

Meeting of the Board

Tuesday, May 5, 2009 - 9:30 A.M.

Government Accountability Board Conference Room

212 East Washington Avenue, Third Floor

Madison, Wisconsin

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Agenda

Open Session

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**\* Click on the bold text of each agenda item to go to that section of the materials.**

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- A. Call to Order**
- B. Director's Report of Appropriate Meeting Notice**
- C. Signing of the Canvass of the 2009 Spring Non-Partisan Election**
- D. Approval of Minutes of Previous Meeting**
- E. Report: Examining the Wisconsin Voter Experience**  
  
Dr. Barry Burden, Professor  
Political Science Department  
University of Wisconsin-Madison
- Break*
- F. Public Comment**
- G. Wisconsin Eye Request for G.A.B. Copyright Enforcement**
- H. Legislation**
  - 1. Proposed Legislation on Registration and Reporting Threshold**
  - 2. Proposed Legislation on Electronic Election Data Retention**
  - 3. Legislative Status Report**
- I. Administrative Rules**
  - 1. Rescind Rule Making Effort on Blind Trusts**
  - 2. Status Report on Pending Administrative Rules**

The Government Accountability Board may conduct a roll call vote, a voice vote, or otherwise decide to approve, reject, or modify any item on this agenda.

**J. Report on Spring Election Recount Activity**

**K. Report on Voting Equipment Security Audits**

**L. Director's Report**

Elections Division Report – election administration and SVRS.

Ethics and Accountability Division Report – campaign finance, state official financial disclosure, lobbying registration and reporting, contract sunshine.

Office of General Counsel Report – general administration

***Break***

**M. Closed Session**

- |                                |   |
|--------------------------------|---|
| 5.05 (6a) and<br>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.   |

The Government Accountability Board has scheduled its next meeting for Monday, June 22, 2009 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:30 a.m.

## ITEM D

Approval of Minutes of  
Previous Meeting

# State of Wisconsin\Government Accountability Board

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JUDGE MICHAEL BRENNAN  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

## WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD

212 East Washington Avenue, Third Floor

Madison, Wisconsin

March 30 and 31, 2009

9:30 a.m.

**DRAFT**

Not yet approved  
by the Board

### Open Session Minutes Monday, March 30, 2009

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Reaffirmed the Board's position on GAB 1.28, the "issue ad" rule.	2
B. Passed 13 motions finalizing the Board's review of former Elections and Ethics Boards formal opinions, rules, guidelines and internal operating procedures.	3, 4
C. Received a three-part report on election fraud in Wisconsin.	4
D. Authorized proceeding with promulgation of permanent administrative rule chapter GAB 4, relating to election observers.	4
E. Adopted and created administrative rule chapter GAB 22, relating to settlement offer schedules.	4
F. Amended and adopted administrative rule GAB 6.05, relating to electronic filing of campaign finance reports.	5
G. Approved the 2009 Ethics and Accountability Division legislative agenda.	5
H. Accepted a report on an early voting proposal for Wisconsin.	5
I. Adopted interim approvals of electronic voting system modifications, and gave the G.A.B. Director the authority to continue making approvals on an interim basis.	6

**Present:** Judge Michael Brennan, Judge William Eich, Judge Gerald Nichol, Judge Thomas Cane, Judge Victor Manian, and Judge Gordon Myse

**Staff present:** Kevin Kennedy, Jonathan Becker, Nat Robinson, Ed Edney, Shane Falk, Michael Haas, Barbara Hansen, Adam Harvell, Sharrie Hauge, Kyle Richmond, Steve Rossman and Tommy Winkler.

**A. Call to order**

Chairman Brennan called the meeting to order at 9:35 a.m.

**B. Director's Report of Appropriate Notice of Meeting**

The G.A.B. Director informed the Board that proper notice was given for the meeting.

**C. Approval of Minutes of Previous Meeting**

**MOTION:** Approve the minutes of the January 15, 2009, Government Accountability Board meeting. Moved by Nichol, seconded by Eich. Motion carried.

**D. Public Hearing on GAB 1.28 Scope of Regulation**

The Board heard comments from three speakers:

- Mike McCabe, Wisconsin Democracy Campaign
- Mike Wittenwyler, Wisconsin Association of Lobbyists
- Andrea Kaminski, Wisconsin League of Women Voters

**MOTION:** Reaffirm Board's position on GAB 1.28. Moved by Nichol, seconded by Myse.

Roll call vote:	Brennan:	Aye	Cane:	Aye
	Eich:	Aye	Manian:	Aye
	Myse:	Aye	Nichol:	Aye

Motion carried, 6-0.

**E. Public Comment**

1. **Paul Malischke**, Madison, appeared to comment about electronic voting systems and early voting. Materials related to this topic can be found on pages 171-189 and 201-210 of the G.A.B. meeting packet for the March 30-31, 2009 meeting.
2. **Mike McCabe**, Wisconsin Democracy Campaign, appeared to comment about the Campaign Finance Information System, and GAB 6.05, electronic filing of campaign finance reports. Materials related to this topic can be found on pages 14-59 and 146-156 of the G.A.B. meeting packet for the March 30-31, 2009 meeting.

The Chairman called a recess at 10:55 a.m. and the meeting reconvened at 11:15 a.m.

**F. Demonstration and Report on Campaign Finance Information System (CFIS)**

Jonathan Becker made a presentation to the Board and answered questions.

The Chairman called a recess for lunch at 12:00 noon. and the meeting reconvened at 12:38 p.m.

**G. Report on Affirmation of Administrative Rules, Guidelines and Formal Opinions of former Elections and Ethics Boards**  
(Presented by Shane Falk)

**MOTION:** Amend section GAB 1.15(4) to remove sentence regarding postmark filing, delete section GAB 1.15(7), and direct staff to complete rule-making procedures to amend section GAB 1.15. Moved by Nichol, seconded by Myse. Motion carried.

**MOTION:** Reaffirm forms and form numbers in GAB 1. Moved by Eich, seconded by Nichol. Motion carried.

**MOTION:** Reverse the Board's May 5, 2008, affirmation of section GAB 1.41, decline to reaffirm GAB 1.41, and direct staff to seek deletion of GAB 1.41 from the Administrative Code. Moved by Myse, seconded by Eich. Motion carried.

**MOTION:** Reaffirm GAB 1.655. Moved by Myse, seconded by Eich. Motion carried.

**MOTION:** Decline to affirm all Ethics Boards opinions from 1978 through 1989. Moved by Nichol, seconded by Manian. Motion carried.

**MOTION:** Reverse the Board's February 25, 2008, reaffirmation of pre-1990 Ethics Board opinions. Moved by Eich, seconded by Nichol. Motion carried.

**MOTION:** Reaffirm section GAB 6.04 and direct staff to continue to review the rule and suggest necessary amendments. Moved by Cane, seconded by Nichol. Motion carried.

**MOTION:** Reaffirm section GAB 6.05. Moved by Nichol, seconded by Cane. Motion carried.

**MOTION:** Reaffirm sections GAB 6.03 and GAB 21.30, and direct staff to begin rulemaking procedures to amend GAB 6.03 to reference Section 5.05(6a), Wis. Stats. and chapters 5-12. Moved by Eich, seconded by Nichol. Motion carried.

**MOTION:** Reaffirm section GAB 6.02 and direct staff to suggest at a later meeting possible amendments to address the joint agency, timing for remedying the registration statement, Campaign Finance Information System, and threshold sufficiency issues. Moved by Cane, seconded by Eich. Motion carried.

**MOTION:** Reaffirm GAB 25 and direct staff to suggest amendments to update the forms and form numbers. Moved by Nichol, seconded by Cane. Motion carried.

**MOTION:** Reaffirm chapters GAB 15 and 16 in their entirety, and sections GAB 20.02, 20.03, 20.04, 20.05, 20.06, 20.07, 20.08, 20.09, and 20.10, and direct staff to suggest possible amendments to GAB 20 to address any necessary changes to accommodate investigation and confidentiality requirements of Section 5.05, Wis. Stats. Moved by Cane, seconded by Nichol. Motion carried.

**MOTION:** Direct the G.A.B. Director to send a letter to the Legislative Reference Bureau to address administrative rules that should be repealed and correct the G.A.B. office address in the administrative rules. Moved by Eich, seconded by Cane. Motion carried.

**H. Report on Election Fraud**

(Presented by Shane Falk, Michael Haas, and Milwaukee County Assistant District Attorney Bruce Landgraf)

The report included results of a staff survey of Wisconsin district attorneys regarding cases of voter fraud, a summary of a report from the Wisconsin Attorney General's office on Election Day observations from November 4, 2008, and a summary of Mr. Landgraf's work in Milwaukee County since 2005. The report was received for information. The Board took no action.

The Chairman called a recess at 2:11 p.m. and the meeting reconvened at 2:30 p.m.

**I. Administrative Rules**

(Presented by Shane Falk and Michael Haas)

**1. GAB Chapter 4: Election Observers**

**MOTION:** Pursuant to 5.05(1)(f), 7.41(5), 227.11(2)(a), 227.14(4m), 227.15(1), and 227.16-17, Wis. Stats., approve a Notice of Proposed Order Adopting Rule Recreating Chapter GAB 4, Notice of Submittal of Recreated Chapter GAB 4 to Legislative Council Clearinghouse, and Notice of Hearing of Recreated Chapter GAB 4, and direct staff to proceed with promulgation of the permanent rule. Moved by Eich, seconded by Nichol. Motion carried unanimously.

**MOTION:** Direct staff to take all other steps necessary to complete promulgation of the permanent rule recreating chapter GAB 4, Wis. Adm. Code. Moved by Eich, seconded by Nichol. Motion carried unanimously.

**2. GAB Chapter 22: Settlement Offer Schedule**

**MOTION:** Pursuant to 5.05(2m)(c)12., 5.05(1)(f), 227.11(2)(a), 227.14(4m), 227.15(1), and 227.16-17, Wis. Stats., approve a Notice of Proposed Order Adopting Rule Creating Chapter GAB 22, Notice of Submittal of Recreated Chapter GAB 22 to Legislative Council Clearinghouse, and Notice of Hearing of Chapter GAB 22, and direct staff to proceed with promulgation of this chapter of the Administrative Code. Moved by Nichol, seconded by Eich. Motion carried.

**MOTION:** Direct staff to take all other steps necessary to complete promulgation of chapter GAB 22, Wis. Adm. Code. Moved by Nichol, seconded by Eich. Motion carried.

### **3. GAB 6.05: Electronic Filing of Campaign Finance Reports**

**MOTION:** Pursuant to 5.05(1)(f), 227.11(2)(a), 227.135, 227.14(4m), 227.15(1), and 227.16-17, Wis. Stats., approve the proposed Statement of Scope, Notice of Proposed Order Adopting Rule Amending GAB 6.05, Notice of Submittal of Amended GAB 6.05 to Legislative Council Clearinghouse, and Notice of Hearing of Amended GAB 6.05, with the following revision to section 6.05(5): “Each registrant who files a report in the electronic format specified by this rule shall also file a paper copy of that report. That paper copy of the report shall be signed by an individual authorized by the registrant to file and filed no later than the time prescribed by law for filing the report”, and direct staff to proceed with promulgation of this chapter of the permanent rule. Moved by Eich, seconded by Nichol. Motion carried.

**MOTION:** Direct staff to take all other steps necessary to complete promulgation of the permanent rule amending GAB 6.05, Wis. Adm. Code. Moved by Eich, seconded by Nichol. Motion carried.

#### **J. Ethics and Accountability Legislative Agenda** (Presented by Jonathan Becker)

**MOTION:** Approve the proposed Ethics and Accountability Division legislative agenda and direct staff to contact the Legislature, continue work on the confidentiality provisions, and make a general report back to the Board. Moved by Myse, seconded by Cane. Motion carried.

#### **K. Early Voting Report** (Presented by Nat Robinson, Ed Edney and Adam Harvell)

**MOTION:** Accept the early voting report and direct staff to seek public comments and solicit feedback from the public and legislators, and work with key legislators to implement early voting legislation. Moved by Myse, seconded by Eich. Motion carried.

#### **L. Ethics Guidelines Review Process** (Presented by Jonathan Becker)

By consensus the Board approved the proposed procedures for reviewing, revising, and creating guidelines.

#### **M. Electronic Voting Systems Updates** (Presented by Shane Falk)

**MOTION:** Direct staff to develop a process by which updates, engineering change orders, and other modifications to voting systems are reviewed and approved, returning to the Board at a future meeting with recommendations for action, including possible revision of the administrative code. Moved by Nichol, seconded by Myse. Motion carried.

**MOTION:** Ratify the interim approvals granted by the G.A.B. Director with regard to the Premier SSL certificates and ES&S AutoMARK Engineering Change Order, with permanent approval only upon a more thorough review following implementation of a developed procedure by which to process notifications of modifications to previously approved voting systems. Until the Board implements a developed procedure by which to process notifications of modifications to previously approved voting systems, the G.A.B. Director may continue to grant interim approvals as necessary and inform the Board of each approval at the first Board meeting following the granted request. Moved by Nichol, seconded by Myse. Motion carried.

The Chairman recessed the meeting at 5:08 p.m. until 9:00 a.m. the following morning.

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Open Session Minutes  
Tuesday, March 31, 2009

The Chairman called the meeting to order at 9:04 a.m., on Tuesday, March 31, 2009.

Hearing no objection, the Chairman took up Item P out of order.

**P. Presentation by Brady Williamson on Observing Elections in Bangladesh**

Brady Williamson made a presentation regarding his experience as an international observer of the recent election in Bangladesh and took questions. The presentation was for informational purposes to Board, staff and the public. The Board took no action.

**N. Director's Report**

**1. Elections Division Report**

(Presented by Nat Robinson and Anne Oberle)

The report was presented for informational purposes. The Board took no action.

The Chairman called a recess at 10:55 a.m. and the meeting reconvened at 11:11 a.m.

**2. Ethics and Accountability Division Report**

(Presented by Jonathan Becker and Tommy Winkler)

The report was presented for informational purposes. The Board took no action.

**3. Office of the Director and General Counsel Report**

(Presented by Kevin Kennedy and Sharrie Hauge)

The report was presented for informational purposes. The Board took no action.

**O. 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 Sections 5.05(6a), 19.85(1) (c), (g), (h), and 19.851 Wis. Stats., to consider written requests for advisory opinions, 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 Eich, seconded by Nichol.

Roll call vote:	Brennan:	Aye	Cane:	Aye
	Eich:	Aye	Manian:	Aye
	Myse:	Aye	Nichol:	Aye

Motion carried.

Hearing no objection, the Chairman called a recess at 12:03 p.m. The Board reconvened in closed session beginning at 12:25 p.m.

Summary of Significant Actions Taken in Closed Session

- A. Requests for Advice: Three matters considered; one formal opinion issued.
- B. Investigations: Sixteen matters considered; six matters closed – including the adoption of a finding of no probable cause In the matter of Representative Michael Huebsch and In the matter of Representative Brett Davis and All Children Matter.

Judge Eich left the meeting at 2:35 p.m.

**MOTION:** Return to open session. Moved by Manian, second by Nichol. Motion carried 5-0.

The Board again discussed the May meeting date, and reached consensus that the meeting would be only one day and would occur on May 5.

Judge Myse left the meeting at 2:46 p.m.

**Adjournment**

**MOTION:** Adjourn the meeting. Moved by Cane, seconded by Nichol. Motion carried 4-0.

The meeting adjourned at 2:47 p.m.

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The next meeting of the Government Accountability Board is scheduled for 9:30 a.m., Tuesday, May 5, 2009 in the G.A.B. Conference Room, Third Floor, 212 East Washington Avenue, Madison, Wisconsin.

March 30 and 31, 2009 Government Accountability Board meeting minutes prepared by:



\_\_\_\_\_  
Kyle R. Richmond, Public Information Officer

April 6, 2009

\_\_\_\_\_  
Date

March 30 & 31, 2009 Government Accountability Board meeting minutes certified by:

\_\_\_\_\_  
Judge Gerald Nichol, Board Secretary

May 5, 2009

\_\_\_\_\_  
Date

# ITEM E

## Report: Examining the Wisconsin Voter Experience

# State of Wisconsin\Government Accountability Board

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JUDGE MICHAEL BRENNAN  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

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## Background Information

### **Dr. Barry C. Burden, Ph.D.**

Professor, Department of Political Science  
Associate Chair/Director of Graduate Studies  
University of Wisconsin-Madison

At the Government Accountability Board's January 28, 2008, meeting, the Board authorized staff to apply for one of five \$2 million dollar election data collection grants offered by the U.S. Election Assistance Commission (EAC). The EAC was authorized by the U.S. Congress to administer a national \$10 million dollar Election Data Collection Grant Program. The goal of this national program is three fold: Gather and submit November 4, 2008, Presidential Election and Voter Participation data at the ward/percent level; Identify best election data collection practices and develop national election data collection models; and, improve election data collection business processes.

In early 2008, when staff of the Government Accountability Board commenced to focus on developing a competitive application for the EAC national \$10 million dollar Election Data Collection Grant Program, two decisions were made even before the actual writing of the application began – 1) that an independent evaluation component would be a core part of the project, and 2) that the University of Wisconsin-Madison, Department of Political Science, would be asked to be a partner with the G.A.B. for the purpose of conducting the independent assessment of the project. Rather than being an after-thought, including the UW-Department of Political Science was at the very beginning of staff's strategic thinking on how to approach the development of the grant application.

