

State of Wisconsin\Government Accountability Board

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JUDGE DAVID G. DEININGER
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board
212 East Washington Avenue, Third Floor
Madison, Wisconsin
October 23, 2012
9:00 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
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B. Reaffirmed Staff Guidance on Use of Electronic Proof of Residence Documents and Election Observer issues	3
C. Received Reports of Election Preparedness	4

Present: Judge David G. Deininger, Judge Michael Brennan, Judge Gerald C. Nichol, Judge Thomas H. Barland, Judge Thomas Cane and Judge Timothy Vocke

Staff present: Kevin Kennedy, Nathaniel E. Robinson, Jonathan Becker, Shane Falk, Michael Haas, Ross Hein, Sharrie Hauge, Katie Mueller, David Buerger, Jason Fischer, Meagan McCord-Wolfe, Colleen Adams and Reid Magney

A. Call to Order

Judge Deininger called the meeting to order at 9:00 a.m.

B. Director's Report of Appropriate Meeting Notice

Director and General Counsel Kevin Kennedy informed the Board that proper notice was given for the meeting.

Director Kennedy recognized Elections Specialist Katie Mueller, a valued employee who is leaving the G.A.B. in early November for a position at the Wisconsin Department of Transportation. He said Ms. Mueller will be greatly missed.

C. Minutes of Previous Meeting

August 28, 2012 Meeting

MOTION: Approve the Open Session minutes of the meeting of June 8, 2012 with correction of March 2013 meeting dates. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

D. Personal Appearances from Members of the Public

Walt Hadcock of Mequon, an election inspector, appeared on his own behalf to express concerns about the Board's prior decision to allow the use of electronic devices to display proof of residence documents for voter registration. He was concerned that it would be hard for election inspectors to use a stranger's phone due to the large number of diverse devices on the market. He was concerned about having to view small documents and trying to determine whether they were forged. He was concerned about the age of election inspectors and their ability to use and see electronic documents. He advocated that the website, password and user name should be identified on the GAB 131.

Carol Boettcher of Cedarburg, a chief election inspector, appeared on her own behalf to express concern about electronic proof of residence. She said election inspectors in their upper 60s and low 70s are unfamiliar with smartphone technology, and she asked the Board to reconsider its decision. She was concerned that the increased use of smartphones may result in more violations of the no photo policy. She indicated that she stresses accuracy over speed and this new policy will slow the process. She indicated that election inspectors are stressed enough, this adds another thing to be concerned about, and reminded us that we are losing election inspectors at an alarming rate.

Susan Maguire of Grafton, an election inspector, appeared on her own behalf to express concern about electronic proof of residence and whether documents could be forged. She also expressed concern about how voters in line might use their smartphones.

Barbara Struck of Mequon, an election inspector, appeared on her own behalf to express concern about electronic proof of residence, and a lack of training for accepting POR on a smartphone.

Chris Korinek of Grafton appeared on his own behalf to comment on election observer and electronic proof of residence rules, urging the Board to reconsider guidance regarding the distance observers must be from the registration table if they are to see what is on cell phones. He demonstrated the size of a regular paper utility bill versus the size of two cell phones. He indicated that at six feet away, you can see the logo on the paper utility bill, along with the name and account number, but on a cell phone there is no way an observer can view those things from six feet away.

Kenneth Dragotta of Milwaukee appeared on his own behalf to comment on election observer issues. He advocated for observer access to Election Day registration forms and discussed an overlay to voter registration forms that would allow observers to see non-confidential fields on the form. He was critical of the October 15, 2012 letter to the RPW regarding observers and emphasized that if the GAB 131 is not subject to public access at

the polling place, then observers cannot ensure adherence to state policy and statutes. He also emphasized that observers should not have limited access to in-person absentee documents because Wis. Stat. Sec. 6.84(1) establishes a legislative policy that specifically notes that absentee voting occurs outside the normal safeguards of the polling place and additional scrutiny is permitted.

