

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

May 10, 2016

The Honorable Alberta Darling, Senate Co-Chair
Joint Committee on Finance
Room 317 East, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable John Nygren, Assembly Co-Chair
Joint Committee on Finance
Room 309 East, State Capitol
PO Box 8953
Madison, WI 53708-8953

Dear Senator Darling and Representative Nygren:

The Government Accountability Board (G.A.B.) requests the Joint Committee on Finance (JCF) approve a request to transfer \$250,000 in GPR funds from the Committee's supplemental appropriation [§ 20.865(4)(a)] to the agency's GPR general operations appropriation [§ 20.511 (1)(a)] in order to implement a Voter Photo ID Public Information Campaign before the November 8, 2016 General Election. As Director and General Counsel of the Government Accountability Board, I will represent the agency at the quarterly meeting of the Joint Committee on Finance.

Summary of Request

Pursuant to § 13.101(4), Wis. Stat., the Government Accountability Board requests the JCF transfer \$250,000 to the GPR general operations appropriation to enable the agency to restart the Voter ID public education campaign. The agency has consulted with the advertising firm Knupp, Watson & Wallman, Inc. (KW2), which created the original campaign in 2011, to develop two media plan options for 2016 designed to reach as many voters as possible statewide through paid public service announcements on Wisconsin television and radio stations while at the same time targeting at-risk populations through other media channels. With the JCF's approval, the G.A.B. recommends that the final decision on which media plan option to move forward with would be made by the new Wisconsin Elections Commission shortly after it begins its work on June 30, 2016. The Elections Commission will receive a full presentation of options by KW2 prior to its decision.

The campaign's \$250,000 budget does not include \$26,810 needed to modify the campaign's branding and message to reflect the change in sponsorship from the G.A.B. to the Wisconsin Elections Commission and the change in the voter ID law to include veterans' ID cards as acceptable forms of photo ID. These changes are already underway and will be paid for from existing G.A.B. funds.

Campaign Details

With a suggested budget of \$250,000, KW2 has developed two options for a targeted campaign to raise general awareness of the identification requirement and, consistent with 2011 Wisconsin Act 23, reach out to groups of electors who may need assistance in obtaining an acceptable photo ID. These identified populations include students, people of low socio-economic status, and minorities. In addition, the campaign would target the voting age population of Wisconsin. The campaign includes online and offline media tactics. One of the main elements of the campaign is 15 and 30 second public service announcements (PSAs) which can run on traditional television and radio stations, as well as online video and audio websites and applications.

Both options make use of an existing state contract negotiated by the Department of Administration (DOA) with the Wisconsin Broadcasters Association (WBA) through its Non Commercial Sustaining Announcement/Public Education Program (NCSA/PEP). Under this program, state agencies are able to have their PSAs air on WBA member TV and radio stations at a cost of \$6,000 per week. While the WBA is not able to guarantee specific airtimes or frequencies, the G.A.B. and other state agencies that have used this contract have found it to be a good deal for taxpayers, which returns approximately \$4 in value for every \$1 spent. More information about the program is available at <http://www.wi-broadcasters.org/ncsa-pep/>.

The campaign plans are timed to reach target audiences this summer and early fall, giving people without an acceptable photo ID adequate time to take action and acquire a free state ID card from the Division of Motor Vehicles. The campaign is also timed to start early in recognition that the traditional and online media landscape will be flooded with political advertising after Labor Day. During those final two months, market rates for paid advertising will be extremely high and the voter ID PSAs stand a strong chance of getting lost amid a flood of political ads, especially on TV and radio.

Campaign Options

Option one includes:

- 18 weeks (July through early November) of radio and TV PSAs at \$108,000
- Two months of online display ads on desktop and mobile devices at \$48,075
- Three months of online video ads on YouTube and other sites at \$93,925

Option two includes:

- Eight weeks of radio and TV PSAs (July and August) at \$48,000
- Two months of online display ads on desktop and mobile devices (reduced from option 1) at \$38,675
- Three months of online video ads on YouTube and other sites (same as option 1) at \$93,925
- One month Cinema pre-show advertising at \$27,675
- One month interior bus ads in Madison and Milwaukee at \$14,100
- Two to three months of in-feed sponsored posts on Facebook at \$27,625

KW2 developed its recommendations based on media usage by the targets, cost-efficiency, ability to target key populations and expected impact. The three targeted audiences are much more likely than the general population to rely heavily on a smartphone as their primary internet device, and to take public transportation. The campaign will be live July through October (dependent on tactic/budget) to allow voters time to get a free state ID card (if needed).

Background

On June 9, 2011, 2011 Assembly Bill 7 related to requiring photo identification in order to vote, and making other election administration changes, was published as 2011 Wisconsin Act 23. The voter identification law specifically required the G.A.B. to conduct a public informational campaign for the purpose of informing prospective voters of the voter identification requirements in conjunction with the first regularly scheduled primary and general election at which the voter identification requirements initially apply. 2011 Wisconsin Act 23, Section 144 (1). The legislation also directed that the G.A.B. engage in outreach to identify and contact groups of electors who may need assistance in obtaining or renewing an acceptable form of photo ID and to provide assistance to electors in obtaining or renewing that document. 2011 Wisconsin Act 23, Section 95.