Dr. Burden was referred to us by one of his colleagues as someone who had the expertise and an interest in joining our partners. We contacted Dr. Burden, explained the project and the application process, and he quickly and graciously agreed to participate. He serves as the Principal Investigator of Wisconsin's Election Data Collection System. We believe that including the UW-Department of Political Science as a partner added great value and as such, significantly contributed to our success in being one of five states to be awarded a \$2 million dollar election data collection grant. Board members may recall the other \$2 million dollars grant-receiving states are Illinois, Minnesota, Ohio and Pennsylvania.

Last fall, Dr. Burden informed us of an opportunity to join a national study in which he and his colleagues participated about voter satisfaction with the November 4, 2008, Presidential Election. The study was nationwide; however, the data could be drilled-down by region and by state. We supplemented Dr. Burden's evaluation budget by an additional \$5,000 as our share, for the purpose of obtaining research-based information about Wisconsin's voter satisfaction.

Dr. Burden's presentation to the Board will report on findings about Wisconsin's voter satisfaction compared to other "Big Ten" states and the nation. It is our immense pleasure and honor to have someone of Dr. Burden's talents, skills, experience and extraordinary high caliber to be a strong, reliable and effective partner.

For additional information about Dr. Burden and his work, an abridged copy of his curriculum vitae is attached.

# Wisconsin Voter Experiences in the November 2008 General Election

Professor Barry C. Burden  
University of Wisconsin-Madison  
Department of Political Science

The overall experience for Wisconsin voters in the November 2008 general election was extremely positive. Not only did Wisconsin have one of the highest turnout levels in the country, but its residents were almost always able to vote quickly and without incident. Compared to voters in other Big Ten states and the rest of the country, Wisconsinites were more satisfied, experienced fewer problems, and expressed more confidence that their votes were counted fairly.

This brief report on the experiences of Wisconsin voters is based on a survey of voters in Wisconsin and other states immediately following the November 4, 2008 election. Respondents were asked about their means of voting, problems they faced, and other evaluations of the voting experience.

Data are drawn from the post-election wave of the Big Ten Battleground Poll. The statistical results are unweighted responses from telephone interviews conducted in November 2008 with 3,742 respondents nationwide. Of these respondents, 662 were in Wisconsin, 2,231 were in the other Big Ten Conference states (Indiana, Illinois, Michigan, Minnesota, Ohio, and Pennsylvania), and 849 were located in other states. Percentages do not always sum to 100 due to rounding. More information about the survey is available at [www.bigtenpoll.org](http://www.bigtenpoll.org).

Compared to other states:

- Wisconsinites were more likely to cast their ballots early in person and much less likely to vote absentee by mail.
- Voting in Wisconsin takes less time than in other states, with three-quarters of Wisconsin voters taking less than 10 minutes to vote.
- Wisconsinites were more likely to register at the polls.
- Very few Wisconsin voters encountered problems with their registration.
- Wisconsin voters were quite confident that their ballots were counted as they intended.
- Wisconsin voters were extremely satisfied with their voting experiences.

**Did you vote in person on Election Day at a polling place, in person before Election Day, or absentee by mail?**

	Wisconsin	Other Big Ten States	Rest of Nation
In person on Election Day	72%	69%	64%
In person before Election Day	16%	10%	16%
Absentee by mail	12%	21%	20%
Number of cases	623	2,123	812

**From when you arrived at the polling station, how long did it take you to vote?**

	Wisconsin	Other Big Ten States	Rest of Nation
0-10 minutes	75%	55%	66%
10-20 minutes	14%	24%	17%
20-40 minutes	7%	12%	9%
40 minutes to 1 hour	3%	4%	4%
More than 1 hour	1%	5%	4%
Number of cases	450	1,457	521

**Did you register to vote before Election Day or at the polling place?**

	Wisconsin	Other Big Ten States	Rest of Nation
Before Election Day	86%	92%	90%
At the polls	14%	8%	10%
Number of cases	377	230	81

**Was there a problem with your voter registration when you tried to vote?**

	Wisconsin	Other Big Ten States	Rest of Nation
No	99%	99%	99%
Yes	1%	1%	1%

**How confident are you that your ballot was counted as you intended? Would you say that you are very confident, somewhat confident, not too confident, or not at all confident?**

	Wisconsin	Other Big Ten States	Rest of Nation
Very confident	87%	82%	83%
Somewhat confident	11%	15%	15%
Not too confident	1%	1%	1%
Not at all confident	0%	1%	1%
Number of cases	619	2,095	803

**Thinking about your overall experience at the polls when you voted, how satisfied are you with your voting experience?**

	Wisconsin	Other Big Ten States	Rest of Nation
Very satisfied	90%	85%	86%
Somewhat satisfied	9%	13%	12%
Not too satisfied	1%	1%	1%
Not satisfied at all	1%	1%	1%

# Barry C. Burden

*Abridged Curriculum Vitae*

## Contract Information

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## Academic Positions

Professor of Political Science, University of Wisconsin-Madison (2006-present)

Associate Chair/Director of Graduate Studies (2007-2010)

Associate Professor of Government, Harvard University (2003-2006)

Assistant Professor of Government, Harvard University (1999-2003)

Assistant Professor of Political Science, Louisiana State University (1998-9)

## Education

Ph.D. The Ohio State University (1998)

Department of Political Science

B.A. Wittenberg University (1993)

Major: Political Science

Minors: Mathematics & Psychology

Phi Beta Kappa

## Books Published

*Personal Roots of Representation*. 2007. Princeton, NJ: Princeton University Press.

*Uncertainty in American Politics*. 2003. New York, NY: Cambridge University Press. (editor)

*Why Americans Split Their Tickets: Campaigns, Competition, and Divided Government*. 2002.  
Ann Arbor, MI: The University of Michigan Press. (with David C. Kimball)

## Selected Publications on U.S. Elections

- “Ballot Regulations and Multiparty Politics in the States.” 2007. *PS: Political Science & Politics* 40:669-73.
- “Institutions and Policy Representation in the States.” 2005. *State Politics and Policy Quarterly* 5:373-93.
- “Minor Parties and Strategic Voting in Recent U.S. Presidential Elections.” 2005. *Electoral Studies* 24:603-18.
- “A Technique for Estimating Candidate and Voter Positions.” 2004. *Electoral Studies* 23:623-39.
- “Candidate Positioning in U.S. Congressional Elections.” 2004. *British Journal of Political Science* 34:211-27.
- “Internal and External Effects on the Accuracy of NES Turnout.” 2003. *Political Analysis* 11:193-5.
- “Voter Turnout and the National Election Studies.” 2000. *Political Analysis* 8:389-98.
- “Party Attachments and State Election Laws.” 2000. *Political Research Quarterly* 53:57-70.  
(with Steven Greene)
- “Calculating Voter Turnout in U.S. House Primary Elections.” 1999. *Electoral Studies* 18:89-99.  
(with Marni Ezra)
- “Deterministic and Probabilistic Voting Models.” 1997. *American Journal of Political Science* 41:1150-69.
- “The Possibilities of Congressional Elections.” Forthcoming. In *The Oxford Handbook of American Elections and Political Behavior* edited by Jan E. Leighley. Oxford, UK: Oxford University Press. (with Amber Wichowsky)
- “Multiple Parties and Ballot Regulations.” Forthcoming. In *Democracy in the States: Experiments in Elections Reform*, ed. Bruce E. Cain, Todd Donovan, and Caroline J. Tolbert. Washington, DC: Brookings Institution Press.
- “Laws Governing Suffrage.” 2005. In *Guide to Political Campaigns in America*, ed. Paul S. Herrnson. Washington, DC: CQ Press.
- “Family Feud in Massachusetts: How Intraparty Dynamics Influence Redistricting.” 2005. In *Redistricting in the New Millennium*, ed. Peter F. Galderisi. Lanham, MD: Lexington Books.
- “Vote Likelihood and Institutional Trait Questions in the 1997 NES Pilot Study.” 1998. Report to NES Board of Overseers. (with Janet M. Box-Steffensmeier)

## **Selected Honors and Awards**

Hamel Family Faculty Fellow (2008-2012) – *one of ten UW-Madison Letters and Science faculty members chosen for this honor*

Emerging Scholar Award (2005) – *given by the Political Organizations and Parties section of APSA for significant research by a scholar receiving her or his doctorate within the past seven years*

Wittenberg University Outstanding Young Alumnus Award (2002) – *given to a graduate of the last decade to recognize professional achievement*

Winner of the Council of Graduate Schools/University Microfilms International Distinguished Dissertation Award (2000) – *given to recognize best social science dissertation completed nationwide between 1998 and 2000*

## **Examples of Data Collections**

2000 and 2004 presidential election returns by county (n = 8,000)

2000 mail survey of congressional candidates (n = 970)

2001 telephone survey of Ohio residents conducted by OSU Survey Research Center (n = 800)

2005 national internet survey conducted by Harris Interactive (n = 100,000)

1952 to 2000 presidential and congressional election returns by congressional district (n = 5,655)

1983 to 2004 patterns of federal program spending by congressional district (n = 9,135)

## **Teaching Experience**

### *Undergraduate courses:*

- Political Behavior
- American Public Opinion
- The Legislative Process
- Techniques of Political Analysis
- The Practice of Political Science Research

### *Graduate courses:*

- American Politics Field Seminar
- Mass Political Behavior
- Congress and Legislative Politics
- American Electoral Politics
- Readings in Advanced Statistical Methods
- Quantitative Research Design
- Political Institutions

## **Selected Professional Activities and University Service**

Associate Chair/Director of Graduate Studies, Department of Political Science (2007-present)  
Chair, Graduate Admissions and Fellowships Committee, Graduate Program Committee,  
and Teaching Assistant Evaluation Committee

### Invited presentations:

Boston Museum of Science, Dartmouth College, Newton Center for Lifetime Learning,  
Stanford University, SUNY-Stony Brook, University of Houston, University of  
Minnesota, University of Notre Dame, University of Rochester, Utah State University,  
Vantage Point, Wisconsin Academy of Sciences, Arts, & Letters, Wisconsin Department  
of Revenue, and Yale University

Occasional source for media coverage of politics including *Atlanta Journal-Constitution*,  
*Associated Press*, *The Baltimore Sun*, *The Boston Herald*, *Campaigns & Elections Magazine*,  
*Chicago Tribune*, *Cleveland Plain Dealer*, *Congressional Quarterly Weekly Report*, *Dallas  
Morning News*, *Des Moines Register*, *Los Angeles Times*, *National Journal*, *The New Republic*,  
*The New York Times*, *USA Today*, *The Wall Street Journal*, and *The Washington Post*

# ITEM G

Wisconsin Eye Request for  
G.A.B. Copyright  
Enforcement

# State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

---

## MEMORANDUM

**DATE:** For the May 5, 2009 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:** WisconsinEye Request Regarding Content Use

As you may recall, Chris Long, President and CEO of WisconsinEye, attended the Board meeting in January and asked the Board to consider assisting the network in preventing use of its broadcast footage for political purposes. At the Board's direction, Board staff met with Mr. Long and Attorney Mike Wittenwyler, and Attorney Wittenwyler subsequently provided correspondence to outline the specifics of WisconsinEye's request, a copy of which is attached.

Background information regarding WisconsinEye and its contractual relationship with both houses of the Legislature is included in Attorney Wittenwyler's letter. In short, WisconsinEye is a privately funded, not-for-profit public affairs network, often described as "Wisconsin's CSPAN," which provides television and internet coverage of state government meetings and events, as well as public policy discussions and community events. The network also covers campaign events and airs interviews with political candidates. WisconsinEye has covered many of the G.A.B. meetings since the agency's creation. Its broadcasts are covered by some cable networks throughout the state, and its website, [www.wiseye.org](http://www.wiseye.org), provides free live and archived footage of meetings and events. Attached to this memo are some sample screen shots from WisconsinEye's website, including the user agreement notice which appears before a viewer is allowed to see video content.

The concern of WisconsinEye is that at least two legislative candidates used its content during the 2008 election cycle for political purposes and without the network's consent. WisconsinEye executed license agreements with both the State Senate and the State Assembly in 2005, and has a standard user agreement it requires as a condition of subsequent use of its content. Those agreements prohibit users, specifically legislators and legislative staff, from using WisconsinEye content for political purposes, and place some responsibility on legislative leaders to enforce that prohibition. The Legislature, its members, and its staff are subject to the User Agreement, but candidates who are not state legislators and their campaigns are not parties to the agreement, although they might separately be prosecuted for copyright infringement.

WisconsinEye seeks the G.A.B.'s assistance in reducing the likelihood of use of its content for political purposes in future election cycles. The network acknowledges that the G.A.B. is not a party to its agreements with the Assembly and Senate, and that it is responsible for protecting its own copyright interests. However, WisconsinEye believes that, given its unique contractual relationship with the State and the public service it provides, as well as the G.A.B.'s general role in overseeing Wisconsin's election and campaign finance laws, the G.A.B. could assist in educating candidates regarding improper use of WisconsinEye coverage.

Specifically, WisconsinEye requests that the G.A.B. provide a link from its website to the WisconsinEye website page displaying its copyright notice and user agreement. The request is for the link to be located on pages of the G.A.B. website used for candidate committee registration. WisconsinEye also requests that the G.A.B. mail an informational flyer to candidates describing the network's copyright privileges and user agreement restrictions.

After careful consideration, Board staff recommends declining WisconsinEye's request for several reasons. First, the parties to the user agreement are the Assembly and Senate and WisconsinEye, and the G.A.B. has no role in enforcing that agreement. Second, the G.A.B. has no authority to enforce or assist in enforcing WisconsinEye's copyright privileges. If a legislative candidate, whether an incumbent or challenger, used the network's coverage for a political purpose, or without its consent, the G.A.B. would have no legal basis to assert itself into a dispute between the parties.

Third, while WisconsinEye has a unique contractual relationship with the legislative bodies and other state agencies, it is still a private organization and staff believes the better public policy is to avoid setting a precedent to get involved in such requests when there is no clear purpose related to G.A.B.'s statutory duties and authority. Finally, simply as a procedural matter, the G.A.B. does not send any standard mailing out to candidates when they register in which we could insert an informational flyer from WisconsinEye.

Staff suggests that there are other alternatives for WisconsinEye to accomplish a systematic outreach to candidates to educate them regarding the network's copyright and user agreement concerns. For instance, WisconsinEye could send its flyer directly to all registered candidates, which the G.A.B. could facilitate by providing Declaration of Candidacy forms containing candidate addresses, or a list of registered candidates with addresses. As another option, the legislative leadership, which is a party to the agreements with WisconsinEye, could distribute its informational flyer to candidates in their respective parties.

Either of those approaches would keep responsibility for enforcing the User Agreements with WisconsinEye and the Senate and Assembly, the parties to their agreements. The only added benefit of having the informational flyer distributed by G.A.B. would seem to be the implication that the Board is placing its regulatory stamp of approval on the legal position of WisconsinEye. While that position may seem to be clear and uncomplicated on its face, staff believes that such action would not be an appropriate use of the agency's regulatory authority for the reasons stated above. Staff does intend to provide a link on the G.A.B. website to WisconsinEye's homepage, as we do for other organizations which provide valuable information to our users and customers, but recommends declining the network's request related to its broadcast content.

***Recommendation/Proposed motion:***

Staff recommends that the Board decline the request of WisconsinEye to assist in efforts to protect its rights under copyright law and its User Agreements.

April 16, 2009

RECEIVED  
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www.gklaw.com

**VIA HAND DELIVERY**

**HAND DELIVERED**

Jonathan Becker  
Division Administrator –  
Ethics & Accountability  
Government Accountability Board  
212 East Washington Ave, Third Floor  
Madison, WI 53703

Dear Mr. Becker:

Thank you for meeting with Chris Long and me on February 12, 2009 to discuss how we may better communicate with candidates about WisconsinEye and its unique involvement with state government.

WisconsinEye, as we have discussed, is a privately funded and independent section 501(c)(3) organization, established to provide Wisconsin with a trusted, nonpartisan and unbiased public service. In the simplest of terms, WisconsinEye is capturing on video our state's governmental processes, public policy discussions, civic forums and community events. It is creating a video archive of Wisconsin's people and events and making it all available through television and the Internet ([www.wiseye.org](http://www.wiseye.org)).

While it provides an invaluable resource to state government, WisconsinEye receives no direct or indirect state government support. WisconsinEye has, however, entered into agreements with the State Senate and Assembly (copies enclosed) in which it agrees to provide state residents with public affairs coverage in exchange for the ability to install cable and equipment in the State Capitol. Moreover, these agreements provide that WisconsinEye must make its programming available at no cost to state government. (Article II, Section F(4)) Both of these agreements were approved by the members of the respective legislative bodies and are administered by the Department of Administration.

WisconsinEye's content is wholly owned by WisconsinEye and that content is protected from duplication and further distribution under copyright law. In addition to these copyright restrictions on subsequent use, WisconsinEye's agreements with the State of Wisconsin go even further and expressly prohibit any political or commercial use of Wisconsin Eye's content. (Article IV, Section A) It was critical to include these additional restrictions on subsequent use in order to obtain legislative approval of WisconsinEye's agreement with the state.

As a condition of subsequent use of WisconsinEye's content by state government, a signed user agreement must be entered into. (A copy of the user agreement is enclosed.) In this user agreement, members of the legislature have agreed to strict controls on the editing and reuse by the legislature and its members of Wisconsin Eye's legislative coverage. (Section 5(d)) Moreover, use of WisconsinEye's content in campaign communications as well as the distortion or misrepresentation of the content by members of the legislature is expressly prohibited. (Sections 2 and 5)

As Chris Long described in his testimony at the Government Accountability Board's January meeting, the members of the legislature are aware of and have abided by the terms of the user agreement. However, during the 2008 election cycle, a few non-incumbent legislative candidates misused WisconsinEye's content in violation of copyright law and the terms of the user agreement.

