place, or in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855, Stats., on any day that absentee ballots may be cast at that site, for the purpose of observation of an election or the absentee ballot voting process, excluding a candidate appearing on the ballot at that polling place or a registered write-in candidate, for an office voted on at that polling place or other location.

(g) “Public aspects of the voting process” means the election activities that take place at a polling place, or other observation location, that includes waiting in line to vote by inspectors, the election day registration process, the recording of electors under s. 6.79 Stats., the elector’s receipt of a ballot, the deposit of the ballot into the ballot box, a challenge to an elector’s right to vote, the issuing of a provisional ballot, and the counting and reconciliation process.

(2) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the chief inspector of that intent upon entering the voting area of a polling place. The observers shall sign a form acknowledging they understand the applicable rules and will abide by them. The observers shall also list their full name, street address and municipality, and the name of the organization or candidate the observer represents, if any, on the form. The inspector shall attach the form to the Inspectors’ Statement, EB–104. The chief inspector shall provide the observer with a name tag supplied by the board which reads “Election Observer.” Observers shall wear this name tag at all times when they are inside the polling place.

(3) To ensure the orderly conduct of the election, the chief inspector may reasonably limit the number of observers representing a particular organization or candidate.

(4) The chief inspector shall direct the observer to an area of the polling place designated by the chief inspector as an observation area.

(5) The observation area shall be situated to enable observers to observe all public aspects of the voting process during the election. When physically feasible within the polling place, the observation area shall be not less than 6 feet nor more than 12 feet from the table at which electors are announcing their name and address and being issued a voter number. If observers are unable to hear the electors stating their name and address, the poll workers shall repeat the name and address. If necessary to ensure all public aspects of the process are readily observable, the chief inspector shall set up additional observation areas near the election-day registration table and area where elector challenges are handled.

(6) Observers shall comply with the chief inspector’s lawful commands or shall be subject to removal from the polling place.

(7) All of the observers’ questions and challenges shall be directed to the chief inspector.

(8) Upon receiving a challenge to a voter’s ballot at the polling place, the chief inspector shall follow the challenge procedure in Chapter GAB 9, Wis. Adm. Code. The challenge shall be recorded on the Challenge Documentation Form, EB–104c.

(9) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the chief inspector, threatens the orderly conduct of the election or interferes with voting, the chief inspector shall warn the offending observer(s) that such conduct shall cease or the observer shall have to leave the polling place

(10) If, after receiving the warning provided in sub. 9, the offending observer does not cease the offending conduct, the chief inspector shall order the offending observer to depart the polling place. If

the offending observer declines or otherwise fails to comply with the chief inspector's order to depart, the chief inspector shall summon local law enforcement to remove the offending observer.

(11) While in the polling place, observers shall keep conversation to a minimum and shall try to conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and to the election inspectors and any other election officials. Failure to adhere to this subsection shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10.

(12) Observers shall be permitted to view the poll lists, excluding the confidential portions of the lists maintained under ss. 6.35 (4) and 6.79 (6), Stats., as long as doing so does not interfere with or distract electors under s. 5.35 (5) Stats. Observers shall not be permitted to make a photocopy or take photographs of the poll lists on election-day.

(13) Observers shall not be permitted to handle an original version of any official election document.

(14) Observers shall not engage in electioneering as defined in s.12.03, Stats. If an observer violates s. 12.03, Stats., the chief inspector shall issue a warning under sub. 9 and, if the conduct continues, shall order the offending observer to depart the polling place or suffer removal under sub. 10.

(15) Observers shall not use a cellular telephone or other wireless communication device inside the voting area to make voice calls. Such use shall result in a warning under sub. 9 and, if the conduct continues, shall result in removal under sub. 10. Text messaging and other non-audible uses of such a device are permissible.

