

State of Wisconsin \ Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

DATE: September 2, 2010

TO: Wisconsin Municipal Clerks
Wisconsin County Clerks
City of Milwaukee Election Commission
Milwaukee County Election Commission

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

SUBJECT: Impact of Likely U.S. Department of Justice Lawsuit on Wisconsin Election Officials
Compliance with the Military and Overseas Voter Empowerment (MOVE) Act

For all that you do to make sure voters maintain their rights to cast their votes and have them counted, for all you do to ensure Wisconsin's elections are conducted in an open, fair and transparent manner with the highest possible integrity, we salute you and we thank you.

I know it is rather late to raise a new issue this close to the Election, and I would not ask for your assistance if I absolutely did not have to, but I need your immediate cooperation! I ask for your continued support on a matter that was shared with us this past Friday, August 27. As you may have heard, the Government Accountability Board has been threatened with a lawsuit by the U. S. Department of Justice (U.S. DoJ) because the Department of Defense determined that our current absentee ballot procedures for the November General Election do not meet the necessary requirements to comply with the Military and Overseas Voter Empowerment (MOVE) Act. We are discussing a resolution to this lawsuit with U.S. DoJ.

Because the litigation impacts the absentee balloting phase of Wisconsin's election administration process, and because municipal clerks and many county clerks who serve as providers manage the absentee process, both the Government Accountability Board and clerks will be affected by the lawsuit and the anticipated resolution.

In order to comply with the provisions of the anticipated consent decree, I am writing to ask clerks to take immediate action to ensure that procedures for issuing military and overseas absentee ballots for the General Election required by state and Federal law are fully met. We are contacting you now because we expect the consent decree and Federal court order to require state, county, and local election officials to slightly accelerate the process of certifying results of the September Partisan Primary and delivering General Election absentee ballots to military and overseas voters.

Background

The Military and Overseas Voter Empowerment (MOVE) Act, signed by the President in October 2009, requires that military and overseas voters must be given a 45-day transit period before the General Election in order to receive, mark, and return ballots in time for them to be counted. Also, the MOVE Act requires that military and overseas voters must be able to track the status of their absentee ballots through a free online access system.

In Wisconsin, absentee ballots sent to military and overseas voters and their status must be entered into the Statewide Voter Registration System (SVRS). Managing these ballots via SVRS ensures they will automatically be displayed online on the G.A.B.'s Voter Public Access (VPA) website (<http://vpa.wi.gov>). Therefore, starting with the November 2, 2010 General Election, all municipalities must record military and overseas voters in SVRS using the Absentee functionality provided. A memo describing the new requirements was sent to all clerks on July 12, 2010, and is available on the G.A.B. website for reference.

Currently, Wisconsin cannot comply with the 45-day requirement due to our late Partisan Primary. Although the State's Write-in Absentee Ballots are required to be sent out 90 days before Election Day, the official ballot is required by statute to be available 31 days before the General Elections; thus, leaving Wisconsin with a 16-day deficit. Current statutes provide that absentee ballots of military voters must be counted if they are received no later than ten days after the General Election, provided that ballots are postmarked by Election Day. Overseas voters are not allowed the same benefit under the statutes. The Department of Defense (DoD) rejected G.A.B.'s request for a waiver in part due to fact that the State's write-in ballots list only contests, not candidates. The pending lawsuit and the anticipated resolution will mandate changes in current absentee ballot procedures for the November 2, 2010, General Election. We will confirm final details as soon as they are finalized by a Federal court.