To avoid any further potential misuse by candidates during the 2010 election cycle, WisconsinEye is actively working to further educate the public about the organization's nonpartisan mission and the appropriate use of its content. This education campaign is particularly important given the growing amount of WisconsinEye content that is created and available on its website each day.

As part of its effort, WisconsinEye is seeking the assistance of the Government Accountability Board in educating candidates for public office. Specifically, WisconsinEye is requesting that:

- The Government Accountability Board provide links from its website to the WisconsinEye website.
  - The link would be to WisconsinEye's copyright notice page and user agreement ([http://www.wiseye.org/wisEye\\_programming/wisEye\\_Copyright.html](http://www.wiseye.org/wisEye_programming/wisEye_Copyright.html)).
  - The link would be from the G.A.B.'s page on candidate registration as well as the candidate checklists page and any other page that the G.A.B. believes is appropriate.
- The Government Accountability Board include printed information on WisconsinEye with the materials that it sends to candidates.
  - A copy of the proposed informational flyer is enclosed.
  - The flyer would be printed by WisconsinEye, at its own expense, and provided to the G.A.B.
  - In the event that inclusion of the flyer increases the G.A.B.'s mailing cost, WisconsinEye would be willing to contribute toward the increased cost.

Jonathan Becker  
Government Accountability Board  
April 16, 2009  
Page 3

Please keep in mind that these are proposed requests and WisconsinEye is open to further discussion on each item. We look forward to your reaction to this proposal and in working with the GAB on this project.

Sincerely,

GODFREY & KAHN, S.C.

A handwritten signature in black ink, appearing to read "M B Wittenwyler", with a long, sweeping underline.

Mike B. Wittenwyler

Encls.

cc: Chris Long (via U.S. Mail w/ Encls.)  
Mike Haas (via Hand Delivery w/ Encls.)

3582810\_1

# WISCONSIN EYE - COPYRIGHT NOTICE

DRAFT

## USE OF WISCONSINEYE'S CONTENT IN CAMPAIGN COMMUNICATIONS IS EXPRESSLY PROHIBITED.

WisconsinEye is Wisconsin's version of the national C-SPAN. It is a private, not-for-profit public affairs network that covers civic and community life statewide, including nonpartisan, gavel-to-gavel coverage of state government proceedings in Madison.

WisconsinEye covers all floor sessions and many committee meetings of the State Senate and State Assembly; all State Supreme Court oral arguments; news conferences and other public appearances by the Governor and Attorney General; and selected meetings and activities of other state departments and agencies. The network also airs a wide range of other studio- and field-produced public affairs programming. WisconsinEye is carried 24/7 on the Charter (Channel 995) and Time Warner (Channel 163) cable systems as well as on the state's BadgerNet system. The network also offers live video streaming and a permanent video archive at [www.wiseye.org](http://www.wiseye.org).

WisconsinEye's extensive coverage of proceedings in the Capitol is produced as a public service under contract to the State of Wisconsin. The network, which launched in 2007, has installed 70 digital robotic camera positions in the four wings of the Capitol that cover all three branches of government. However, the network receives no state funding and is not a state agency. WisconsinEye is unique among the nearly two dozen state networks operating nationally in that it receives no direct or indirect state support and is therefore editorially independent of government.

WisconsinEye is managed by an experienced team of broadcast professionals and governed by a nonpartisan board of directors with bipartisan representation from the public policy, media, and business sectors. The network's start-up has been funded by a bipartisan donor community of foundations, organizations and associations, corporations, and individuals. WisconsinEye's long-term business plan also includes earned revenue from cable and other carriers; program underwriting; and sales of archived programming.

**WisconsinEye's content is wholly owned by WisconsinEye and, because the network is not state-funded, its content is not subject to the state's open records law. WisconsinEye's content on-air and online is fully protected by United States and international copyright law and may not be recorded, reproduced, distributed or otherwise used without the express written consent of the network. WisconsinEye is committed to serving the public interest by providing an unbiased and unedited view of public life in our state. The network does not condone, support or much less authorize the use of its content for partisan political purposes.**

**To that end, WisconsinEye's contract with the State of Wisconsin expressly prohibits any political use of its coverage of state proceedings. The network's user agreement forbids political or commercial use of its content and imposes strict controls on the editing and reuse of its legislative coverage by the legislature and its members, as well as by others. Use of WisconsinEye's content in campaign communications as well as the distortion or misrepresentation of the network's content is expressly prohibited.**

**WisconsinEye's copyright notice and user agreement are posted at [http://www.wiseye.org/wiseye\\_programming/wiseye\\_copyright.html](http://www.wiseye.org/wiseye_programming/wiseye_copyright.html).**

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<b>Friday   April 24</b>				
7:15am	Wisconsin State Supreme Court: Douglas Osborn v. Harold Dennison	INFO	WATCH	▼

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**04.13.09 | DNR Spring Hearing: Proposed Wildlife and Fisheries Rules and Conservation Congress Meeting (Part 1)**

The 2009 Annual DNR Spring Fish and Wildlife Hearings and Conservation Congress County Meeting took place on Monday, April 13, 2009, from Middleton High School in Middleton.

[Watch](#) | [Listen](#) | [Link](#)

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**04.13.09 | DNR Spring Hearing: Proposed Wildlife and Fisheries Rules and Conservation Congress Meeting (Part 2)**

Continued.

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**04.13.09 | DNR Spring Hearing: Proposed Wildlife and Fisheries Rules and Conservation Congress Meeting (Part 3)**

Continued.

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**02.24.09 | Government Accountability Board Candidate Committee Member Selection**

Wisconsin Supreme Court Chief Justice Shirley Abrahamson chose the names of four Court of Appeals judges Tuesday to serve on the Government Accountability Candidate Committee. The current committee members' terms will expire on March 1. The committee serves as the nominating body for members of the Wisconsin Government Accountability Board, and is made up of one judge from each of the state's four Court of Appeals districts. Committee members are chosen by lot by the Chief Justice in the presence of the other members of the Supreme Court and serve a two-year term.

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**02.19.09 | UW Evidence-Based Health Policy Briefing: Accountable Care Organizations**

The UW Evidence-Based Health Policy Project hosted a briefing on February 19, 2009, titled "Accountable Care Organizations: A Path Forward to Quality and Savings." The event took place at the State Capitol and featured the following presenters: Donna A. Friedsam, Associate Director, UW Population Health Institute; Patrick Remington, UW Population Health Institute; and Elliot Fisher, Professor of Medicine and Community and Family Medicine at Dartmouth Medical School.

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**02.13.09 | Geographic Information Systems Day: Maps Matter - Working Together for Wisconsin (Part 1)**

The State Agency Geographic Information Coordination Team presented Geographic Information Systems Day from the State Capitol in Madison on Friday, February 13, 2009. The event was titled, "Maps Matter: Working Together for Wisconsin."

## User Agreement

This video content is owned by WisconsinEye Public Affairs Network, Inc. and may not be used for commercial or political purposes, or otherwise reproduced, downloaded, distributed or used except in accordance with the WisconsinEye User Agreement. [Click here to view the User Agreement.](#) Check "Agree" if you agree to the terms of the User Agreement; otherwise click "Disagree."

ITEM H

Legislation

# ITEM H.1

## Proposed Legislation on Registration and Reporting Threshold

# State of Wisconsin \ Government Accountability Board

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Post Office Box 7984  
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JUDGE MICHAEL BRENNAN  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For May 5, 2009 Meeting

**TO:** Members, Government Accountability Board

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

Prepared and Presented by:  
Shane W. Falk, Staff Counsel  
Government Accountability Board

**SUBJECT:** Revision of §11.23, Wis. Stats.  
Registration and Reporting by Individuals and Groups for Referenda

### Issue

The Honorable J.P. Stadtmueller, U.S. District Judge, Eastern District of Wisconsin, issued a declaratory ruling on March 16, 2009 declaring §§11.23 and 11.30, Wis. Stats., unconstitutional as applied to the Wisconsin plaintiff of that case. A legislative change is necessary.

### Background

On March 10, 2008, John Swaffer, Jr., filed a civil action for declaratory and injunctive relief arising under the First and Fourteenth Amendments to the U.S. Constitution. The action was filed in the United States District Court, Eastern District of Wisconsin, and alleged that Mr. Swaffer's constitutional rights were infringed by §§11.23 and 11.30, Wis. Stats., which involve the organizational, reporting, disclosure and disclaimer requirements imposed on individuals by Wisconsin's election laws.

Mr. Swaffer filed the action in anticipation of an April 1, 2008 town of Whitewater election involving three separate referenda to allow liquor sales and issuance of liquor licenses in Whitewater. Mr. Swaffer opposed allowing liquor sales and licenses as the town had been "dry" since 1977. Mr. Swaffer sought to send post cards to residents of Whitewater in which he opposed the referenda. Mr. Swaffer sought to spend between \$200.00 and \$300.00, with a single contributor providing \$120.00.

Currently, § 11.23 (1), Wis. Stats., requires individuals or groups promoting or opposing a referendum to file a registration statement before making disbursements, receiving

contributions, or incurring obligations in excess of \$25.00 in the aggregate in a calendar year. In addition, §11.23(4), Wis. Stats., requires individuals or groups promoting or opposing a referendum to file campaign finance reports as provided in §§11.06, 11.19, and 11.20, Wis. Stats. Once an individual or group meets the §11.23, Wis. Stats., threshold of \$25.00, the individual or group is also subject to reporting requirements of §11.05, Wis. Stats., and the source attribution requirements of §11.30, Wis. Stats.

The Honorable J.P. Stadtmueller, U.S. District Judge, Eastern District of Wisconsin, issued a declaratory ruling on March 16, 2009 declaring §§11.23 and 11.30, Wis. Stats., unconstitutional as applied to Mr. Swaffer. However, Judge Stadtmueller did not rule these statutes facially unconstitutional. Without remedial policy action and without a legislative change, the State of Wisconsin is likely to be sued over and over as a result of the current statutory requirements.

## **Discussion**

A. In ruling that §§11.23 and 11.30, Wis. Stats., were unconstitutional as applied to Mr. Swaffer, Judge J.P. Stadtmueller applied the following reasoning:

### **§11.23, Wis. Stats.:**

The Supreme Court has recognized that compelled disclosure of campaign related activities “can seriously infringe on privacy of association and belief guaranteed by the First Amendment.” *Buckley v. Valeo (Buckley I)*, 424 U.S. 1, 64 (1976) (citations omitted). When disclosure laws regulate the “independent expenditures made to further individuals’ political speech,” the court must closely scrutinize the law to ensure it comports with the First Amendment’s commands. *See Davis v. Fed. Election Comm’n*, 128 S.Ct. 2759, 2774-75 (2008). To survive the court’s scrutiny, “there must be a relevant correlation or substantial relation between the governmental interest and the information required to be disclosed, and the governmental interest must survive exacting scrutiny.” *Id.* at 2775 (citations and internal quotation marks omitted). Exacting scrutiny requires the state have a compelling interest in obtaining the disclosures it seeks. *See Buckley I*, 424 U.S. at 64 n.74 (citing *NAACP v. Alabama*, 357 U.S. 449, 463 (1958)).

In support of their motion, plaintiffs argue that § 11.23 significantly burdens First Amendment activities, and fails “strict scrutiny,” as plaintiffs call it, because any government interest the defendants have in enforcing § 11.23 on individuals wishing to spend over \$25.00 to advocate the passage or defeat of a referendum may be achieved through less restrictive means. Plaintiffs assert that the registration, record keeping and reporting requirements of §11.23 are onerous on individuals seeking to make their voice heard on a referendum issue. Plaintiffs further argue that the traditional interests proffered in support of election disclosure laws, including promotion of an informed electorate, preventing fraud and corruption and detecting election law violations, are not compelling when applied to individuals advocating their position on a referendum.

In opposing plaintiffs' motion, defendants appear to have opted not to argue in favor of upholding § 11.23, and defendants never explicitly put forth any governmental interests that are furthered by § 11.23. To be sure, the court is under no obligation to make the defendants’ case for them. *See Pelfresne v. Village of Williams Bay*, 917 F.2d 1017, 1023 (1990) (“A litigant who fails to press a point by supporting it with pertinent authority, or by showing why it is sound despite a lack of supporting authority or in the face of contrary authority, forfeits the point”). However, defendants do argue that in certain circumstances, voters may have a

compelling interest in knowing the identity of individuals who have both personal and financial interests in the outcome of a referendum, and who are attempting to influence the result of that referendum. As an example, defendants posit that if plaintiffs in this case had been commercial purveyors of liquor, presumably in a neighboring town, voters would have a compelling interest in knowing about plaintiffs' attempt to influence the referendum vote.

The court finds that the disclosure requirements set forth in Wis. Stat. § 11.23 regulate plaintiffs' independent expenditures in furtherance of their political speech, and in doing so significantly encroach on plaintiffs' First Amendment interests. On its face, this section, along with its correlating sections in chapter 11 of the Wisconsin Statutes, requires any individual disbursing, receiving or incurring obligations in excess of \$25.00 in a calendar year for the purpose of promoting or opposing a referendum in Wisconsin: (1) file a registration statement with a designated filing official; (2) keep a dedicated bank account; (3) refuse anonymous contributions greater than \$10.00; (4) keep records of all contributions received, disbursements made and obligations incurred for at least three years after the referendum; and (5) file preelection reports and a termination statement with the GAB. *See* Wis. Stat. §§ 11.23, 11.06, 11.19, 11.20(3)(k-l). The registration statement must include the individual's name, address, the "nature of any referendum which is supported or opposed," and the name and address of the dedicated depository account. Wis. Stat. § 11.05 (2). These requirements act to inhibit the open exchange of ideas and political conversations on referendum issues, at least with respect to individual Wisconsinites, like plaintiffs, who seek to inject their opinions into the public debate. Therefore, § 11.23 warrant the court's exacting scrutiny. *See generally Buckley v. Am. Constitutional Law Found., Inc. (Buckley II)*, 525 U.S. 182, 192 (1999).

Applying exacting scrutiny, the court finds that § 11.23, as currently written, fails to address the matter of a relevant correlation or substantial relation between a compelling governmental interest and the information required to be disclosed. The only interest that the state, via the defendants, has put forth is the interest of the voters knowing who is seeking to influence a referendum vote. Indeed, the court has no doubt that the electorate's interest in knowing "where political money comes from and how it is spent," can be sufficiently compelling to warrant mandatory campaign finance disclosure laws. *Buckley I*, 424 U.S. at 66-67. The court also recognizes that campaign finance disclosure may meet the important goal of bringing light to political corruption, although the Supreme Court has held that the potential for corruption "simply is not present in a popular vote on a public issue." *Bellotti*, 435 U.S. at 790.

However, the court finds that the public's interest in knowing where political money is coming from and how it is spent is substantially diminished in the context of § 11.23. Referendum questions and candidate elections may often appear on the same ballot, but they are fundamentally different. As the Supreme Court noted, "[t]he direct participation of the people in a referendum . . . increases the need for the widest possible dissemination of information from diverse and antagonistic sources." *Bellotti*, 435 U.S. at 790 n.29 (citations and internal quotation marks omitted). In this case, the referendum questions asked voters in the Town of Whitewater to weigh in on whether to keep their town dry, a question towns and states throughout the country have grappled with since the ratification of the Twenty-First Amendment of the Constitution in 1933. *See* U.S. Const. amend. XXI, § 2; *Philly's v. Byrne*, 732 F.3d 87, 93-94 (7th Cir. 1984) (upholding the constitutionality of using a referendum to regulate local sales of liquor). The government's interest in keeping the public informed of where and how the teetotalers of Whitewater are spending their money to rally support against a liquor referendum is not commensurate with the government's interest in knowing which candidates for public office those same teetotalers financially support. *See Buckley II*, 525 U.S. at 203-04 (noting that financing advocacy of ballot initiatives do not involve the same risks of corruption and fraud as financing individual candidate campaigns).

While states have “considerable leeway to protect the integrity and reliability of the [election] process,” they cannot place “undue hindrances to political conversations and the exchange of ideas.” *Buckley II*, 525 U.S. at 191-92. Requiring a private individual who expends as little as \$26.00 to register with the state, open a dedicated bank account, keep detailed financial records for three years and file preelection reports with the state creates an undue hindrance to that individual’s ability to advocate a position on a public referendum. Moreover, such disclosure requirements are not sufficiently related to the government’s interest in providing the public electorate with information to pass muster under the First Amendment. *See Volle v. Webster*, 69 F.Supp. 171 (D. Me. 1999) (holding similar Maine statute unconstitutional as applied). As a result, the court finds that § 11.23 is unconstitutional as applied to plaintiffs in this case.

### **§11.30, Wis. Stats.:**

Plaintiffs next argue that Wis. Stat. § 11.30 is unconstitutional under the First Amendment based on the Supreme Court’s decision in *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334 (1995). In *McIntyre*, the Supreme Court held unconstitutional an Ohio statute prohibiting anonymous political campaign literature. *Id.* at 357. The plaintiff in *McIntyre* had distributed leaflets at a public meeting in which the local schools superintendent was discussing a school tax levy proposal. *Id.* at 337. In the leaflets, plaintiff advocated against the tax proposal, and she left some of the leaflets unsigned. *Id.* After a complaint was lodged against the plaintiff by a supporter of the tax levy, Ohio’s Elections Commission fined the plaintiff for failing to sign the leaflets in violation of an Ohio statute prohibiting anonymous political campaign literature. *Id.* at 338. In holding the statute unconstitutional, the Supreme Court emphasized the importance of anonymous publications in our national political discourse, noting that “[a]nonymity is a shield from the tyranny of the majority.” *Id.* at 357. The Court found that Ohio had “not shown that its interest in preventing the misuse of anonymous election-related speech justifies a prohibition of all uses of that speech.” *Id.*

The court agrees that *McIntyre* applies to this case, and directs the result with respect to §11.30. In relevant part, § 11.30 provides the following:

(1) No disbursement may be made or obligation incurred anonymously, and no contribution or disbursement may be made or obligation incurred in a fictitious name or by one person or organization in the name of another for any political purpose.