(16) Observers shall not engage in any conversation with election officials or other electors concerning a candidate, party, or question appearing on the ballot. Such conversation constitutes electioneering under s. 12.03, Stats., and shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10. The chief inspector may order that other conversation be minimized if it is disruptive or interferes with the orderly conduct of the election.

(17) The restrictions on voter contact under sub. 16 shall not be construed to prevent any observer from assisting an elector under s. 6.82, Stats., provided that the elector requests the observer's assistance, and provided that the assistance meets the other requirements of s. 6.82, Stats., and the observer qualifies to provide assistance under that statute.

(18) Observers shall not wear any clothing or buttons having the name or likeness of, or text related to, a candidate, party, or referendum group appearing on the ballot or having text which describes, states, or implies that the observer is a governmental official or has any authority related to the voting process. Wearing such apparel at the polling place constitutes a violation of s. 12.03, Stats., and shall result in a warning under sub. 9 and, if the observer refuses to comply with the chief inspector's order, shall result in removal under sub. 10.

(19) Observers may not use any video or still cameras inside the polling place while the polls are open for voting. Failure to adhere to this subsection shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10.

(20) After the polls close, candidates are allowed to be present and the prohibition of video and still cameras does not apply unless it is disruptive or interferes with the administration of the election.

**GAB 4.02 Observers at the municipal clerk's office.**

(1) Observers shall be permitted to be present at the municipal clerk's office, provided the clerk's office is located in a public building, or an alternate site for absentee voting designated under s. 6.855, Stats., on any day that absentee ballots may be cast in the office.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to view all public aspects of the absentee voting process. The observers need not be allowed behind the counter in the clerk's office.

(4) All of the observers' questions shall be directed to the clerk.

(5) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the election or interferes with voting, the clerk shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10). (6) Observers may not use any video or still camera inside the clerk's office.

**GAB 4.03 Observers at the central counting location.**

(1) In a municipality using a central counting location under s. 5.86, Stats., observers shall be permitted to be present at the central counting location.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to view all public aspects of the counting process.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the count, the clerk shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).

(5) Observers shall be permitted to use a video or still camera inside the central count location unless it is disruptive or interferes with the administration of the election.

(6) All of the observers' questions and challenges shall be directed to the clerk.

**GAB 4.04 Observers at absentee ballot canvass.**

- (1) In a municipality using a central absentee ballot canvass location under s. 7.52, Stats., observers shall be permitted to be present at the canvass location.
- (2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of absentee ballot canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.
- (3) The board of absentee ballot canvassers shall establish observation areas to allow observers to view all public aspects of the canvassing process.
- (4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of absentee ballot canvassers, threatens the orderly conduct of the count, the board of absentee ballot canvassers shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).
- (5) Observers shall be permitted to use a video or still camera inside the absentee canvass location unless it is disruptive or interferes with the administration of the absentee ballot canvass.
- (6) All of the observers' questions and challenges shall be directed to the member of the board of absentee ballot canvassers designated to receive questions and challenges.

**GAB 4.05 Observers at absentee voting locations described in s. 6.875, Stats.**

- (1) One observer from each of the two political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats.
- (2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The special voting deputies shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.
- (3) The special voting deputies shall establish observation areas to allow observers to view all public aspects of the absentee voting process.
- (4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the special voting deputies, threatens the orderly conduct of the absentee voting process, the special voting deputies shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).
- (5) Observers shall not be permitted to use a video or still camera inside the voting location.
- (6) All of the observers' questions shall be directed to the special voting deputies.

**GAB 4.06 Observers at a recount.**

- (1) Pursuant to s. 9.01 (1) (b) 11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.
- (2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.
- (3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.
- (4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of canvassers, threatens the orderly conduct of the count, the board of canvassers shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).
- (5) Observers shall be permitted to use a video or still camera inside the recount location unless it is disruptive or interferes with the administration of the election.
- (6) All of the observers' questions and challenges shall be directed to the member of the board of canvassers designated to receive questions and challenges.