Action Needed

1. We are committed to making the following changes with your cooperation to ensure absentee ballots are transmitted to military and overseas voters as far in advance as possible for the November 2, 2010 Election.
 - A. The G.A.B. will complete its September Partisan Primary Canvass Certification early, on or before September 27, 2010.
 - B. Counties must have the official ballot printed immediately after the canvass has been certified. Our goal is to have these ballots distributed to municipal clerks and sent to military and overseas voters on or before October 1, 2010.
 - C. We encourage you to set-up your November ballot proofs in advance of our certification so you can proof the version that goes to your printer as soon as you receive our certification. We also encourage you to consult with your printer and provide advance notice that printing services will be require a few days earlier than may have been planned.
 - D. We anticipate that military and overseas ballots will have an extended deadline for the November 2010 election.
 - E. Please note that these procedures may be slightly revised by a final court order resolving this matter. All municipal and county clerks should watch for further communications regarding the issuance, tracking, and acceptance of absentee ballots of military and overseas voters for the November 2010 General Election.
2. Municipal clerks with military or overseas voters, and SVRS Providers for their Reliers, must ensure that the following tasks are completed in SVRS.
 - A. **All Reliers must inform their SVRS Provider of the following information:**
 - The names of any military or overseas voter;
 - Whether they are identified as military or overseas;
 - The date the state write-in ballot was sent to the voter;
 - The date and method (via mail, via email, via fax) by which the official ballot was sent; and
 - The date any absentee ballots from military and overseas voters are returned.

Please note that this process must be kept current as new absentee ballot requests are received.

- B. **All Providers and Self-Providers must immediately inherit the 2010 General Election and mark Milestone #2 in SVRS, if they have not done so already. Counties should immediately inherit and mark Milestone #2 for all Relier municipalities.**
 - C. **All Providers (for their Reliers) and Self-Providers must open the voter record of each military and overseas voter and enter “Military” or “Overseas” in the UOCAVA Status field, as appropriate.**
 - D. **All Providers (for their Reliers) and Self Providers must track military and overseas voters’ state write-in and official absentee ballot status for the November 2010 General Election in SVRS.** We will be required to provide regular reports and updates to the U. S. Department of Justice. It is important that you keep the ballot status for military and overseas voters current in SVRS.
 - E. **Providers must use the Absentee Lite application in SVRS;** directions are available on the G.A.B. website (gab.wi.gov). Some Self-Providers may use Absentee Lite.
 - F. **Self-Providers who use the Full Absentee functionality (those who already produce ballot labels out of SVRS for their absentee voters) should not use Absentee Lite for tracking military and overseas absentee voters.** Instead they should use the new quick task in SVRS called “Send Write-In Ballots.” Directions on sending write-in ballots through Full Absentee are in the Absentee Ballots chapter of the SVRS Training Manual, available on the G.A.B. website.
3. All municipal clerks who currently do not have any military and overseas absentee voters should immediately communicate with the G.A.B. to let us know that.
- A. Send an email to the G.A.B. Help Desk (GABHelpDesk@wi.gov) or fax a message at (608) 267-0500 to confirm that you have no military or overseas voters for the November 2010 election.
 - B. Once you receive an absentee ballot request from a military or overseas voter, you must follow the directions in Item #2.
4. The G.A.B. will use every method at its disposal to ensure compliance with State and Federal requirements for military and overseas voters.

Step-by-step directions on how to enter absentee ballots into SVRS are located in the Absentee Lite, Absentee Applications, and Absentee Ballots chapters of the SVRS Manual, and these chapters are available on the G.A.B. website at <http://gab.wi.gov>.

We very much appreciate the extra efforts that municipal and county clerks make to ensure our military and overseas voters get the opportunity to cast their ballots. Please cooperate and complete the tasks described above as soon as possible. We have emphasized to Federal officials the outstanding track record of Wisconsin’s local election officials in serving military and overseas voters, which puts us in a strong position to comply with the new Federal requirements. With your continued efforts we can demonstrate again that Wisconsin is a leader in accommodating those voters, and that we can achieve that success within the framework of local control of election administration.

If you need further information, please contact the G.A.B. Help Desk at GABHelpDesk@wi.gov, or at (608) 261-2028. Thank you so very much.

cc: Kevin J. Kennedy / Director and General Counsel / Government Accountability Board