(2)(a) The source of every printed advertisement, billboard, handbill, sample ballot, television or radio advertisement or other communication which is paid for by or through any contribution, disbursement or incurred obligation shall clearly appear thereon. This paragraph does not apply to communications for which reporting is not required under s. 11.06(2).

...

(c) Every such communication which is directly paid for or reimbursed by an individual, including a candidate without a personal campaign committee who is serving as his or her own treasurer, or for which an individual assumes responsibility, whether by the acceptance of a contribution or by the making of a disbursement, shall be identified by the words "Paid for by" followed by the name of the candidate or other individual making the payment or reimbursement or assuming responsibility for the communication. No abbreviation may be used in

identifying the name of a committee or group under this paragraph.

Wis. Stat. § 11.30. The GAB have interpreted “communication” to include “any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, and any other form of communication that may be utilized by a registrant for the purpose of influencing the election or nomination of any individual to state or local office or for the purpose of influencing a particular vote at a referendum.” Wis. Admin. Code [GAB] § 1.655.

Defendants appear to concede that § 11.30, as applied to plaintiffs in this case, is unconstitutional under *McIntyre*. The court agrees. The statute in *McIntyre* prohibited persons from making general publications which were designed to promote the election of a candidate or the adoption or defeat of any issue, or from financing political communications, unless the author’s name and address were conspicuously placed in the publication or communication. *See McIntyre*, 514 U.S. at 338 n.3 (quoting Ohio Rev. Code Ann. § 3599.09(A) (1988)).

As with the Ohio statute in *McIntyre*, § 11.30 creates a broad prohibition of anonymous political speech, and the possible state interests of preventing fraud, corruption and providing the public with information on the sources of campaign financing do not apply to the type of independent activities pursued by plaintiffs. *See id.* at 350-55. The only notable difference between the two statutes is that § 11.30 requires only the name of the source be disclosed, as opposed to the author’s name and address in the Ohio statute. The court does not consider this sufficient to distinguish plaintiffs’ case from *McIntyre*. *See Majors v. Abell*, 361 F.3d 349, 351-55 (7th Cir. 2004) (upholding a statute that prohibited anonymous political advertisements advocating a candidate). As a result, the court finds that § 11.30, and § 1.655 of its correlative administrative rule, run afoul of the First Amendment as applied to plaintiffs in this case.

**B.** Other states’ thresholds for reporting referendum activity.

**Ohio:**

The State of Ohio was involved with a lawsuit that was resolved by the U.S. Supreme Court in 1995 and it involved the attribution or disclaimer requirements for referendum activity. That famous case, *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), was cited by Judge Stadtmueller in ruling Wisconsin’s attribution statute, §11.23, Wis. Stats., unconstitutional. Even after revisions of the Ohio statutes in 2006, Ohio still requires any referendum committee (2 or more persons) to register and file campaign finance reports BEFORE raising or spending any money for the effort. The Ohio Elections Commission only regulates statewide ballot initiatives and counties regulate local ballot initiatives. In my discussions with staff at the State agency, I learned that generally counties follow the same rule.

Ohio has a separate statute that governs independent expenditures on referenda. This statute requires an individual making one or more independent expenditures in excess of \$100.00 in support of or opposition to any referenda to file a statement itemizing the independent expenditures.

Ohio addressed the constitutional challenge to its attribution provision by setting expenditure thresholds before attributions are required--\$100 for local ballot issue and \$500.00 for statewide ballot issue.

**Pennsylvania:**

A political committee receiving contributions or making expenditures in the aggregate of \$250.00 on any referendum and individuals making independent expenditures in the aggregate of \$100.00 on any referendum must register and file campaign finance reports.

**Florida:**

A political committee must register and file campaign finance reports within 10 days of forming or anticipating the receipt or an expenditure in the aggregate of \$500.00 or more. An individual is required to register and report independent expenditures in the aggregate of \$100.00 or more.

**Michigan:**

Michigan exempts an individual from having to register and report expenditures on a referendum, but only so long as the individual does not receive contributions. For Ballot Access Committees a threshold for registration and reporting requirements of \$500.00 applies.

**Missouri:**

Ballot initiative committees must register; however, the contribution or expenditure threshold for additional campaign finance filings is \$500.00.

**Iowa:**

Any group of citizens or entity taking a position on a question placed before the voters has a threshold for registration and reporting requirements of \$750.00.

**Minnesota:**

A committee is defined as a corporation or association of persons acting together to influence the nomination, election, or defeat of a candidate or to promote or defeat a ballot question. A threshold for registration and reporting requirements of \$750.00 aggregate contributions or expenditures for a calendar year applies. However, another section of the statute requires registration and reporting to the Campaign Finance and Public Disclosure Board after exceeding \$100.00 in contributions or expenditures.

**California:**

Any person or combination of persons is considered to be a “recipient committee” if contributions totaling \$1,000.00 or more have been received in a calendar year for the purposes of influencing a referendum (ballot measure.) Once any person or combination of persons qualifies as a recipient committee, the committee must register and file campaign finance reports.

**Illinois:**

Illinois defines “state political committee” and “local political committee” as the candidate, individual, trust, partnership, committee, association, corporation, or any other organization or group of persons. Further, such a “state political committee” or “local political committee,” which includes an individual, has a threshold for

registration and reporting requirements of \$3,000.00 aggregate contributions or expenditures for a calendar year on referenda to be submitted to more than one county and no more than one county, respectively.

**Maine:**

In 1999, a Federal District Court ruled unconstitutional Maine's former statute setting a \$50.00 threshold for registration and reporting by referendum groups. Maine revised their statute and now the threshold for any person not defined as a "committee" is \$5,000.00 for registration and reporting requirements. However, any organization formed to address a ballot question and qualifying as a "committee" has a threshold of \$1,500.00 for registration and reporting requirements.

C. Staff recommends that the Government Accountability Board work with the legislature to revise Wisconsin's registration and reporting threshold to a figure in the range of \$250.00 to \$500.00. As an example and assuming a \$250.00 threshold, staff recommends the following revisions to §11.23, Wis. Stats., (added language underlined and removed language crossed out):

**11.23 Political groups and individuals; referendum questions.**

(1) Any group or individual may promote or oppose a particular vote at any referendum in this state. Before making disbursements, receiving contributions or incurring obligations in excess of \$250.00 in the aggregate in a calendar year for such purposes, the group or individual shall file a registration statement under s. 11.05 (1), (2) or (2r). In the case of a group the name and mailing address of each of its officers shall be given in the statement. Every group and every individual under this section shall designate a campaign depository account under s. 11.14. Every group shall appoint a treasurer, who may delegate authority but is jointly responsible for the actions of his or her authorized designee for purposes of civil liability under this chapter. The appropriate filing officer shall be notified by a group of any change in its treasurer within 10 days of the change under s. 11.05 (5). The treasurer of a group shall certify the correctness of each statement or report submitted by it under this chapter.

(2) Any anonymous contribution exceeding \$10 received by an individual or group treasurer may not be used or expended. The contribution shall be donated to the common school fund or to any charitable organization at the option of the treasurer.

(3) All contributions, disbursements and incurred obligations exceeding \$10 shall be recorded by the group treasurer or the individual. He or she shall maintain such records in an organized and legible manner, for not less than 3 years after the date of a referendum in which the group or individual participates. If a report is submitted under s. 11.19 (1), the records may be transferred to a continuing group or to the appropriate filing officer for retention. Records shall include the information required under s. 11.06 (1).

(4) Each group or individual shall file periodic reports as provided in ss. 11.06, 11.19 and 11.20. Every individual acting for the purpose of influencing the outcome of a referendum shall be deemed his or her own treasurer. No disbursement may be made or obligation incurred by or on behalf of a group without the authorization of the treasurer or the treasurer's designated agents. No contribution may be accepted and no disbursement may be made or obligation incurred by any group at a time when there is a vacancy in the office of treasurer.

(5) If a group which operates as a political committee has filed a single registration statement, any report of that group which concerns activities being carried on as a political

committee under this chapter shall contain a separate itemization of such activities, whenever itemization is required.

(6) If any contribution or contributions of \$500 or more cumulatively are received by a group or individual supporting or opposing the adoption of a referendum question from a single contributor later than 15 days prior to an election such that it is not included in the preprimary or preelection report submitted under s. 11.20 (3), the treasurer of the group or the individual receiving the contribution shall within 24 hours of receipt inform the appropriate filing officer of the information required under s. 11.06 (1) in such manner as the board may prescribe. The information shall also be included in the treasurer's or individual's next regular report. For purposes of the reporting requirement under this subsection, only contributions received during the period beginning with the day after the last date covered on the preelection report, and ending with the day before the election need be reported.

D. Staff recommends that the Government Accountability Board work with the legislature to implement a corresponding change to §11.05, Wis. Stats., and increase the single source threshold to an identical figure in the range of \$250.00 to \$500.00. As an example and assuming a \$250.00 threshold, staff recommends the following (added language underlined and removed language crossed out):

### **11.05 Registration of political committees, groups and individuals.**

(1) **Committees and groups.** Except as provided in s. 9.10 (2) (d), every committee other than a personal campaign committee, which makes or accepts contributions, incurs obligations or makes disbursements in a calendar year in an aggregate amount in excess of \$25 and every political group subject to registration under s. 11.23 ~~which makes or accepts contributions, incurs obligations or makes disbursements in a calendar year in an aggregate amount in excess of \$25~~ shall file a statement with the appropriate filing officer giving the information required by sub. (3). In the case of any committee other than a personal campaign committee, the statement shall be filed by the treasurer. A personal campaign committee shall register under sub. (2g) or (2r).

(2) **Individuals.** Except as provided in s. 9.10 (2) (d), every individual, other than a candidate or agent of a candidate, who accepts contributions, incurs obligations, or makes disbursements in a calendar year in an aggregate amount in excess of \$25 and every individual subject to registration under s. 11.23 shall file a statement with the appropriate filing officer giving the information required by sub. (3). An individual who guarantees a loan on which an individual, committee or group subject to a registration requirement defaults is not subject to registration under this subsection solely as a result of such default.

\* \* \*

(2r) **General reporting exemptions.** Any person, committee or group, other than a committee or individual required to file an oath under s. 11.06 (7), who or which does not anticipate accepting contributions, making disbursements or incurring obligations in an aggregate amount in excess of \$1,000 in a calendar year and does not anticipate accepting any contribution or contributions from a single source, other than contributions made by a candidate to his or her own campaign, exceeding \$100, or \$250.00 for individuals and groups subject to registration under s. 11.23, in that year may indicate on its registration statement that the person, committee or group will not accept contributions, incur obligations or make disbursements in the aggregate in excess of \$1,000 in any calendar year and will not accept any contribution or contributions from a single source, other than contributions made by a candidate to his or her own campaign, exceeding \$100, or \$250.00 for individuals and groups

subject to registration under s. 11.23, in such year. Any registrant making such an indication is not subject to any filing requirement if the statement is true. The registrant need not file a termination report. A registrant not making such an indication on a registration statement is subject to a filing requirement. The indication may be revoked and the registrant is then subject to a filing requirement as of the date of revocation, or the date that aggregate contributions, disbursements or obligations for the calendar year exceed \$1,000, or the date on which the registrant accepts any contribution or contributions exceeding \$100, or \$250.00 for individuals and groups subject to registration under s. 11.23, from a single source, other than contributions made by a candidate to his or her own campaign, during that year, whichever is earlier. If the revocation is not timely, the registrant violates s. 11.27 (1).

\* \* \*

**(12) Time of registration; acceptance of unlawful contributions.**

\* \* \*

(b) Except as authorized under sub. (13), a committee, group or individual other than a candidate or agent of a candidate shall comply with sub. (1) or (2) no later than the 5th business day commencing after receipt of the first contribution by such committee, group or individual, and before making any disbursement. No committee, group or individual, other than a candidate or agent of a candidate, may accept any contribution or contributions exceeding \$25, or \$250.00 for individuals and groups subject to registration under s. 11.23, in the aggregate during a calendar year at any time when the committee, group or individual is not registered under this section except within the initial 5-day period authorized by this paragraph.

**Recommendations and Motions**

1. Staff is directed to work with the legislature to amend §11.23, Wis. Stats., to increase the registration threshold aggregate disbursement, contribution, obligation figure to \$\_\_\_\_\_ and provide that same threshold in §11.05, Wis. Stats., for reporting and for a single source donor.
2. Staff is directed to prepare an enforcement policy implementing the \$\_\_\_\_\_ thresholds pending new statutory provisions and then notify District Attorneys of the policy.

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2. Staff is directed to prepare an enforcement policy implementing the \$\_\_\_\_\_ thresholds pending new statutory provisions and then notify District Attorneys of the policy.

## ITEM H.2

# Proposed Legislation on Electronic Election Data Retention

# State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For May 5, 2009 Meeting

**TO:** Members, Government Accountability Board

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

Prepared and Presented by:  
Shane W. Falk, Staff Counsel  
Government Accountability Board

**SUBJECT:** Revision of §7.23, Wis. Stats.  
Maintenance of Electronic Voting Records for State and Local Elections

### Issue

Currently, §7.23 (1) (g), Wis. Stats., requires the transfer of the election data from detachable recording units and compartments to an electronic medium, which may not be erased or destroyed for 22 months after an election regardless of whether the election was federal, state, or local. While there is a federal requirement to retain all election data from federal elections for 22 months, there is no similar sound reason to require the same for state and local elections.

### Background

Cost of retaining electronic election data is a major consideration. There has been much concern expressed by municipal and county clerks regarding the cost of transferring election data from memory devices to an electronic medium, such as a compact disk or a hard drive. Election costs within the last 5 years have increased dramatically with state and federal mandates leaving many of the municipalities struggling to fund all the statutorily required election mandates.

Most clerks do not have the resources to purchase enough recording devices to maintain each election for 22 months on the actual recording device, not to mention the need to purchase additional recording devices for recounts or special elections. In fact, the manufacturers of the devices often have difficulty locating enough recording devices to sell to municipalities. In a two year election cycle, there could be as many as 2 primaries, 2 generals, and a presidential preference primary. Excluding recounts and special elections, clerks would need at least 5 sets of recording devices in order to maintain all election data on the device for the requisite 22 month period.

Most clerks have looked to transfer the electronic election data from each recording device and store that election data on another electronic media form. The cost of transferring the data to an electronic medium, which is then stored for 22 months, is still prohibitive. Depending on the voting equipment manufacturer/programmer, the costs of transferring the memory device data can range from \$50-\$200 for each election for each voting equipment unit. For example, the cost to transfer the memory device results to a recording medium for the City of Marinette, a municipality with a population of less than 12,000, is \$1,400 for 2008.

Unlike most other states that provide state funds to support the local electoral process, the State of Wisconsin does not award any General Purpose Revenue (GPR) to local governmental units to help prepare for or conduct elections. In Wisconsin, the cost and financial support for funding elections are incurred at the local level. In addition to complying with the Federal Help America Vote Act (HAVA) of 2002, local officials also have to adhere to an array of HAVA companion state laws codified in 2003 Wisconsin Act 265 (published April 29, 2004); 2005 Wisconsin Act 92 (published January 19, 2006); 2005 Wisconsin Act 333 (published April 28, 2006); and, 2005 Wisconsin Act 451 (published June 9, 2006).

As federal and state laws governing elections administration continue to grow in number and complexity, the financial burden on local election officials grows proportionally. Local elections partners are having and will continue to experience a difficult enough time struggling to support even the most basic/core election requirements.

## **Discussion**

With the advent and increased use of electronic voting equipment, the legislature passed 1987 Act 391, which revised §7.23(1)(g), Wis. Stats., to address the emerging fact that some election materials were created and stored in electronic forms. The legislative intent surrounding the adoption of the current version of §7.23(1)(g), Wis. Stats., was to capture the electronic forms of election materials for retention, just as had been the practice for lever machines, paper and hard copies of election materials. In addition, the revisions to §7.23(1)(g), Wis. Stats., were consistent with requirements of 42 U.S.C. §1974 of the Civil Rights Act of 1960, which requires retention of all election records from federal elections for 22 months. Under the current status of §7.23(1)(g), Wis. Stats., and despite the fact that it was originally intended to apply to federal elections, elections officials have an obligation to retain election materials for 22 months for federal, state, and local elections in Wisconsin.

## **Federal Elections**

Federal elections bring into play §7.23(1)(f), Wis. Stats., which requires elections officials to retain for 22 months the following election materials: “ballots, applications for absentee ballots, registration forms, or other records and papers requisite to voting.” The application of §7.23(1)(g), Wis. Stats., provides election officials with a means to preserve the electronic election materials for the same retention period of 22 months and specifically authorizes the transfer of electronic elections materials to disk or other recording medium to allow for the erasure of the memory devices for re-use in the next election.