**GAB 4.07 Communications media observers.**

- (1) Observers from communications media organizations shall identify themselves and the organization they represent to the chief inspector upon arriving at the polling place. The inspector shall record that information on the inspectors' statement, EB-104.
- (2) Communications media observers shall be permitted to use video and still cameras provided the cameras are not used in a manner that allows the observer to see or record how an elector has voted and provided the cameras do not interfere with voting or disrupt the orderly conduct of the election.

**GAB 4.08 Polling Place Accessibility Assessments.**

- (1) This section applies to disability advocates and other individuals authorized by the board to assess the compliance of a polling place with s. 5.25 (4) (a), Stats.
- (2) When practical, groups and individuals observing under this section shall notify the clerk at least 24 hours in advance of their intent to assess polling place accessibility.
- (3) Disability advocate observers shall be allowed out of the designated observation area to take accessibility measurements to ensure compliance with polling place accessibility requirements unless it is disruptive or interferes with the administration of the election.

(4) Disability advocate observers shall be allowed to take photos and video to document compliance with the accessibility requirements unless it is disruptive or interferes with the administration of the election.

(5) Disability advocate observers shall be allowed to wear shirts or name tags identifying themselves as disability advocate observers.

(6) Election officials, including poll workers, shall facilitate the work of disability advocates in making their accessibility assessments.

This emergency rule will take effect upon its publication in the official state newspaper, the Wisconsin State Journal, pursuant to s.227.24, Stats.

Dated September 13, 2010

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KEVIN J. KENNEDY  
Director and General Counsel  
Government Accountability Board

## **Notice of Hearing**

### **Government Accountability Board**

NOTICE IS HEREBY GIVEN that pursuant to sections 5.05 (1) (f) and 227.11 (2) (a), Stats., and interpreting section 7.41, Stats., the Government Accountability Board will hold a public hearing to consider adoption of an emergency and permanent rule to repeal and recreate Chapter GAB 4, Wis. Adm. Code, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

### **Hearing Information**

The hearing will be held:

**Date:** October 11, 2010

**Time:** 9:30 a.m.

**Location:** Government Accountability Board Office  
212 E. Washington Ave. Third Floor  
Madison, Wisconsin

This public hearing site is accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact the person listed below.

### **Analysis Prepared by the Government Accountability Board**

1. Statutes interpreted: Section 7.41 of the Wisconsin Statutes
2. Statutory authority: ss.5.05(1)(f), 7.41(5), and 227.11(2)(a), Stats.
3. Explanation of agency authority: This rule repeals and re-creates Chapter GAB 4, Election observers, interpreting s.7.41 of the Wisconsin Statutes – Public’s right to access. Express rule-making authority to interpret the provisions of statutes the Board enforces or administers is conferred on it pursuant to s. 227.11(2)(a), Stats. In addition, s. 5.05(1)(f), Stats., provides that the Board may promulgate rules under ch. 227, Stats., for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration. Furthermore, the Board is empowered by s. 7.41(5), Stats., to promulgate rules consistent with the supervisory authority of a chief inspector at any polling place on election day, regarding the proper conduct of individuals exercising the right under s. 7.41, Stats., to readily observe all public aspects of the voting process in an election.
4. Related statute(s) or rule(s): Sections 5.35 (5), 7.37 (2) and 12.13 (3) (x), Stats., relating to maintaining order at the polling place, and other locations

where observation of the public aspects of the voting process is taking place, and enforcing compliance with the lawful commands of the inspectors at the polling place.