Under the 2011-13 biennial budget act (2011 Wisconsin Act 27), the Legislature provided G.A.B. \$1,965,200 in 2011-12, and 5.0 two-year project positions to the Board's GPR biennial general program operations appropriation to implement the provisions of 2011 Act 23. The funding and positions were intended to be utilized for public outreach and information, modification of the Statewide Voter Registration System, training of election officials, support of the Board's Help Desk, and the revision of election forms and materials. Of that initial appropriation, the G.A.B. spent \$631,899 in FY-12 and \$89,648 in FY-13, for a total of \$721,547. Of that, \$181,041 was spent in FY-12 on producing and deploying a public information multi-media campaign, known as "Bring It to the Ballot."

The campaign primarily consists of eight television and six radio public service announcements in 15 and 30 second durations. There are also digital ads, printed media and billboards. The purpose of the campaign is to drive viewers and listeners to visit a website (www.BringIt.wi.gov) or call a toll-free number (866-VOTE-WIS) where they can get additional, detailed information about the photo ID requirement to vote. Within the campaign, the messages are divided between awareness and how-to information. The *awareness message* is that an acceptable photo ID is now required to vote in Wisconsin and that viewers should tell their family and friends to "bring it to the ballot." The *how-to message* is that if you do not have an acceptable photo ID, you can get one for free from the Division of Motor Vehicles. Two of the radio ads are in Spanish.

The main vehicle the G.A.B. used to distribute these TV and radio ads in 2011-2012 was a Department of Administration contract with the Wisconsin Broadcasters Association that state agencies could use to distribute and air public service announcements, which is still ongoing. The contract requires WBA to provide state agencies with regular reports about how often stations broadcast the public service announcements. In addition, the TV and other short videos are available on the Bring It website, as well as the YouTube.com and Vimeo.com video-sharing websites.

The photo ID requirement was in effect for the February 2012 Spring Primary before multiple legal challenges resulted in permanent injunctions, starting in March of 2012 that forced the G.A.B. to cease implementation of the law, including the Bring It to the Ballot public education campaign. The campaign was taken off the air, the website was disabled, and other ads (bus placards, outdoor billboard, etc.) were withdrawn.

With the photo ID requirement on hold, unspent funds from the appropriation lapsed back to the state at the end of the biennium.

Under the 2013-15 biennial budget act (2013 Wisconsin Act 20), the Legislature approved the Governor's recommendation to extend the 5.0 project positions for two-years and to put \$230,400 GPR annually in the JCF's GPR supplemental appropriation. According to documents prepared by the Legislative Fiscal Bureau, if the courts lifted the permanent injunctions against the enforcement of the Act 23 photo identification provisions during 2013-15, the G.A.B. could file a § 13.10 request to seek release of this funding in order to fill the 5.0 project positions to assist in the implementation of Act 23.

<http://legis.wisconsin.gov/lfb/publications/budget/2013-15%20Budget/Documents/Act%2020/gab.pdf>

On July 31, 2014 the Wisconsin Supreme Court upheld the provisions of 2011 Wisconsin Act 23 and lifted the state court injunction. On September 12, 2014, the United States Court of Appeals for the 7th Circuit lifted the federal district court injunction and opined that the State of Wisconsin was free to implement the voter ID law for the November 2014 election. The State through the G.A.B. and various cabinet agencies began that implementation. On September 29, 2014, the G.A.B. made a § 13.10 request in the amount of \$460,800 to launch an intensive public education multi-media campaign in the weeks before the November 2014 General Election. Before JCF could meet to consider the request, the United States Supreme Court on October 9, 2014 enjoined the 7th Circuit's decision while it considered whether to take the case. During the brief period when the photo ID requirement was back in place, the G.A.B. spent \$41,200 updating the Bring It to the Ballot campaign and airing it for one week.

In March 2015, the United States Supreme Court declined to hear the case, leaving in place the 7th Circuit Court of Appeals decision that found 2011 Wisconsin Act 23 to be constitutional. The Wisconsin Attorney General advised the G.A.B. not to implement the photo ID requirement for the April 2015 Spring Election because there would not be enough time to train election workers and educate the public about the requirement.

The G.A.B.'s 2015-2017 biennial budget request, submitted September 15, 2014, did not include funds for voter ID education because at the time of its submission, the 7th Circuit Court of Appeals had not made its ruling lifting the district court's injunction. The G.A.B. was not one of the agencies invited to present its budget request to the JCF during hearings on the 2015-2017 biennial budget. The 2015-2017 biennial budget act (2015 Wisconsin Act 55) did contain \$82,600 for clerk training on photo ID implementation, but no funding for a public information campaign. In June 2015, staff asked G.A.B. Board Members for authorization to make a supplemental funding request to the Legislature to implement a photo ID education campaign. The Board took no action, telling staff that the Legislature is aware that photo ID would be in effect for any special elections in 2015 and all elections in 2016, and if the Legislature wanted to make a photo ID education campaign a priority, it had the opportunity to

do so. In FY-16, the G.A.B. has spent \$19,637 updating the Bring It to the Ballot campaign and website to make it more compatible with mobile devices.