With respect to electronic/computerized vote recording or tabulation equipment utilizing removable programmable data storage devices (memory devices or PROMs) or other similar storage devices, the United States Department of Justice, Public Integrity Unit, recommends that election officials retain an electronic record of the program by which votes are to be recorded or tabulated, which is captured prior to the election, and the hard copy output from each detachable recording unit or compartment (memory device or PROM), i.e. the results

tape. The electronically stored program and the results tapes should then be retained for 22 months. From speaking with ES&S and Command Central representatives, it appears that the memory devices for Insight and Eagle optical scan equipment only possess the final results totals and no other programming data can be transferred. This raises a large cost issue for preservation of results data that is actually preserved in paper form. To comply with U.S. DOJ recommendations from 1994, the results tape from the voting equipment and the original programming is sufficient. (Note: these U.S. DOJ guidelines are subject to update and EAC guidelines currently recommend preservation of all audit and other programming data.)

As for the specific election data that must be preserved, whether by transfer or in original form, the U.S. DOJ policy for Federal election materials clearly requires the retention of all programming, ballot definition, ballot marking, audit logs, error logs, tabulation programs and any other internal programming used for the election. In short, I believe that the U.S. DOJ policy requires a mirror image of the data and programming used in the election, so that the election can be recreated without redoing data entry. All data from ballot definition to election aggregate results and the programming to do everything must be preserved and retained for 22 months post any election where a federal office is on the ballot. Failure to do so, risks significant criminal penalties from the U.S. DOJ.

The U.S. Department of Justice publication entitled Federal Prosecution of Election Offenses, Seventh Edition, May 2007, pages 81 – 87, includes a section regarding the requirements of 42 U.S.C. §1974. The DOJ publication notes that the detection, investigation, and proof of election crimes—and in many instances Voting Rights Act violations—often depend on documentation generated during the voter registration, voting, tabulation, and election certification processes. “In recognition of this fact, and the length of time it can take for credible evidence suggestion election fraud or voting rights violations to develop, Congress enacted Section 1974 to require that documentation generated in connection with the voting and registration process be retained for twenty-two months if it pertained to an election that included a federal candidate.” The DOJ publication notes that absent this statute, the disposition of election documentation would be subject solely to state law, which in virtually all states permits its destruction within a few months after the election is certified. Additional legislative history is provided to further support these general principles and the need to retain the election documentation.

The DOJ publication emphasizes that Section 1974 provides for criminal misdemeanor penalties for any election officer who willfully fails to retain records covered by the statute. The reach of the statute to specific categories of election documentation is critical to both prosecutors and election administrators, who must often resolve election disputes and answer challenges to the fairness of elections. Indeed, the federal courts have recognized that the purpose of this federal document retention requirement is to protect the right to vote by facilitating the investigation of illegal election practices. Kennedy v. Lynd, 306 F.2d 222 (5<sup>th</sup> Cir. 1962).

The DOJ publication notes that Section 1974 “must be interpreted in keeping with its congressional objective: under Section 1974, all documents and records that may be relevant to the detection or prosecution of federal civil rights or election crimes must be maintained if the documents or records were generated in connection with an election that included one or more federal candidates.” The DOJ publication emphasizes that if a state or locality chooses to create a record that pertains to voting, this statute requires that record be retained if it relates to voting in an election covered by the statute.

### **State and Local Elections**

Section 7.23, Wis. Stats., governs the destruction of election materials. Section 7.23(b), Wis. Stats., allows clearing and reactivation of voting machine recorders essential for proper operation of voting machines 14 days after any primary and 21 days after any other election. However, if there is a demand for a recount, notice of an election contest or any contest or litigation pending with respect to an election, materials may be destroyed and recorders, units or compartments may be cleared or erased only by order of the judge in whose court litigation is pending or if no litigation is pending, by order of any circuit judge for the affected jurisdiction. §7.23(2), Wis. Stats. This allows clerks to reuse the recording devices for consecutive elections, while at the same time preserving election materials for recounts or election contests should they occur. This practice is consistent with the procedures of other states with respect to election materials from state and local elections.

Other than the purpose of preserving election materials for recounts or election contests, there is no additional state or local purpose to preserve election materials beyond the time of a recount or election contest. Certainly, there is no need to preserve election materials for state and local elections for the 22 months required for federal elections. Staff recommends that the Government Accountability Board work with the legislature to revise §7.23, Wis. Stats., to allow clearing and reactivation of voting machine recorders 14 days after any primary and 21 days after any other state or local elections, subject to retention for purposes of a recount or election contest. Staff recommends specifically that §7.23(g), Wis. Stats., be revised to only require the transfer of electronic election data and storage on electronic media for 22 months for federal elections, specifically excluding state and local elections. The costs of maintaining the electronic data from federal elections for 22 months is significant; however, there is a compelling purpose for doing so, namely the requirements of 42 U.S.C. §1974. Without a corresponding compelling purpose for preserving state and local electronic data for 22 months, staff recommends that a shorter period of retention is warranted. This shorter period will be embraced by clerks due to the avoidance of significant additional costs for retention of electronic election data for state and local elections.

Staff also recommends revisions to §7.23(2), Wis. Stats., to permit the destruction of election materials and particularly the clearing and erasure of recorders, units or compartments of voting machines following expiration of the time to appeal a recount or election contest decision or time period specifically provided in §7.23, Wis. Stats., whichever is later, but subject to an order of a court to preserve the election materials for a longer period. Requiring an order of court before election materials may be destroyed following a recount is unduly burdensome for clerks.

Staff recommends that the Government Accountability Board work with the legislature to implement the following revisions to §7.23, Wis. Stats., (added language underlined and removed language crossed out):

### **7.23 Destruction of election materials.**

(1) All materials and supplies associated with an election, except as provided in sub. (2), may be destroyed according to the following schedule:

(a) Except as provided in par. (am), unused materials after an election and the contents of the blank ballot box after a primary may be destroyed at a time and in a manner designated by the appropriate clerk.

(am) Unused ballots may be discarded or destroyed no earlier than the day after the latest day for the filing of a petition for a recount under s. 9.01 for any office on the

ballots.

(b) Voting machine recorders essential for proper operation of voting machines may be cleared and reactivated 14 days after any primary and 21 days after any other election, subject to the requirements of par. (g).

(c) Registration forms of electors whose registrations are changed to ineligible status under s. 6.50 (7) may be destroyed 4 years after the change, unless an elector becomes eligible again during that period.

(d) Except as provided in s. 11.21 (11) (a), financial reports may be destroyed 6 years after the date of receipt. Financial registration statements may be destroyed 6 years after termination of registration.

(e) Poll lists created at a nonpartisan primary or election may be destroyed 2 years after the primary or election at which they were created and poll lists created at a partisan primary or election may be destroyed 4 years after the primary or election at which they were created.

(f) Except as authorized in pars. (b) and (g), ballots, applications for absentee ballots, registration forms, or other records and papers requisite to voting at any federal election, other than registration cards, may be destroyed after 22 months.

(g) Detachable recording units and compartments for use with electronic voting machines may be cleared or erased 14 days after any primary and 21 days after any other federal election. Before clearing or erasing the units or compartments for any federal election, a municipal clerk shall transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the federal election to which the data relates.

(h) Ballots may be destroyed 30 days after any election.

(i) Official canvasses may be destroyed 10 years after the election to which they relate.

(j) Election notices, and proofs of publication and correspondence filed in connection with such notices may be destroyed one year after the date of the election to which they relate.

(k) All other materials and supplies associated with an election may be destroyed 90 days after the election.

(2) If there is a demand for a recount, notice of an election contest or any contest or litigation pending with respect to an election, materials may be destroyed and recorders, units or compartments may be cleared or erased ~~only no earlier than as provided in sub. (1) or the day after the latest day for filing any appeal of the recount under s. 9.01, whichever is later,~~ by order of the judge in whose court litigation is pending or if no litigation is pending, by order of any circuit judge for the affected jurisdiction. Upon petition of the attorney general or a district attorney or U.S. attorney for the affected jurisdiction, a circuit judge for the affected jurisdiction may order that specified materials not be destroyed or that specified recorders, units or compartments not be cleared or erased as otherwise authorized under this subsection until the court so permits. ~~The governor may by order permit the clearing of voting machine recorders on machines needed to conduct a special election prior to the time authorized under~~

~~this subsection, unless there is a demand for recount, notice of an election contest or a contest or litigation pending, or a court of record orders that the records not be cleared.~~

### **Recommendation and Motion**

Staff is directed to work with the legislature to amend §7.23, Wis. Stats., to provide a retention period of 22 months for electronic election data applies only to Federal elections and to allow the destruction of election material in recount and election contest matters pursuant to the later of statutory timelines or expiration of appeals.

## ITEM H.3

# Legislative Status Report

# LEGISLATIVE STATUS REPORT

May 5, 2009 Meeting

## Assembly Bills

### Assembly Bill 2

Introduced by Representatives Pocan, Zigmunt, Barca, Benedict, Berceau, Bernard Schaber, Black, Clark, Danou, Fields, Grigsby, Hraychuck, Hubler, Jorgensen, Krusick, Mason, Molepske Jr., Nelson, Parisi, Pasch, Pope-Roberts, Radcliffe, Richards, Roys, Seidel, Sheridan, Shilling, Sinicki, Smith, Van Akkeren, A. Williams and Young. Cosponsored by Senators Wirch, Coggs, Hansen, Lassa, Lehman, Miller, Robson and Sullivan.

**Relating to:** state procurement of contractual services.

**Status:** Passed the Assembly. Referred to Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection. Public hearing held on 4/01/09.

### Assembly Bill 39

Introduced by Representatives Kessler, Soletski, Pocan, Hubler, Turner, Richards, A. Williams, Hebl, Berceau, Roys, Black, Grigsby, Barca and Pasch. Cosponsored by Senators Lehman, Coggs and Plale.

**Relating to:** the authorization for municipalities to establish satellite stations for purposes of conducting voter registration and absentee voting and granting rule-making authority.

**Status:** Referred to Assembly Committee on Elections and Campaign Reform. Public Hearing on 4/21/09.

### Assembly Bill 42

Introduced by Representatives Gottlieb, Kaufert, Ballweg, Bies, Brooks, Cullen, Davis, Gunderson, Lothian, Meyer, Mursau, Murtha, Nass, Nygren, A. Ott, Petrowski, Roth, Strachota, Van Roy and Ripp. Cosponsored by Senators Harsdorf, Olsen, Cowles and Schultz.

**Relating to:** acceptance of certain political contributions by certain elective state officials, officials elect, and committees and providing a penalty.

**Status:** Referred to Assembly Committee on Elections and Campaign Reform.

### **Assembly Bill 63**

Introduced by Representatives Dexter, Hebl, Cullen, Zigmunt, Sherman, Barca, Hintz, Black, Hilgenberg, Mason, Toles, Hixson, Pope-Roberts, Pocan and Kaufert. Cosponsored by Senators Erpenbach, Kreitlow, Ellis, Vinehout, Hansen, Risser, Lehman, Holperin, Harsdorf, Carpenter, Cowles and Robson.

**Relating to:** the scope of regulated activity under the campaign finance law.

**Status:** Referred to Assembly Committee on Elections and Campaign Reform.

### **Assembly Bill 65**

Introduced by Representatives Hintz, Hilgenberg, Smith, Garthwaite, Benedict, Roys, Hebl, Staskunas, Turner, Parisi, Cullen, Jorgensen, Richards, Zepnick, Pocan, Pope-Roberts, Clark, Shilling, Hubler, Black, Berceau, Grigsby, Molepske Jr. and Kessler. Cosponsored by Senators Kreitlow, Taylor, Lehman, Erpenbach, Miller, Risser, Lassa, Hansen, Wirch, Vinehout, Schultz and Sullivan.

**Relating to:** public financing of campaigns for the office of justice of the Supreme Court, making appropriations, and providing penalties.

**Status:** Referred to Assembly Committee on Elections and Campaign Reform. Fiscal Estimate received.

### **Assembly Bill 75**

Introduced by Joint Committee on Finance, by request of Governor Doyle.

**Relating to:** state finances and appropriations, constituting the executive budget act of the 2009 Legislature.

**Status:** Referred to the Joint Committee on Finance, the Joint Survey Committee on Tax Exemptions, and the Joint Survey Committee on Retirement Systems. Public hearings held by Joint Committee on Finance.

### **Assembly Bill 93**

Introduced by Representatives Roth, Bies, Gunderson, Lothian, Nass, A. Ott, Petersen, Spanbauer, Strachota, Townsend and Van Roy. Cosponsored by Senators Holperin and A. Lasee.

**Relating to:** prohibiting certain automated telephone solicitations.

**Status:** Referred to Assembly Committee on Consumer Protection. Public hearing held on 4/08/09.

### **Assembly Bill 104**

Introduced by Representatives Spanbauer, Ballweg, Bies, Gunderson, Kaufert, Kestell, Petersen, Ripp, Strachota, and Townsend. Cosponsored by Senators Harsdorf, Lehman, Cowles, Olsen, Kedzie, Leibham and Hopper.

**Relating to:** reporting of information by nonresident registrants under the campaign finance law.

**Status:** Referred to Assembly Committee on Elections and Campaign Reform

### **Assembly Bill 117**

Introduced by Representatives Kaufert, Bies, Brooks, Roth, Van Roy, Townsend, Lothian and Mursau. Cosponsored by Senators Cowles, Ellis and A. Lasee.

**Relating to:** withholding of pay of certain state elected officials and prohibiting the reimbursement of certain legislator expenses; acceptance of certain political contributions by certain elective state officials and committees; deadlines for the transmittal of the Building Commission's long-range state building program recommendations and the delivery of the governor's biennial budget message; submission of a report on the timeliness of the submittal of agency biennial budget requests; legislative consideration of biennial budget bill; operation of legislature before passage of biennial budget bill; and providing a penalty.

**Status:** Referred to Joint Committee on Finance. Fiscal Estimate received.

### **Assembly Bill 120**

Introduced by Representatives Vos, Montgomery, Nygren, Suder, Gundrum, Kramer, Huebsch, Kestell, Kerkman, LeMahieu, Petersen, Cullen, Murtha, J. Ott, Townsend, Mursau, Gunderson, Spanbauer, Bies, Strachota, Kleefisch, Van Roy, Lothian, Petrowski and Honadel. Cosponsored by Senators Grothman, Cowles, Hopper, Darling, Leibham and Lazich.

**Relating to:** providing the public with information on state agency operations expenditures and state agency contracts and grants.

**Status:** Referred to Assembly Committee on State Affairs and Homeland Security. Fiscal Estimate received.

### **Assembly Bill 145**

Introduced by Representatives Kessler, A. Williams and Turner. Cosponsored by Senator Taylor.

**Relating to:** legislative review of municipal ward, supervisory district, aldermanic district, and certain school district election district plans.

**Status:** Referred to Assembly Committee on State Affairs and Homeland Security. Assembly substitute amendment offered by Representative Kessler.

### **Assembly Bill 163**

Introduced by Representatives Berceau, Roys, Zepnick, Hilgenberg and Smith. Cosponsored by Senators Taylor and Plale.

**Relating to:** allowing certain political signs on rental premises.

**Status:** Referred to Assembly Committee on Elections and Campaign Reform. Public hearing held on 4/21/09.

### **Assembly Bill 168**

Introduced by Representatives Zipperer, Vukmir, Kramer, Davis, Gundrum, Kerkman, Kestell, Kleefisch, Knodl, LeMahieu, Lothian, Montgomery, Murtha, Nass, Nygren, J. Ott, Petersen, Roth, Spanbauer, Strachota, Suder, Townsend, Van Roy, Vos and Ziegelbauer. Cosponsored by Senators Leibham, Kanavas, Cowles, Darling, Hopper, Lazich and Schultz.

**Relating to:** preparation and legislative consideration of a biennial budget bill; making executive sessions of the Joint Committee on Finance relating to the biennial budget bill available in real time for viewing by the public on the legislature's Internet Web site; and reporting of certain information by lobbying principals.

**Status:** Referred to Joint Committee on Finance. Fiscal Estimate received.

### **Assembly Bill 169**

Introduced by Representative Zipperer. Cosponsored by Senator Kanavas.

**Relating to:** the number of nomination paper signatures required for school board candidates in certain school districts.

**Status:** Referred to Assembly Committee on Elections and Campaign Reform. Public hearing held on 4/21/09.

**AB 232 (4.24.2009)**

## **Assembly Joint Resolutions**

### **Assembly Joint Resolution 2**

Introduced by Representatives Sherman, Vruwink and Soletski. Cosponsored by Senators Carpenter and Holperin.

**Relating to:** eliminating the spring election (first consideration).

**Status:** Referred to Assembly Committee on Elections and Campaign Reform. Fiscal Estimate received. Assembly substitute amendment offered by Representative Sherman.

### **Assembly Joint Resolution 6**

Introduced by Representatives Kessler and A. Williams.

**Relating to:** fixing the size of the legislature and gubernatorial appointment of Supreme Court justices (first consideration).

**Status:** Referred to Assembly Committee on Elections and Campaign Reform.

### **Assembly Joint Resolution 11**

Introduced by Representatives Schneider, Kaufert and Suder. Cosponsored by Senators S. Fitzgerald and Schultz.

**Relating to:** status of seats of legislators on ordered military duty and appointment of temporary acting legislators for legislators performing ordered military duty (first consideration).