5. Plain language analysis: This rule repeals and recreates rule chapter GAB 4, relating to observers and observation of the public aspects of the voting process at polling places and other locations where observation of the public aspects of the voting process is taking place.
6. Summary of, and comparison with, existing or proposed federal regulations: Observers and observation of the voting process is a matter of state regulation, not federal regulation. Consequently, no federal legislation or regulation applies to observers in Wisconsin or any other state.
7. Comparison with rules in adjacent states: The States of Illinois, Iowa, Michigan and Minnesota all have legislation that allows persons to observe at the polling places in that state, but none of those states allows any member of the public to show up at a polling place and observe because each of those states requires prospective observers to register with the municipal clerk before the election and receive authorization to observe.
8. Summary of factual data and analytical methodologies: Adoption of the rule was not predicated on any factual data or analytical methodologies, but on observation eliminating provisions of the former Ethics Board's and Elections Board's rules that were inconsistent with the provisions or intent of the new law merging those agencies into the new Government Accountability Board.
9. Analysis and supporting documents used to determine effect on small business: Preparation of an economic impact report is not required. The Government Accountability Board does not anticipate that the repeal and recreation of the described provisions will have an economic impact.
10. Small Business Impact: The creation of this rule does not affect business.
11. Agency Contact Person: Michael Haas, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3<sup>rd</sup> Floor, Madison, Wisconsin 53707-7984; Phone 608-266-0136; [Michael.haas@wi.gov](mailto:Michael.haas@wi.gov).
12. Submission of Written Comments: Comments may be submitted by October 10, 2010, to the Government Accountability Board, 212 E. Washington Ave. Third Floor, P.O. Box 7984, Madison, WI 53707-7984; ([gab.wi.gov](http://gab.wi.gov)).
13. Fiscal Estimate: The creation of this rule has no fiscal effect.
14. Initial Regulatory Flexibility Analysis: The creation of this rule does not affect the normal operations of business.

TEXT OF PROPOSED RULE:

Pursuant to the authority vested in the State of Wisconsin Government Accountability Board by ss.5.05(1)(f) and 227.(11)(2)(a), Stats., the Government Accountability Board hereby repeals Chapter GAB 4, Election observers, and creates new Chapter GAB 4, Election observers, as follows:

SECTION 1. Chapter GAB 4 is repealed.

SECTION 2. Chapter GAB 4 is created to read:

**Chapter GAB 4 Election Observers**

**GAB 4.01 Observers at the polling place.**

(1) In this chapter:

- (a) “Board” means the Government Accountability Board.
- (b) “Chief inspector” means the chief inspector at a polling place, under s. 7.30 (6) (b), Stats., or the election official that the chief inspector designates to carry out the responsibilities of the chief inspector under this chapter.
- (c) “Clerk” means the municipal or county clerk, the executive director of the board of election commissioners, or the official designated by the clerk or director to carry out the election responsibilities under this chapter.
- (d) “Communications media” has the meaning given in s. 11.01(5), Stats.
- (e) “Electioneering” has the meaning given in s. 12.03 (4), Stats.
- (f) “Member of the public” means any individual who is present at any polling place, or in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855, Stats., on any day that absentee ballots may be cast at that site, for the purpose of observation of an election or the absentee ballot voting process, excluding a candidate appearing on the ballot at that polling place or a registered write-in candidate, for an office voted on at that polling place or other location.
- (g) “Public aspects of the voting process” means the election activities that take place at a polling place, or other observation location, that includes waiting in line to vote by inspectors, the election day registration process, the recording of electors under s. 6.79 Stats., the elector’s receipt of a ballot, the deposit of the ballot into the ballot box, a challenge to an elector’s right to vote, the issuing of a provisional ballot, and the counting and reconciliation process.

(2) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the chief inspector of that intent upon entering the voting area of a polling place. The observers shall sign a form acknowledging they understand the applicable rules and will abide by them. The observers shall also list their full name, street address and municipality, and the name of the organization or candidate the observer represents, if any, on the form. The inspector shall attach the form to the Inspectors’ Statement, EB–104. The chief inspector shall

provide the observer with a name tag supplied by the board which reads "Election Observer." Observers shall wear this name tag at all times when they are inside the polling place.

(3) To ensure the orderly conduct of the election, the chief inspector may reasonably limit the number of observers representing a particular organization or candidate.