Attorney Richard Esenberg of Milwaukee appeared on behalf of the Wisconsin Institute for Law and Liberty and We Are Watching Wisconsin Elections to comment about the rule that observers be at least six feet away from registration tables, and the difficulty this will cause with electronic proof of residence. He said the public has a right to see what is going on. He acknowledged that the voting process should be efficient, observers should be permitted to verify the integrity of the documents presented and that election inspectors are following proper processes. He emphasized that observers should be placed as close as possible to the process so they can identify document types and verify that they satisfy statutory requirements. He stressed that the only exception to this is when an observer is disruptive.

Discussion. Judge Vocke asked Mr. Esenberg to assume the proof of residence a voter was presenting was a drivers license and asked Mr. Esenberg how close the observers should be permitted, especially since the driver's license is so small. Mr. Esenberg acknowledged that the observers do not need to do the job of election inspectors, but they need to be close enough to identify the document type. Judge Vocke then inquired about having 6 to 12 observers and whether that would impact the proximity to the election inspectors. Mr. Esenberg advocated that the Board could limit the number of observers.

Mary Ann Hanson of Brookfield appeared on her own behalf to comment on electronic proof of residence documents. She said the Board should have waited until after the election to study electronic proof of residence before implementing it. She emphasized that Presidential elections have the largest turnout and it is already hard to keep up, now election inspectors will have to deal with electronic proof of residence documents which will slow the process further. She also indicated that observers that are six feet away from the registration table cannot see or hear the process. Ms. Hanson also objected to using volunteers in polling places because there are only three statutorily recognized election officials: clerks, election inspectors/greeters, and observers.

Ardis Cerny of Pewaukee appeared on her own behalf to comment on a number of issues including procedures for returning ballot bags to the clerk's office, taking pictures outside absentee voting locations, and difficulty in observing absentee voting in certain locations. She objected to in-person absentee voters having no requirement to state name and address before receiving a ballot.

Attorney Kristina Seseck of Madison appeared on behalf of the Republican Party of Wisconsin to express concerns about election observer rules and guidance issued by the Board. She expressed appreciation for the Board having established clearly that within 100 feet of a polling place entrance, voter advocacy groups and others may not interact with voters.

Bob Spindell of Milwaukee, a Milwaukee election commissioner, appeared on his own behalf to comment on election issues, and said 80 percent of problems revolve around groups trying to assist voters by filling out forms and getting ballots. Mr. Spindell requested the Board issue a memo indicating that observers may not solicit voters for assistance. Mr. Spindell also noted that the public should be informed of how many absentee ballots were collected as of the Friday before an election, then the weekend and Monday too.

Discussion.

Andrea Kaminski of Madison appeared on behalf of the League of Women Voters of Wisconsin to support electronic proof of residence. She also said observers should not be allowed closer than six feet to the registration table. She indicated that her bank statement is not a public document and observers certainly do not need to see her account number. She emphasized that observers should be able to see that the election inspector requested a valid identifying document and that the voter provided one. She explained that voters should be the focus and should come first, observers should not be doing the job of the election inspectors. She indicated if observers wanted access to the identifying documents on election day, the observers should become election inspectors.

Discussion. Judge Barland inquired whether Ms. Kaminski thought that the 6-12 foot rule for observers was obsolete now that electronic proof of residence documents were permitted. Ms. Kaminski emphasized that cell phones are back lit and so it may actually be easier to see those documents.

Attorney Jim Mueller of Cross Plains appeared on behalf of Wisconsin Counts to express concerns about the possibility of election fraud due to manipulation of electronic voting equipment.

Judge Deininger called a recess at 10:15 a.m. The Board reconvened at 10:24 a.m.

E. Legal Team Report on Observer and Proof of Residence Issues

Director Kennedy introduced Staff Counsel Michael Haas and Elections Specialist David Buerger, who presented oral and written reports regarding polling place issues. Attorney Haas said staff has spent a great deal of time in the past few weeks responding to political parties and other groups involving the election observer rules and electronic POR. Mr. Buerger said the Republican Party of Wisconsin has asked the Board to reconsider its August 28, 2012 decision to allow electronic forms of proof of residence documents.

Discussion.