**Status:** Referred to Assembly Committee on Elections and Campaign Reform.

### **Assembly Joint Resolution 26**

Introduced by Representative Schneider

**Relating to:** terms of office for members of the senate and assembly (first consideration).

**Status:** Referred to Assembly Committee on Elections and Campaign Reform.

### **Assembly Joint Resolution 29**

Introduced by Representatives Kessler, Staskunas, Hilgenberg, Hintz and A. Williams.  
Cosponsored by Senator Lehman

**Relating to:** establishing a competitive election criteria for redistricting the legislature (first consideration).

**Status:** Referred to Assembly Committee on Elections and Campaign Reform.

### **Assembly Joint Resolution 39**

Introduced by Representatives Mason, Pasch, Soletski, Fields and Roys. Cosponsored by Senator Taylor.

**Relating to:** the age of qualified electors for state and local elections (first consideration).

**Status:** Referred to Assembly Committee on State Affairs and Homeland Security.

**AJR 47 (4.23.09)**

## **Senate Bills**

### **Senate Bill 8**

Introduced by Senators Wirch, Coggs, Hansen, Lassa, Lehman, Miller, Robson and Sullivan. Cosponsored by Representatives Pocan, Zigmunt, Barca, Benedict, Berceau, Bernard Schaber, Black, Clark, Danou, Fields, Grigsby, Hraychuck, Hubler, Jorgensen, Krusick, Mason, Molepske Jr., Nelson, Parisi, Pasch, Pope-Roberts, Radcliffe, Richards, Roys, Seidel, Sheridan, Shilling, Sinicki, Smith, Van Akkeren, A. Williams and Young.

**Relating to:** state procurement of contractual services.

**Status:** Referred to Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection. Fiscal estimate received.

### **Senate Bill 40**

Introduced by Senators Kreitlow, Taylor, Sullivan, Miller, Risser, Erpenbach, Wirch, Lassa, Lehman, Hansen, Vinehout, and Schultz. Cosponsored by Representatives Hintz, Hilgenberg, Smith, Garthwaite, Benedict, Roys, Hebl, Staskunas, Turner, Parisi, Cullen, Jorgensen, Richards, Zepnick, Pocan, Pope-Roberts, Clark, Shilling, Hubler, Black, Berceau, Grigsby, Molepske Jr. and Kessler.

**Relating to:** public financing of campaigns for the office of justice of the Supreme Court, making appropriations, and providing penalties.

**Status:** Referred to Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing. Fiscal estimate received.

### **Senate Bill 43**

Introduced by Senators Erpenbach, Kreitlow, Ellis, Vinehout, Hansen, Risser, Lehman, Holperin, Harsdorf, Carpenter, Cowles and Robson. Cosponsored by Representatives Dexter, Hebl, Cullen, Zigmunt, Sherman, Barca, Hintz, Black, Hilgenberg, Mason, Toles, Hixson, Pope-Roberts, Pocan, Kaufert and Berceau.

**Relating to:** the scope of regulated activity under the campaign finance law.

**Status:** Referred to Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

### **Senate Bill 68**

Introduced by Senators Harsdorf, Lehman, Cowles, Olsen, Kedzie, Leibham and Hopper. Cosponsored by Representatives Spanbauer, Ballweg, Bies, Gunderson, Kaufert, Kestell, Petersen, Ripp, Strachota and Townsend.

**Relating to:** reporting of information by nonresident registrants under the campaign finance law.

**Status:** Referred to Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

### **Senate Bill 92**

Introduced by Senators Leibham, Kanavas, Cowles, Darling, Hopper, Lazich and Schultz. Cosponsored by Representatives Zipperer, Vukmir, Davis, Gundrum, Kerkman, Kestell, Kleefisch, Knodl, Kramer, LeMahieu, Lothian, Montgomery, Murtha, Nass, Nygren, J. Ott, Petersen, Roth, Spanbauer, Strachota, Suder, Townsend, Van Roy, Vos and Ziegelbauer, Brooks.

**Relating to:** preparation and legislative consideration of a biennial budget bill; making all meetings of the Joint Committee on Finance relating to the biennial budget bill available in real time for viewing by the public on the legislature's Internet Web site; and reporting of certain information by lobbying principals.

**Status:** Referred to Senate Committee on Ethics Reform and Government Operations. Fiscal estimate received.

**SB 176 (4/24/09)**

## **Senate Joint Resolutions**

### **Senate Joint Resolution 9**

Introduced by Senator Carpenter. Cosponsored by Representatives Berceau, Vos and Spanbauer.

**Relating to:** providing for an advisory referendum on the question of restoring the annual adjustment of the motor vehicle fuel tax rate in this state.

**Status:** Referred to Senate Committee on Transportation, Tourism, Forestry, and Natural Resources.

**SJR 31(4/24/09)**

# ITEM I

## Administrative Rules

## ITEM I.1

Rescind Rule Making Effort  
on Blind Trusts

# State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For the May 5, 2009 Meeting

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

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

Prepared and Presented by:

Shane W. Falk, Staff Counsel

**SUBJECT:** Withdrawal of s. GAB 15.05, Wis. Adm. Code, Relating to Blind Trusts

On July 15, 2008, a Statement of Scope was published in the Wisconsin Administrative Register, Vol. 631, relating to blind trusts for public officials who are required to file Statements of Economic Interests. On October 6, 2008, the Government Accountability Board specifically decided against recognizing blind trusts and instead required complete disclosure on Statements of Economic Interests. This action was reaffirmed when a vote failed on November 11, 2008 that would have allowed blind trusts.

The Scope Statement for s. GAB 15.05, Wis. Adm. Code, is still listed on the Wisconsin Government website and clarity on this issue is needed so as to avoid confusion about the Government Accountability Board's action on October 6, 2008.

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

Staff is directed to send a notice of withdrawal of proposed rule-making for s. GAB 15.05 to the Secretary of the Department of Administration and the Wisconsin Government website manager to post on its Wisconsin Administrative Rules website.

# State of Wisconsin\Government Accountability Board

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JUDGE MICHAEL BRENNAN  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

May 6, 2009

Michael L. Morgan  
Secretary of the Department of Administration  
101 E. Wilson St., 10<sup>th</sup> Floor  
P.O. Box 7864  
Madison, WI 53707-7864

Re: Administrative Rules of the Government Accountability Board: Notice of Withdrawal  
s. GAB 15.05, regarding blind trusts and Statements of Economic Interests

Dear Mr. Morgan:

On July 15, 2008, a Statement of Scope was published in the Wisconsin Administrative Register, Vol. 631, relating to blind trusts for public officials who are required to file Statements of Economic Interests. On October 6, 2008, the Government Accountability Board specifically decided against recognizing blind trusts and instead required complete disclosure on Statements of Economic Interests.

On May 5, 2009, the Government Accountability Board specifically withdrew any rule-making regarding s. GAB 15.05, Wis. Adm. Code. Please take notice of this for your file.

If you have any questions, or if I can be of any other assistance, please give me a call.

## GOVERNMENT ACCOUNTABILITY BOARD

Shane W. Falk  
Staff Counsel

cc: Via Email: [adminrules@wisconsin.gov](mailto:adminrules@wisconsin.gov)

## ITEM I.2

# Status Report on Pending Administrative Rules

# State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

---

## MEMORANDUM

**DATE:** For the May 5, 2009 Meeting

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

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

Prepared and Presented by:  
  
Shane W. Falk, Staff Counsel

**SUBJECT:** Status Report on Pending Administrative Rule-Making

This Status Report is for informational purposes only and no immediate action is requested. Following this cover page is a brief status of pending rule-making resulting from past actions of the Government Accountability Board. All administrative rules identified in this summary reference permanent rule-making. Please note that there are several additional rules not addressed in this status report that the Board has affirmed, but for which the staff has identified the need for additional review and revision. The staff will present recommendations at subsequent meetings regarding those involved rules.

## STATUS REPORT ON PENDING ADMINISTRATIVE RULE-MAKING

### Revise 1.10

**Relating to:** Registration by Nonresident Committees and Groups

**Status:** Board original action on May 5, 2008. Must draft scope statement and then begin rule-making process to revise title of 1.10. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

### Revise 1.15

**Relating to:** Filing Reports of Late Campaign Activity (Postmarked Reports)

**Status:** Board original action on March 30, 2009. Must draft scope statement and then begin rule-making process to remove two references to postmarked reports. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

### Create 1.21

**Relating to:** Treatment of Joint Account Contributions

**Status:** Board original action on June 9, 2008. Must draft scope statement and then begin rule-making process to create a rule addressing treatment of contributions from joint accounts. Will return to Board with draft rule. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

### Revise 1.26

**Relating to:** Return of Contribution

**Status:** Board original action on May 5, 2008. Must draft scope statement and then begin rule-making process to correct grammatical error. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

### Revise 1.28

**Relating to:** Scope of Regulated Activity; Election of Candidates

**Status:** Board original action January 15, 2009. Legislative Council review complete. Public hearing held on March 30, 2009. Legislative Report complete and filed with legislature. The legislature has a minimum of 30 days to act, but possibly more. Once legislature reports back to G.A.B. and rule is in final form, will be ready for publication; however, the Board has requested holding on publication to see what occurs with a Supreme Court case likely to be decided by June or July 2009.

**Revise 1.43**

**Relating to:** Referendum-related activities by committees; candidate-related activities by groups.

**Status:** Board original action on May 5, 2008. Must draft scope statement and then begin rule-making process to remove 1.43(2)(a) as the law no longer requires listing all candidates supported and s. 11.05(4), Stats., allows one registration statement. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

**Revise 1.85 and 1.855**

**Relating to:** Conduit Registration and Reporting Requirements; Contributions from Conduit Accounts

**Status:** Board original action on October 6, 2008. Must draft scope statement and then begin rule-making process to harmonize certain portions of these rules with current law and new CFIS system. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

**Create 1.90**

**Relating to:** MCFL Organization Registration and Reporting Requirements

**Status:** Board original action August 27, 2008. Must draft scope statement and then begin rule-making process to codify formal opinions regarding registration and reporting requirements of MCFL organizations. Will return to Board with draft rule. Will likely have to hold public hearing, so following submittal to Legislative Council will hold public hearing and then submittal to legislature before publication.

**Revise Chapter 3**

**Relating to:** Voter Registration, HAVA Checks

**Status:** Board original action August 27, 2008. Must draft scope statement and then begin rule-making process to make further revisions to Chapter 3 regarding voter registration and HAVA checks. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

**Repeal and Recreate Chapter 4**

**Relating to:** Election Observers

**Status:** Board original action on August 27, 2008. Final draft of Chapter 4 approved March 30, 2009. Ready for submittal to Legislative Council for review. Thereafter, will hold public hearing and then submittal to legislature before publication.

**Repeal and Recreation of Chapter 5**

**Relating to:** Security of Ballots and Electronic Voting Systems

**Status:** Board original action on May 5, 2008. Legislative Council review complete. Public Hearing held November 11, 2008. Chapter 5 is ready for completion of legislative report and submittal to legislature. Thereafter, publication.

**Revise 6.03**

**Relating to:** Assistance by Government Accountability Board Staff

**Status:** Board original action on March 30, 2009. Must draft scope statement and then begin rule-making process to update statutory citations with new statutes post 2007 Act 1. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

**Revise 6.05**

**Relating to:** Filing Campaign Finance Reports in Electronic Format

**Status:** Board original action on March 30, 2009. Must publish scope statement. Thereafter, language of emergency rule must be modified to require paper report per direction of the Board before promulgation as permanent rule. Still must submit rule to Legislative Council and will have a public hearing before submittal to legislature.

**Revise Chapter 7**

**Relating to:** Approval of Electronic Voting Equipment

**Status:** Board original action on May 5, 2008. Division Administrator Robinson establishing a committee to make recommendations. Must draft scope statement and then begin rule-making process. Will require public hearing, so following submittal to Legislative Council will have public hearing before submittal to legislature.

**Revise 9.03**

**Relating to:** Voting Procedures for Challenged Electors

**Status:** Board original action on May 5, 2008. Must draft scope statement and then begin rule-making process to remove a reference to lever voting machines. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

**Creation of Chapter 13**

**Relating to:** Training Election Officials

**Status:** Board original action on January 28, 2008. Rule in draft form and ready for submittal to Legislative Council for review. Thereafter, if not doing 30 day notice rule-making, will need public hearing and then submittal to legislature before publication.

**Repeal 21.01, 21.04 and Revise 20.01**

**Relating to:** 21.01—filing of all written communications and documents intended for former Ethics Board  
21.04—transcripts of proceedings before former Ethics Board  
20.01—procedures for complaints before former Elections Board

**Status:** Board original action on January 28, 2008. Legislative Council review complete. No public hearing necessary as processing as 30 day notice rule-making and no petition for public

hearing was filed. These rules are ready for completion of legislative report and submittal to legislature. Thereafter, publication.

**Creation of Chapter 22**

**Relating to:** Settlement of Certain Campaign Finance, Ethics, and Lobbying Violations

**Status:** Board original action on June 9, 2008. Final draft of Chapter 22 approved March 30, 2009. Ready for submittal to Legislative Council for review. Thereafter, will hold public hearing and then submittal to legislature before publication.

# ITEM J

## Report on Spring Election Recount Activity

# State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

**DATE:** For the May 5, 2009, Meeting

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

**FROM:** David Buerger  
Elections Specialist  
Government Accountability Board

**SUBJECT:** April 7, 2009 Recount Report

As expected, the April 7, 2009 Spring Election produced a large number of recounts due to local elections resulting in tied results or slender margins of victory. Staff received reports of potential recounts in 70 contests throughout the state. It is likely that there were a number of recounts that were not reported to the G.A.B. There were 14 tied contests reported. Of the 70 potential recounts we were aware of, only 36 have sent in minutes as required by Wis. Stat. § 9.01(5)(bm) as of April 27.

Staff has received and reviewed the recount minutes of the following contests:

County	Municipality/District	Office
Brown	Town of Wrightstown	Town Supervisor
Burnett	Town of LaFollette	Town Supervisor
Calumet	Town of Chilton	Town Chairperson
Clark	Town of Pine Valley	Town Chairperson
Clark	Town of Pine Valley	Town Supervisor
Clark	Town of Washburn	Town Chairperson
Clark	Town of Washburn	Town Treasurer
Columbia	Village of Wyocena	Village Trustee
Dane	City of Middleton	Alderman #3
Dane	City of Monona	Alderman (at-large)
Dodge	City of Hartford	Alderman #3
Door	Town of Egg Harbor	Town Supervisor
Grant	Town of Muscoda	Town Supervisor
Green Lake	City of Green Lake	Alderman #2
Green Lake	Town of Marquette	Town Supervisor #2
Iron	Mercer Sanitary District	Commissioner #1
Jefferson	Town of Concord	Town Clerk

<b>County</b>	<b>Municipality/District</b>	<b>Office</b>
La Crosse	Town of Burns	Town Chairperson
La Crosse	Town of Shelby	Town Supervisor
La Crosse	City of La Crosse	Aldersperson #3
Lincoln	Town of Wilson	Town Supervisor
Marathon	Town of Wausau	Town Chairperson
Milwaukee	City of Cudahy School District	School Board
Monroe	City of Sparta	Aldersperson #2
Monroe	Town of Ridgeville	Town Clerk
Outagamie	New London School District	School Board Member
Rock	City of Edgerton	Aldersperson
Rock	Town of Plymouth	Town Chairperson
Rock	Town of Rock	Town Chairperson
Sawyer	City of Hayward	Mayor
Sheboygan	Village of Adell	Village Trustee
Trempealeau	City of Arcadia	Aldersperson
Washington	Village of Kewaskum	Village President
Waukesha	Town of Mukwonago	Town Chairperson
Waupaca	Town of Dupont	Town Chairperson

A preliminary review of the recount minutes provided to the G.A.B. indicates that in all but 2 recounts (Town of Dupont, Town of Wausau), the winner was the same. However, 12 recounts resulted in some change to the actual vote totals:

<b>County</b>	<b>Municipality/District</b>	<b>Reason for Change to Vote Total</b>
Dane	City of Middleton	Election Day tally wrong.
Dane	City of Monona	Ballots marked improperly.
Dodge	City of Hartford	Ballot marked improperly.
Door	Town of Egg Harbor	Defective absentee certificate found.
Iron	Mercer Sanitary District	7 ballots not counted on Election Day.
Jefferson	Town of Concord	Ballots marked improperly.
La Crosse	City of La Crosse	Ballots marked improperly.
Marathon	Town of Wausau	Ballot marked improperly.
Milwaukee	City of Cudahy School District	Defective absentee certificates found. Ballot found that was not counted on Election Day.
Outagamie	New London School District	Defective absentee certificates found.
Rock	Town of Rock	Overvote in write-in.
Waupaca	Town of Dupont	All absentee ballots set aside due to complaint regarding electioneering.

There were also some procedural problems at the recounts themselves such as not following the statutory timelines or not noticing the recount correctly. However, none of these procedural errors appear to have significantly impacted the recount determinations. At this time, only one appeal to circuit court from a recount determination is pending (Town of Dupont) and that appeal appears to be on the merits of the board of canvasser's determination and unrelated to any procedural defects.

# ITEM K

## Report on Voting Equipment Security Audits

# State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For May 5, 2009, Meeting

**TO:** Members, Government Accountability Board

**FROM:** Nathaniel E. Robinson  
Elections Division Administrator  
Government Accountability Board

Prepared and Presented by:  
Ross Hein, Elections Administration Specialist  
Government Accountability Board

**SUBJECT:** On-Site Monitoring of Ballots and Electronic Voting Systems  
Compliance with Administrative Code Chapter 5  
April 7, 2009, Spring Election

During the Board's November 11, 2008, meeting, staff was asked to develop procedures to monitor voting system security compliance. At the December 17, 2009, meeting, the Board adopted those procedures developed by staff. This memorandum provides a report for the April 7, 2009, election implementing the Board's directive.