(4) The chief inspector shall direct the observer to an area of the polling place designated by the chief inspector as an observation area.

(5) The observation area shall be situated to enable observers to observe all public aspects of the voting process during the election. When physically feasible within the polling place, the observation area shall be not less than 6 feet nor more than 12 feet from the table at which electors are announcing their name and address and being issued a voter number. If observers are unable to hear the electors stating their name and address, the poll workers shall repeat the name and address. If necessary to ensure all public aspects of the process are readily observable, the chief inspector shall set up additional observation areas near the election-day registration table and area where elector challenges are handled.

(6) Observers shall comply with the chief inspector's lawful commands or shall be subject to removal from the polling place.

(7) All of the observers' questions and challenges shall be directed to the chief inspector.

(8) Upon receiving a challenge to a voter's ballot at the polling place, the chief inspector shall follow the challenge procedure in Chapter GAB 9, Wis. Adm. Code. The challenge shall be recorded on the Challenge Documentation Form, EB-104c.

(9) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the chief inspector, threatens the orderly conduct of the election or interferes with voting, the chief inspector shall warn the offending observer(s) that such conduct shall cease or the observer shall have to leave the polling place.

(10) If, after receiving the warning provided in sub. 9, the offending observer does not cease the offending conduct, the chief inspector shall order the offending observer to depart the polling place. If the offending observer declines or otherwise fails to comply with the chief inspector's order to depart, the chief inspector shall summon local law enforcement to remove the offending observer.

(11) While in the polling place, observers shall keep conversation to a minimum and shall try to conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and to the election inspectors and any other election officials. Failure to adhere to this subsection shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10.

(12) Observers shall be permitted to view the poll lists, excluding the confidential portions of the lists maintained under ss. 6.35 (4) and 6.79 (6), Stats., as long as doing so does not interfere with

or distract electors under s. 5.35 (5) Stats. Observers shall not be permitted to make a photocopy or take photographs of the poll lists on election-day.

(13) Observers shall not be permitted to handle an original version of any official election document.

(14) Observers shall not engage in electioneering as defined in s.12.03, Stats. If an observer violates s. 12.03, Stats., the chief inspector shall issue a warning under sub. 9 and, if the conduct continues, shall order the offending observer to depart the polling place or suffer removal under sub. 10.

(15) Observers shall not use a cellular telephone or other wireless communication device inside the voting area to make voice calls. Such use shall result in a warning under sub. 9 and, if the conduct continues, shall result in removal under sub. 10. Text messaging and other non-audible uses of such a device are permissible.

(16) Observers shall not engage in any conversation with election officials or other electors concerning a candidate, party, or question appearing on the ballot. Such conversation constitutes electioneering under s. 12.03, Stats., and shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10. The chief inspector may order that other conversation be minimized if it is disruptive or interferes with the orderly conduct of the election.

(17) The restrictions on voter contact under sub. 16 shall not be construed to prevent any observer from assisting an elector under s. 6.82, Stats., provided that the elector requests the observer's assistance, and provided that the assistance meets the other requirements of s. 6.82, Stats., and the observer qualifies to provide assistance under that statute.

(18) Observers shall not wear any clothing or buttons having the name or likeness of, or text related to, a candidate, party, or referendum group appearing on the ballot or having text which describes, states, or implies that the observer is a governmental official or has any authority related to the voting process. Wearing such apparel at the polling place constitutes a violation of s. 12.03, Stats., and shall result in a warning under sub. 9 and, if the observer refuses to comply with the chief inspector's order, shall result in removal under sub. 10.

(19) Observers may not use any video or still cameras inside the polling place while the polls are open for voting. Failure to adhere to this subsection shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10.

(20) After the polls close, candidates are allowed to be present and the prohibition of video and still cameras does not apply unless it is disruptive or interferes with the administration of the election.