MOTION: Reaffirm staff guidance contained in the memorandum provided in the Board materials to the Republican Party of Wisconsin, in the informational guides regarding

acceptable proof of residence and electronic proof of residence, and in the staff response to the correspondence from the Wisconsin Institute for Law & Liberty Inc.

Moved by Judge Brennan, seconded by Judge Vocke. Motion carried.

Judge Barland said he agreed with 99 percent of the motion, but felt troubled about the role of observers and dissented.

Attorney Haas next directed the Board to the memo on page 53 of the meeting materials and presented an oral and written report regarding voter advocacy groups at polling places on Election Day. He said groups have been assisting at polling places in unstructured and inconsistent ways, and clerks want to know what these groups can and cannot do.

Director Kennedy discussed the difference between volunteers used by clerks at polling places and in other capacities, versus outside groups who show up at polling places on their own and try to help voters. The problem is that well-meaning individuals may provide incorrect guidance to voters.

Discussion.

MOTION: Adopt the October 17, 2012 staff memo to clerks. Moved by Judge Cane, seconded by Judge Nichol.

Discussion.

AMENDMENT: Adopt Pages 1 and 2 of the memo, and delete paragraphs two and three on Page 3 of the memo. Moved by Judge Cane, seconded by Judge Barland.

Discussion.

Roll call vote: Barland:	Aye	Brennan:	No
Cane:	Aye	Deininger:	No
Nichol:	No	Vocke:	No

Amendment failed.

Discussion.

Judge Cane withdrew his original motion, and Judge Nichol withdrew his second.

Judge Deininger called a lunch recess at 12:20 p.m. The Board reconvened at 1:10 p.m.

Judge Deininger stated that with the original motion withdrawn, no motion is pending and the Board took no further action related to staff's memo beginning on page 53 of the meeting materials.

F. Elections Division Preparedness Report

Elections Division Administrator Nat Robinson introduced Election Specialists Jason Fischer, Meagan McCord-Wolfe and Colleen Adams, who presented oral and written reports regarding the “Back to Basics” plan for a successful Presidential and General Election November 6, 2012.

Discussion.

Judge Cane was excused from the meeting at 1:36 p.m.

Mr. Robinson assured the Board that staff, working in close conjunction with local clerks, were prepared to administer and conduct a successful November 6 General and Presidential Election. He also informed the Board about staff activities involving international observers for the upcoming election.

G. Ethics and Accountability Division Demonstration of Lobbying Website

Campaign Finance Auditor Nathan Judnic and Ethics and Accountability Specialist Molly Sessler demonstrated the division’s new lobbying website, which was launched on October 15 to lobbyists and legislators. Judnic said the new website allows lobbyists to register online. Previously, they were only able to report lobbying activities online.

H. Director’s Report

Ethics and Accountability Division Report – campaign finance, ethics, and lobbying administration

Written report from Division Administrator Becker was included in the Board packet.

Elections Division Report – election administration

Written report from Division Administrator Robinson was included in the Board packet.

Office of General Counsel Report – general administration

Written report from Kevin J. Kennedy, Sharrie Hauge, and Reid Magney was included in the Board packet.

MOTION: Accept reports as submitted in writing. Moved by Judge Vocke, seconded by Judge Barland. Motion carried unanimously.

M. Closed Session

Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation.

MOTION: Move to closed session pursuant to §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation . Moved by Judge Vocke, seconded by Judge Brennan.

Roll call vote: Barland:	Aye	Brennan:	Aye
Cane:	Aye	Deiningner:	Aye
Nichol:Aye		Vocke:	Aye

Motion carried unanimously. The Board recessed at 2:23 p.m. and convened in closed session at 2:32 p.m.

H. Adjourn

The Board adjourned in closed session at 3:56 p.m.

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The next regular meeting of the Government Accountability Board is scheduled for Tuesday, December 18, 2012, at the Government Accountability Board office in Madison, Wisconsin beginning at 9 a.m.

October 23, 2012 Government Accountability Board meeting minutes prepared by:


Reid Magney, Public Information Officer

November 14, 2012

October 23, 2012 Government Accountability Board meeting minutes certified by:


Judge Gerald Nichol, Board Secretary

December 18, 2012