### Background:

Administrative Code Chapter 5: Ballots and Electronic Voting System Security provides rules to assure the security and accuracy of our electronic voting systems and ballots. In particular, for every election, the municipal clerk is required to secure all memory devices within a voting system by keeping a record of the Inspectors' Statement (EB-104) documenting which memory devices and which serialized tamper-evident seals are assigned to particular voting stations or units.

### Board Approved Procedures

1. Staff will request that Chief Election Inspector provide the Inspectors' Statement (EB-104) and G.A.B. staff shall verify the memory device and serialized tamper-evident seals are assigned to particular voting stations or units are recorded on the Inspectors' Statement (EB-104).

2. G.A.B. staff will also verify the Chief Election Inspector initials are contained in the pre-election verification section on the Inspectors' Statement (EB-104). After which, G.A.B. staff shall then verify the same serialized tamper-evident seal number(s) recorded on the Inspectors' Statement are contained on the electronic voting systems. G.A.B. staff will maintain proper documentation of voting system security compliance.
3. Status reports will be provided to the Board at the same time that accessibility updates are presented..

### Status Report

For the past two elections, the February 17, 2009, Spring Primary and the April 7, 2009, G.A.B. staff has conducted on Election Day, evaluations of voting system security compliance, along with polling place accessibility. The February 17, 2009, Spring Primary was considered to be a trial run to familiarize G.A.B. staff with the procedures on how to evaluate voting system security compliance. For the April 7, 2009, Spring Election all G.A.B. staff were requested to evaluate each polling location they visited. The recording document used by G.A.B. staff may be located on the next page.

G.A.B. staff is currently collecting the statistics related to the on-site monitoring for the April 7, 2009, Spring Election and will have the results presented at the May 5, 2009 meeting.

**Protocol for Conducting On-Site Monitoring  
of Administrative Code Chapter 5  
Electronic Voting System Security**

**County:** \_\_\_\_\_ **Municipality:** \_\_\_\_\_

**Name of Polling Place:** \_\_\_\_\_

**Address of Polling Place:** \_\_\_\_\_

**Procedure:**

1. **G.A.B. staff requests that the Chief Election Inspector provide the Inspectors' Statement (EB-104) and records the following information below:**

- Voting Unit Number \_\_\_\_\_
- Memory Device Serial Number \_\_\_\_\_
- Tamper-Evident Seal Serial Number \_\_\_\_\_

**If multiple voting systems, record the following below:**

- Voting Unit Number (2) \_\_\_\_\_
- Memory Device Serial Number (2) \_\_\_\_\_
- Tamper-Evident Seal Serial Number (2) \_\_\_\_\_

2. **G.A.B. staff verifies the Chief Election Inspector initials are contained in the pre-election verification section on the Inspectors' Statement (EB-104):**

- G.A.B staff initials \_\_\_\_\_

3. **G.A.B. staff then verifies the same serialized tamper-evident seal number(s) recorded on the Inspectors' Statement are contained on the electronic voting systems:**

- G.A.B staff initials \_\_\_\_\_

**NOTE: THE FOLLOWING PROCEDURES ARE NOT REQUIRED FOR THE AUTOMARK.**

# ITEM L

## Director's Report

# State of Wisconsin\Government Accountability Board

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JUDGE MICHAEL BRENNAN  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For the May 5, 2009, Meeting

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

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

Prepared and Presented by:  
Nathaniel E. Robinson  
Elections Division Administrator

**SUBJECT:** Elections Division Activities

### Elections Administration Update

#### Introduction

Since the Government Accountability Board's (G.A.B.) March 30-31, 2009, meeting, the Elections Division has focused on the following tasks:

#### **1. The April 7, 2009, Spring Election**

As anticipated, the April 7, 2009, Spring Election proceeded smoothly with no major issues arising. There were however, some complaints with respect to the conduct of election officials, candidates and supporters -- some without merit and some worthy of further investigation.

Government Accountability Board (G.A.B.) staff was available until 9:00 p.m. on election night to receive calls and emails from clerks and the public. Most calls were from clerks asking for procedural clarification. Some calls were from candidates and their supporters concerning opponents' activities, or from voters concerned with real or perceived election law violations or the treatment they received at the polling place. Some incidents were unique; some occurred in more than one municipality. Some resulted in recounts which are addressed in a separate "Recount" presentation to the Board.

#### Calls with Respect to Procedural Clarification or Questionable Practices:

- A. An interesting question arose in the Village of Germantown where the village has an ordinance that prohibits electioneering well outside of the statutory 100-foot mark. Staff recognized the authority of the municipality to extend the area where electioneering is prohibited. The more attention-getting calls were from voters concerned with real or perceived election law violations or with the way they were treated at the polling place.

- B. A clerk directed her election inspectors to challenge an elector who had voted in the municipality for the past 11 years due to the fact that he had been convicted of a felony 37 years ago. G.A.B. staff contacted the clerk and advised her to contact the elector as he should be allowed to vote. The clerk contacted the elector and invited him to return to the polling place to vote.
- C. There were several questions from clerks and voters as to whether the municipal clerk should serve as an inspector. It has come to our staff's attention that candidate clerks have been serving as inspectors also. There were also many questions with respect to spouses or other relatives of candidates serving as election inspectors. There is no election law prohibition against this practice.
- D. Many local elections resulted in tie votes. Staff received many calls with respect to when and how to break a tie vote.

Alleged Election Law Violations or Complaints with Respect to Personal Treatment at Polling Place:

- A. An incumbent municipal clerk, who was up for election, personally delivered absentee ballots to voters accompanied by her husband, the Town Chair who was up for election. The Board of Canvassers, at the recount, decided not to count the absentee ballots. The clerk, incumbent supervisor and chair resigned.
- B. A town clerk allegedly opened absentee ballots by himself at home and then brought them to polling place for placement in ballot box. Complainant was provided information with respect to proper absentee ballot processing, recount procedures and filing a complaint.
- D. Some polling places failed to have an adequate supply of ballots. Photocopied ballots were used once the official ballots had run out.
- E. A voter complained that municipality provided pencils rather than pens to mark paper ballots. The statutes do not specify the type of writing instrument to be used. A voter is welcome to use another type of writing instrument if he or she prefers.
- F. A city clerk inadvertently sent the wrong ballots to 13 absentee electors. The electors should have been able to vote for Council Member, but the ballot they received did not contain that race. The election inspectors remade the 13 ballots onto blank ballots of the correct style, so that they could be processed thru the tabulation equipment. This, of course, did not remedy the fact that the 13 voters were not able to vote for the office of Council Member. Fortunately, the vote was not close.
- G. The most disturbing complaint of the April 7 Election Day came from a disabled woman who was not allowed to vote "curbside." The election inspectors refused to bring a ballot out to her car. The chief inspector and the woman's husband carried her into the polling place so that she could vote. The complainant was given information on filing a complaint.

None of the incidents affected the outcome of any state elections. All county canvasses were received by the G.A.B. by April 22, 2009, two days after the April 17, 2009 deadline. All data from the county canvasses have been reviewed for accuracy and uploaded to the canvass database. At the time of this writing, staff is proofing printouts against the county canvasses. The canvass should be completed by the week of April 27, 2009, and ready for adoption by Board at its May 5 meeting.

## Recounts

A report on recounts will be provided to the Board as a separate Agenda item.

## Accessibility Survey Instrument Implemented in all 2,822 Polling Places on Election Day

In accordance with previous findings by the Legislative Audit Bureau, and subsequent directives by Joint Legislative Committee on Audit, the 2009 Polling Place Accessibility Survey was completed by clerks and/or their representatives for each of our 2,822 polling places on Election Day, April 7, 2009. Even though clerks have self-reported accessibility compliance on the new survey; nevertheless, also in accordance with the Joint Legislative Committee on Audit, we must continue to verify that information. As such, we will continue our business practice of deploying G.A.B. staff across the state to conduct independent assessments of compliance with accessibility requirements.

For the April 7, 2009, Spring Primary, Polling Place Accessibility Evaluations were conducted in **100\*** polling places, in **35** counties. Of the 100 sites visited:

- 18 were in Cities
- 12 were in Villages
- 51 were in Towns

\* Several polling places evaluated were located in the same cities; this accounts for numbers not adding up to 100.

## On-Site Monitoring of Electronic Voting Systems Security Compliance

At your December 17, 2008, meeting, you adopted a policy that requires staff to monitor voting system security compliance to ensure that the electronic voting systems rules are being followed per Administrative Code Chapter 5. You instructed that these monitoring visits be conducted in conjunction with the on-site accessibility visits on Election Day.

A pre-test or “trial run” was conducted during the February 17 Primary in order to get staff comfortable with implementing this new procedure. A report on the details of the April 7, 2009, Spring Election monitoring of electronic voting systems security compliance is still being compiled. The data will be presented during the Board’s May 5 meeting.

## **2. Related Noteworthy Support Activities**

- A. The Wisconsin Election Data Collection System (WEDCS)  
(The \$2 million Election Data Collection Grant)

For the April 7, 2009, Spring Election, clerks were required to submit Voter Participation data to the G.A.B. via the new online Wisconsin Election Data Collection System (WEDCS). That information is due May 8. As of Friday, April 24, about 60% of the data were inputted into the WEDCS.

You may recall, Wisconsin was one of five states (along with Minnesota, Illinois Ohio and Pennsylvania) to be awarded a \$2 million competitive grant from the U.S. Election Assistance Commission (EAC). These grants—10 million dollars total—are designed to improve the collection and reporting of voter participation and elections data throughout the United States.

Grant funds are being used in Wisconsin to:

- Improve local and state election data collection processes;
- Identify best elections management practices;
- Develop a national model election data collection protocol;
- Upgrade and expand local election officials' training to a web-based platform;
- Standardize reporting of the official election canvass;
- Enhance the capacity of absentee voter tracking SVRS;
- Improve the tracking/counting of ballots cast by overseas and military voters; and,
- Examine polling place activities (Inspectors' Statements).

We are up-to-date on submitting deliverables required under the terms and conditions of the \$2 million dollar grant award. On March 23, we submitted the November 2008 election data for federal review. Another report is due to the EAC by June 1, 2009. To date, we have distributed about \$360,000 to municipalities. Over \$500,000 are expected to be shared when all reimbursements are made to municipalities. Municipalities must use grant funds to improve the conduct of elections.

B. Early Voting

The following listening and feedback sessions are being planned to seek comment and feedback from a wide variety of customers on the question of implementing early voting in Wisconsin.

07/07	Fitchburg Community Center, Oak Hall Room, Fitchburg (Madison)
07/16	La Crosse Public Library, Main Auditorium, La Crosse
07/22	Kenosha County Center, Hearing Room, Kenosha
07/23	West Allis City Hall, Common Council Meeting Room, West Allis (Milwaukee)
08/03	Northcentral Technical College, Center for Health Science Auditorium, Wausau (tentative)
08/04	Brown County Library, Auditorium, Green Bay
08/11	Town of Washington City Hall, Board Room, Washington (Eau Claire)
08/12	Rice Lake City Hall, Lakeshore & Council Rooms, Rice Lake

3. Key Metrics

Training, technical assistance and public information/education initiatives with our partners, customers, constituents and stakeholders continued.

A. Training and Technical Assistance Summary

See Attachment #1

B. Public Education and Information Summary

See Attachment #2

4. 30-day Forecast

Continue to work on the following initiatives:

- A. SVRS: We have held two listening sessions in Madison on how SVRS' productivity can be improved. Three additional meetings are now scheduled out of Madison to continue our data-gathering efforts. The three venues are Eau Claire, Outagamie County (Town of Dale) and Racine County.

- B. Communications: Finalize a staff's committee recommendation on how to make communication efforts to clerks more cohesive, timely and efficient, and convene a county-municipal clerk advisory group for review and feedback.
- C. Voting Equipment: Appoint a committee to review voting equipment needs. Members are likely to include representatives from our local election partners (clerks), DOA's Division of Enterprise Technology and the Division of Gaming, and UW-Madison's School of Engineering and Department of Computer Science.
- D. Online Municipal Clerk and Inspector Training: Continue to explore an online option for making education and training available to Municipal Clerk and Chief Inspectors.
- E. Improve our Canvass Process: Finalize plans to contract with DOA's Division of Enterprise Technology for converting our canvassing process to an online web-based system.

### **Statewide Voter Registration System Update**

Barbara A. Hansen, SVRS Project Director

#### **Introduction**

The following Statewide Voter Registration System (SVRS) activities took place since the March 30-31, 2009, meeting of the Government Accountability Board:

#### **SVRS Application**

On April 20, a patch was applied to the SVRS (version 6.6 patch 1). This patch addressed three minor issues that were identified after the installation of version 6.6. They are:

1. The absentee ballot search by ward was improved to be more accurate.
2. The SVRS Event Log, which is used to log and track system issues and events SVRS, was improved so that when administrators are reviewing the log, users can continue to perform transactions in the SVRS without experiencing system slowness or time-outs. In the past, users could experience slowness and time-outs while G.A.B. administrators were reviewing the log.
3. The batch scheduler was improved so that the process for retrieving batch jobs that need to be executed, such as address range changes or scheduled reports, runs more quickly. In the past, it was possible for the same batch job to be sent to the scheduler more than once because this process performed too slowly.

G.A.B. staff are planning the scope for the next version of SVRS (version 6.7) which will be completed in late June/early July. The focus of this version will be to further facilitate election data collection as part of the Wisconsin Election Data Collection grant program.

#### **Voter Data Interfaces**

Effective August 6, 2008, clerks have performed voter HAVA Checks. Since that time, clerks continue to use SVRS to run HAVA Checks to validate against Department of Transportation (DOT) and Social Security Administration (SSA) records, and confirm matches with Department of Corrections (DOC) for felon information, and Department of Health Services (DHS) for death data, as part of on-going HAVA compliance.

<b>HAVA Checks Reported by Month</b>	
August 2008	23,832
September 2008	38,168
October 2008	192,994
November 2008	294,905
December 2008	172,574
January 2009	41,041
February 2009	11,912
March 2009	2,438
April 2009*	11,038
Total HAVA Checks since August 6: <b>788,902</b>	
(* as of April 20, 2009)	

At the March 30-31, 2009, Board Meeting, G.A.B. members requested additional details regarding the matching and non-matching percentages for HAVA Check since the statistical report was prepared.

#### **January HAVA Check Statistics**

- 41,041 HAVA Checks were run from new voter applications in the month in January.
- 38,948 (95%) of the January total were Driver License validations.
- 34,737 (89%) of the Driver License validations matched, and 4211 (11%) did not match.
- 2,093 (5%) of the January total were SSA validations.
- 1,791 (86%) of the SSA validations matched, and 302 (14%) did not match.
- Overall, 36,528 (89%) of the January HAVA Checks matched on their initial check, and 4,513 (11%) did not match.

#### **February HAVA Check Statistics**

- 11,912 HAVA Checks were run from new voter applications in the month in February.
- 11,238 (94%) of the February total were Driver License validations.
- 9,925 (88%) of the Driver License validations matched, and 1,313 (12%) did not match.
- 674 (6%) of the February total were SSA validations.
- 565 (84%) of the SSA validations matched, and 109 (16%) did not match.
- Overall, 10,490 (88%) of the February HAVA Checks matched on their initial check, and 1,422 (12%) did not match.

#### **March HAVA Check Statistics**

- 2,438 HAVA Checks were run from new voter applications in the month in March.
- 2,023 (83%) of the March total were Driver License validations.
- 1,745 (86%) of the Driver License validations matched, and 278 (14%) did not match.
- 674 (6%) of the March total were SSA validations.
- 337 (81%) of the SSA validations matched, and 78 (19%) did not match.
- Overall, 2,082 (85%) of the March HAVA Checks matched on their initial check, and 356 (15%) did not match.

### **April HAVA Check Statistics**

(As of April 20, 2009)

- 11,038 HAVA Checks were run from new voter applications in the month in April.
- 10,377 (94%) of the April total were Driver License validations.
- 9,635 (90%) of the Driver License validations matched, and 1012 (10%) did not match.
- 661 (6%) of the April total were SSA validations.
- 557 (84%) of the SSA validations matched, and 104 (16%) did not match.
- Overall, 9,922 (90%) of the April HAVA Checks matched on their initial check, and 1,116 (10%) did not match.

### SVRS Data Requests

G.A.B. staff received 127 requests for voter information from the SVRS thus far in 2009. This resulted in 111 voter lists being purchased, for a total of \$50,685.00.

### SVRS Help Desk

1. During the month of March, the G.A.B. Help Desk took 489 calls, with an average of 22.2 calls per day, and received 544 e-mails. The top three issues called in for March were: 1) questions on the 4-year voter record maintenance; 2) assistance running reports in SVRS; and 3) questions on setting up the Spring Election in SVRS.
2. For the month of April (through April 20) the Help Desk took 504 calls, with an average of 33.6 calls per day, and received 500 e-mails. The top three issues called in for April were: 1) assistance processing absentees in SVRS; 2) assistance printing poll books and running reports; 3) questions on the WEDCS application and the GAB-190 form.
3. The Help Desk was responsible for giving users access to the new Wisconsin Election Data Collection System (WEDCS). A total of 320 new users were created and given access to WEDCS. 517 existing users were also given access to WEDCS.
4. The Help Desk extended its hours of operation for the April Election, operating from 6:45 am through 9:45 pm on Election Day. The Help Desk was advertised to be open until 9:00 pm, but stayed open until 9:45 to ensure that all questions were answered. The G.A.B. main line was also transferred to the Help Desk on Election Day and the day after the April Election, making the Help Desk the single point of contact for the agency.