**GAB 4.02 Observers at the municipal clerk's office.**

(1) Observers shall be permitted to be present at the municipal clerk's office, provided the clerk's office is located in a public building, or an alternate site for absentee voting designated under s. 6.855, Stats., on any day that absentee ballots may be cast in the office.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to view all public aspects of the absentee voting process. The observers need not be allowed behind the counter in the clerk's office.

(4) All of the observers' questions shall be directed to the clerk.

(5) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the election or interferes with voting, the clerk shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10). (6) Observers may not use any video or still camera inside the clerk's office.

#### **GAB 4.03 Observers at the central counting location.**

(1) In a municipality using a central counting location under s. 5.86, Stats., observers shall be permitted to be present at the central counting location.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to view all public aspects of the counting process.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the count, the clerk shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).

(5) Observers shall be permitted to use a video or still camera inside the central count location unless it is disruptive or interferes with the administration of the election.

(6) All of the observers' questions and challenges shall be directed to the clerk.

#### **GAB 4.04 Observers at absentee ballot canvass.**

(1) In a municipality using a central absentee ballot canvass location under s. 7.52, Stats., observers shall be permitted to be present at the canvass location.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of absentee ballot canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The board of absentee ballot canvassers shall establish observation areas to allow observers to view all public aspects of the canvassing process.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of absentee ballot canvassers, threatens the orderly conduct of the count, the board of absentee ballot canvassers shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).

(5) Observers shall be permitted to use a video or still camera inside the absentee canvass location unless it is disruptive or interferes with the administration of the absentee ballot canvass.

(6) All of the observers' questions and challenges shall be directed to the member of the board of absentee ballot canvassers designated to receive questions and challenges.

**GAB 4.05 Observers at absentee voting locations described in s. 6.875, Stats.**

(1) One observer from each of the two political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The special voting deputies shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The special voting deputies shall establish observation areas to allow observers to view all public aspects of the absentee voting process.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the special voting deputies, threatens the orderly conduct of the absentee voting process, the special voting deputies shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).

(5) Observers shall not be permitted to use a video or still camera inside the voting location.

(6) All of the observers' questions shall be directed to the special voting deputies.

**GAB 4.06 Observers at a recount.**

(1) Pursuant to s. 9.01 (1) (b) 11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of canvassers, threatens the orderly conduct of the count, the board of canvassers shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).

(5) Observers shall be permitted to use a video or still camera inside the recount location unless it is disruptive or interferes with the administration of the election.

(6) All of the observers' questions and challenges shall be directed to the member of the board of canvassers designated to receive questions and challenges.

#### **GAB 4.07 Communications media observers.**

(1) Observers from communications media organizations shall identify themselves and the organization they represent to the chief inspector upon arriving at the polling place. The inspector shall record that information on the inspectors' statement, EB-104.

(2) Communications media observers shall be permitted to use video and still cameras provided the cameras are not used in a manner that allows the observer to see or record how an elector has voted and provided the cameras do not interfere with voting or disrupt the orderly conduct of the election.

#### **GAB 4.08 Polling Place Accessibility Assessments.**

(1) This section applies to disability advocates and other individuals authorized by the board to assess the compliance of a polling place with s. 5.25 (4) (a), Stats.

(2) When practical, groups and individuals observing under this section shall notify the clerk at least 24 hours in advance of their intent to assess polling place accessibility.

(3) Disability advocate observers shall be allowed out of the designated observation area to take accessibility measurements to ensure compliance with polling place accessibility requirements unless it is disruptive or interferes with the administration of the election.

(4) Disability advocate observers shall be allowed to take photos and video to document compliance with the accessibility requirements unless it is disruptive or interferes with the administration of the election.

(5) Disability advocate observers shall be allowed to wear shirts or name tags identifying themselves as disability advocate observers.

(6) Election officials, including poll workers, shall facilitate the work of disability advocates in making their accessibility assessments.

SECTION 3. EFFECTIVE DATE. This permanent rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.