### Four-Year Voter Record Maintenance Initiative

On April 11-19, G.A.B. inactivated the voters who did not respond to the February 20, 2009, postcard. 286,144 voters were marked as inactive. 296 additional voters did not respond to the postcard, but will require additional follow-up before they can be marked inactive (such as cancelling non-returned ballots).

### April 7 Election Statistics<sup>1</sup>

- 670,276 Total voter history recorded in SVRS for the Spring Election.
- 9,834 Total Election Day Registrations entered into SVRS from the Spring Election.
- 50,310 Total requests for absentee ballots tracked in SVRS from the Spring Election.

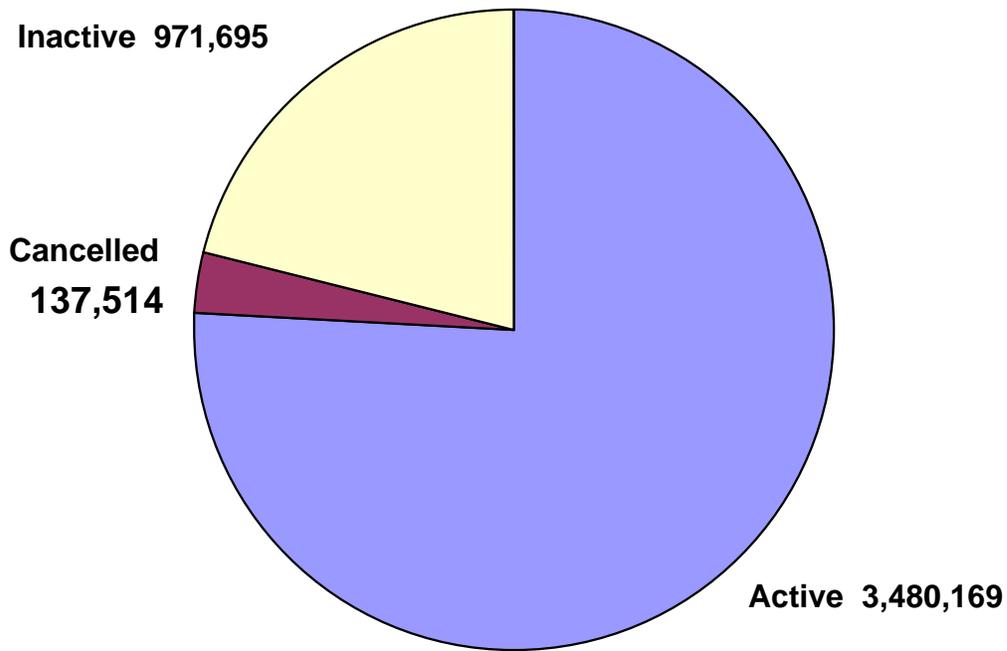
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<sup>1</sup> As of April 20, 2009

Voter Registration Statistics

The chart below provides current voter registration statistics, these numbers reflect the changes due to the Four-Year Voter Record Maintenance Initiative.

**Voter Registration Statistics by Status**  
**Total Records 4,589,378**



**ATTACHMENT #1**

GAB Election Division's Training Initiatives  
March 30 – May 5, 2009

<b>Training Type</b>	<b>Description</b>	<b>Class Duration</b>	<b>Target Audience</b>	<b>Number of Classes</b>	<b>Number of Students</b>
Voter Registration	Basic training in adding voter registration applications, searching for voters, updated voters.	3 hours	Municipal and county clerks, staff and temp workers who provide election support only.	The WBETS site is available to train temporary workers.	Ongoing, self-directed training is available online.
Municipal Clerk	2005 Wisconsin Act 451 requires that all municipal clerks attend a state-sponsored training program at least once every 2 years.	3 hours	All Municipal clerks are required to take the training; other staff may attend.	2 classes conducted in Dodgeville and Rhinelander prior to the April 7 election.	30
Chief Inspector	Instruction for new Chief Inspectors before they can serve as an election official for a municipality during an election.	3 hours	Election workers for a municipality.	2 classes conducted in Fennimore and Madison prior to the April 7 election.	60
WisLine	Series of 10 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	80 minute conference call, hosted by the UW Extension, conducted by Elections Division staff.	Clerks and chief inspectors; campaign treasurers and candidates.	April 8, 2009: Election Day Duties: Special Topics	Average 200 per class
WBETS	Web Based Election Training System. Still	Varies	County and municipal clerks and	Phase 1 of eLearning training plan close to	Site is available for clerks to train temp

**ATTACHMENT #1**

GAB Election Division's Training Initiatives  
March 30 – May 5, 2009

<b>Training Type</b>	<b>Description</b>	<b>Class Duration</b>	<b>Target Audience</b>	<b>Number of Classes</b>	<b>Number of Students</b>
	under development. Reference materials were made available to the clerks in February; voter registration training made available to clerks 3/24/2008.		their staff.	completion; Phase 2 under discussion.	workers in data entry; relies are also able to access the site upon request.
HAVA Interfaces	Instruction in the user of the interface functionality in SVRS to check death records, felon records, DOT records and duplicate records against voter records as part of HAVA compliance requirements.	2 hours	All clerks (staff as determined by clerk).	Pilot of web-based training presented to the Standards Committee on May 14, 2008. Lessons available online June 2, 2008.	Eventually 2000+
Other training assignments:	➤ Trainers assigned to early voting project.				

**ATTACHMENT #2**

**GAB Elections Division  
Communications Initiatives  
March 30-May 5, 2009**

<b>Topic</b>	<b>Message</b>	<b>Media</b>	<b>Audience</b>	<b>Follow-up Activities</b>
“G.A.B. Sends Issue Ad Rule to the Legislature”	Board moves forward with promulgation of amendment to GAB 1.28.	News release: 03/30/09	General public, news media.	Posted to the website.
“Government Accountability Board Endorses Strengthening State Ethics, Lobbying and Campaign Finance Laws”	Board adopts Ethics & Accountability Division’s legislative agenda.	News release: 03/30/09	General public, news media.	Posted to the website.
“New Wisconsin Forfeitures Rule Approved by G.A.B.”	Stronger enforcement of state forfeitures schedule will be set in 2009.	News release: 03/31/09	General public, news media.	Posted to the website.
“Wisconsin Spring Election Features Important State Races”	Preview of April 7 Spring Election.	News release: 04/02/09	General public, news media.	Posted to the website.
“Governor Receives the Names of Two Nominees to Serve on the Government Accountability Board”	G.A. Candidate Committee nominates two judges to serve on the G.A.B.	News release: 04/09/09	General public, news media.	Posted to the website.
WEDCS begins, early voting, SVRS improvement, data quality processes.	“News from the Wisconsin Government Accountability Board”	<i>Wisconsin Elections</i> newsletter: 04/23/09	Agency partners, news media and Legislature.	Posted to the website.
Voter Record Maintenance, WIEAC discussion, clerk communication, May	Spring programming for the Elections Division, reminders, and deadlines.	<i>Election Update:</i> 04/24/09	Municipal and county clerks.	Posted to the website.

**ATTACHMENT #2****GAB Elections Division  
Communications Initiatives  
March 30-May 5, 2009**

deadlines.				
“State Begins Retroactive Voter Record Checks Tomorrow”	Elections Division starts the retroactive “HAVA Check” procedure on voter records.	News release: 4/30/09	General public, news media.	Posted to the website.
“G.A.B. to Seek Public Input on Possible Early Voting for Wisconsin”	Listening sessions planned around the state; report is released.	News release: 05/04/09 (planned)	General public, news media.	Posted to the website.
“November Election Survey Shows Wisconsin Voters More Satisfied”	A national voter survey, specified to Wisconsin, shows state voters are happier than Big Ten or national counterparts.	News release: 05/04/09 (planned)	General public, news media.	Posted to the website.
“April 7 Spring Election Results Certified”	Latest election results are certified by Board.	News release: 05/05/09 (planned)	General public, news media.	Posted to the website.

# State of Wisconsin\Government Accountability Board

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**KEVIN J. KENNEDY**  
Director & General Counsel

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## **MEMORANDUM**

**DATE:** May 5, 2009 Meeting

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

**FROM:** Kevin J. Kennedy, Legal Counsel  
Wisconsin Government Accountability Board

Prepared by: Jonathan Becker, Administrator  
Ethics and Accountability Division

**SUBJECT:** Ethics and Accountability Division Program Activity

### **Campaign Finance Program**

Richard Bohringer, Tracey Porter and Dennis Morvak, Campaign Finance Auditors

#### ***Spring Election Information***

Materials for the 2009 Spring Pre-Election filing were sent to those candidates participating in the spring election. 61 pre-election reports were filed by candidate committees with the G.A.B. These reports were due on March 30, 2009. All committees required to file a 2009 Spring Pre-Election report with the G.A.B. have done so. The 2009 Spring Pre-Election report covers campaign finance activity from February 3 through March 23, 2009. During this filing period, campaign auditors fielded over 400 phone calls and 300+ emails.

#### ***Campaign Finance Information System Update***

Staff continues to work with those candidates, PACs, parties, conduits and corporations on filing campaign finance information using the Campaign Finance Information System. G.A.B. staff met with PCC Technology and staff members from the Division of Enterprise Technology on Monday, April 6, to discuss enhancements in the application's functionality. Improvements in the application itself and the platform the system operates on were discussed in order to advance the system's ability to process information in an efficient and effective manner.

On Tuesday, April 7, G.A.B. staff and PCC Technology met with members of the legislature, legislative aids, and other CFIS system users in order to receive feedback on how to improve CFIS' functionality. Feedback from both meetings was very productive, and the vendor will be implementing application improvements in the next version of the system, scheduled to be released on May 4.

On Thursday, April 9, several G.A.B. staff and agency temporary employees tested CFIS by entering and uploading data into the application using a test environment. The purpose of the testing was to simulate activity the system receives during a busy filing period. DET and PCC Technology staff used software to monitor how the system performed under that level of activity. The results of the

test are going to be used by both DET and PCC Technology staff to improve the application for future filings.

On Wednesday, April 22 and Monday, May 4, G.A.B. staff members met to conduct a comprehensive review of the application. Katie Mueller and Sarah Witt, two G.A.B. staff members unfamiliar with CFIS, participated in this meeting in order to provide feedback on how to make the program more understandable and user friendly. Changes in the system's flow, appearance, screen text and help will be communicated to the vendor and implemented in a future release of the application.

On Wednesday, May 6, G.A.B. staff will be testing the new release of the application while DET and PCC Technology staff use software to monitor the system's functionality and performance. Results of this test will again be used to implement necessary system and platform enhancements in the June 1 system update in order to ensure optimal system performance for the 2009 July Continuing report filing.

### **Training**

GAB staff has partnered with both the Democratic Party of WI and the Republican Party of WI to give training sessions and answer questions regarding campaign finance and CFIS. Campaign auditors were available for the Democratic Leadership Institute on Sunday, April 26, 2009, and the Republican Party state convention on Saturday, May 3, 2009, to answer any questions on using CFIS or general campaign finance.

### **Lobbying Update**

Tommy Winkler, Ethics Specialist

Government Accountability Board staff continues to process 2009-2010 lobbying registrations, licenses and authorizations. Processing performance and revenue statistics related to this session's registration is provided in the table below. Staff continues to process lobbying interests reported by principal organizations and provide advice related to Chapter 13, *Wisconsin Statutes*, on a daily basis. The legislature's Joint Finance Committee has voted to increase lobby fees to fund rebuilding the G.A.B.'s lobbying database and website. The fee for a lobbyist's license to represent one principal will increase next session from \$250 to \$350. The fee for a lobby license to represent multiple principals will increase from \$400 to \$650. The fee increase will sunset after two legislative sessions and is expected to generate \$200,000 for the new database and website.

**TABLE 1**

<b>2009-2010 Legislative Session: Lobbying Registration by the Numbers</b>			
<b>(Data Current as of April 27, 2009)</b>			
	<b>Number</b>	<b>Cost</b>	<b>Revenue Generated</b>
<b>Organizations Registered</b>	672	\$375	\$252,000
<b>Lobbyists Licenses Issued (Single)</b>	563	\$250	\$140,750
<b>Lobbyists Licenses Issued (Multiple)</b>	125	\$400	\$50,000
<b>Lobbyists Authorizations Issued</b>	1436	\$125	\$179,500

**Financial Disclosure Update**  
Tommy Winkler, Ethics Specialist

Government Accountability Board staff mailed approximately 2,100 pre-printed Statements of Economic Interests to state public officials required to file a statement with the Board under Chapter 19, *Wisconsin Statutes*. As of Monday, April 27, 2009, **1,955** statements have been filed. Of those filed, **1,845** statements have been processed into the online index available on the agency's website. Statements of Economic Interests are due on or before April 30, 2009. Staff will continue to process incoming statements through the end of April and into May and follow up with those officials who have yet to file to ensure they file in a timely manner. Staff also sent out quarterly financial disclosure statements to State Investment Board members on March 31. These statements are to be completed and returned to the G.A.B. no later than April 30, 2009.

**Contract Sunshine Update**  
Tommy Winkler, Ethics Specialist

Staff continues to process transactions reported by state agencies into the Contract Sunshine website application. Staff has worked with Sundial Software consultants to correct some functional issues in the application in order to facilitate agencies' ability to file information. Due to a lack of staff resources, the testing of the application's second version has not been completed. If additional resources become available, testing of the system's new version would be conducted and the updated version of the program would be released for use. Training of state agencies' procurement staff on the new version of the application would then be conducted.

# State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY  
Director and General Counsel

## MEMORANDUM

**DATE:** For the May 5, 2009 Meeting

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

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

Prepared by: Kevin J. Kennedy, Director and General Counsel  
Sharrie Hauge, Special Assistant to the Director

**SUBJECT:** Administrative Activities

### Agency Operations

#### Introduction

It continues to be an extremely busy time. The primary administrative focus has been on the agency's 2009-2011 Biennial budget process, processing polling hour reimbursement payments, presentations and staff recruitment.

#### Noteworthy Activities

##### 1. 2009-2011 Biennial Budget

On April 16, 2009, the Joint Committee on Finance (JCF) began its Executive Sessions for the 2009-2011 Biennial Budget. The Government Accountability Board's biennial budget was on the agenda. The major budget items were the 1% and 5% base budget reductions, the Polling Hour Reimbursement Program and the creation of a new lobbying website.

The agency's 1% base budget reduction is -\$24,300 annually, of which the JCF voted to restore \$4,200 PR annually because we can only use lobbying fees on lobbying-related expenses, not as a budget recovery measure to the general fund. The remaining portion of the agency's 1% base cut is -\$20,100 annually.

The JCF did not make a decision on restoring several agencies 5% annual budget reductions with federal stimulus money. They deferred that decision item. The Government Accountability Board's portion is -\$121,700 annually.

The JCF voted to keep the supplemental GPR operations funding (Polling Hour Reimbursement Program) intact, but to reduce the appropriation by \$115,600 GPR in 2009-

10, and by \$60,000 GPR in 2010-11, to reflect reimbursement costs during the 2007-09 biennium. They also voted to sunset the reimbursement program on June 30, 2011.

The JCF voted to increase lobbying license fees (by \$100 for single license and \$250 for multiple licenses) to pay for a new lobbying website in the 2009-2011 biennium. The estimated revenue generated by the increase in fees is \$108,300 PR in 2010-11 (the beginning of the 2011-12 legislative session) and another \$108,300 PR in 2012-13 (the beginning of the 2013-14 legislative session). The license fee increases will sunset after the 2013-14 legislative session. However, the bill change does not provide expenditure authority to expend the funds without seeking permission from the JCF, when needed, under the 14-day passive review process.

We will continue to explore options for ways to reduce GPR spending and keep you apprised as we prepare for the passage of the 2009-2011 biennial budget.

2. Polling Hour Reimbursements

Staff has been working diligently on processing 400 plus Polling Hour reimbursement requests from the February primary. From March 20 – April 27, approximately 200 requests have been processed, totaling \$10,500. After the February primary requests are processed, staff will work on the 400 plus spring election requests.

3. Staffing

Currently, staff is in the process of recruiting for one vacant Ethics Specialist and three vacant Information Technology positions.

4. Meetings and Presentations

I had several informal meetings and contacts with key agency stakeholders related to the agency budget, the Campaign Finance Information System (CFIS) and proposed legislation. I monitored technical and design meetings organized by the Ethics and Accountability Division related to CFIS. I also monitored several meetings organized by the Elections Division related to the State Election Administration Plan, SVRS enhancements and clerk communications.

On April 7, 2009, I observed several polling places in the Madison area.

On April 20, 2009, I attended a public forum in Eau Claire sponsored by the University of Wisconsin-Eau Claire Political Science Department and Common Cause in Wisconsin on State Government Reform.

On April 21, 2009, I testified before the Assembly Committee on Elections and Campaign Reform for information on several pieces of proposed legislation.

The Government Accountability Candidate Committee met on April 3, 2009. The new Committee Members are Court of Appeals Judges Ralph Adam Fine, Daniel Anderson, Edward Brunner and Charles Dykman. The Committee reviewed the names of 13 applicants interested in serving on the Government Accountability Board. The Committee forwarded

the names of Judge Thomas Barland of Eau Claire and Judge Timothy Vocke of Rhinelander as nominees to fill the vacancy created by the expiration of the term of current G.A.B. Member Victor Manian.

### Looking Ahead

The staff will continue to work with the Legislature on legislative initiatives and carryout a number of organization functions related to ongoing investigations, administrative rule promulgation, informational manual revisions, wrapping up the fiscal year and the agency website.

### Action Items

None