Absent funding for a paid media campaign, the G.A.B. launched an earned and free media campaign on February 1, 2016, by holding a news conference and issuing news releases about the photo ID requirement. With the gracious assistance of the Wisconsin Broadcasters Association, G.A.B. staff distributed TV and radio PSAs from the Bring It to the Ballot campaign to all WBA member stations. WBA did not charge the G.A.B. for distribution of the ads; but without payment, the ads do not have priority and the G.A.B. is not receiving reports of when the ads have aired.

At the February 16 Spring Primary and the April 5 Spring Election and Presidential Preference Primary, a number of problems with voter photo ID were reported, suggesting the need for a comprehensive public education campaign prior to the August 9 Partisan Primary and the November 8 General Election.

At the February primary there were 567,038 ballots cast, for a turnout of approximately 12.75 percent of the voting age population of 4.4 million residents. The G.A.B. received reports of 91 provisional ballots issued, of which 37 were rejected and 30 were counted. The G.A.B. received no data from clerks on the outcome of the remaining 24 provisional ballots.

Immediately after the Spring Primary (February 18 to 21), the Marquette Poll asked respondents a question designed to gauge public awareness of the photo ID requirement to vote.

31. So far as you know, will voters be required to present a government issued photo ID in order to vote in upcoming elections or will they not have to show a photo ID to vote?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Required to show photo ID	676	84.3	84.3	84.3
Not required to show photo ID	79	9.8	9.8	94.1
Don't know	47	5.9	5.9	100.0
Refused	0	.0	.0	100.0
Total	802	100.0	100.0	

While 84.3 percent of respondents knew correctly that a photo ID would be required to vote, 15.7 was either wrong about or did not know whether a photo ID is required. For more information about the poll, visit <https://law.marquette.edu/poll/results-data>.

The G.A.B. staff is not aware of a subsequent poll taken since February on this question that would gauge current public awareness of the photo ID requirement. In any event, our hope is to increase awareness further among voters.

In April, as turnout surged to 47.5 percent (2,113,544 ballots in the presidential preference primary), the number of provisional ballots also grew significantly. Clerks reported 375

provisional ballots were issued, of which 258 were rejected and 108 were counted. Clerks have not reported the status of 9 provisional ballots. Anecdotally, the G.A.B. has received reports from voters without an acceptable photo ID who chose not to fill out a provisional ballot because they did not believe they would be able to obtain an ID by the Friday after the election.

In November, if past turnout trends of approximately 70 percent for presidential elections continue, an additional 1 million voters will likely go to the polls in Wisconsin.

Request Meets Statutory Criteria

The agency request meets the criteria for supplementing its general operations funding set out in Wis. Stats. § 13.101 (3)(a). The purpose for which the funds will be used has been specifically and clearly authorized by the Legislature. 2011 Wisconsin Act 23, which created the voter identification requirement, specifically directs the Government Accountability Board to conduct a public informational campaign for the purpose of informing prospective voters of the voter identification requirements in conjunction with the first regularly scheduled primary and election at which the voter identification requirements initially apply. The Legislature authorized funding for the public informational campaign in the 2011-2013 biennial budget and reauthorized the funding in the 2013-2015 biennial budget. However, because the law was enjoined pending action by the U.S Supreme Court, no funding was included in the 2015-2017 biennial budget.

The lack of funding to conduct a public informational campaign before the 2016 Spring primary and Presidential Preference Vote raised concerns that the public was not sufficiently informed of the voter identification requirements, particularly in light of several changes from the original version of the law enacted in 2011. With an anticipated turnout of more than 3 million voters, the Fall General and Presidential Election creates a situation where having only limited information available to the public will exacerbate the concerns identified in the Spring election cycle. The limited public informational campaign proposed by the agency will alleviate that emergency. The opportunity for the agency to implement a comprehensive public information campaign existed only prior to the low turnout 2012 Spring Primary, and has not existed prior to a higher turnout Spring Election or General Election. Experience indicates that the public is more inclined to act on election-related messages prior to a higher turnout election.

The agency is in the final two months of existence before dissolution. The agency's current funding is allocated to ongoing operating expenses along with other projects established by the Legislature as a result of 2015 Wisconsin Act 261.

If the Committee acts expeditiously the agency should be able to implement a viable public information media campaign for the November 8, 2016 Presidential and General Election.

Request

The Government Accountability Board requests the following action: The Joint Committee on Finance transfer \$250,000 from the Committee's supplemental appropriation [§ 20.865(4)(a)] to the agency's GPR general operations appropriation to enable the agency to fund the 2016 Voter Photo ID Public Information Campaign. It is our understanding from published reports the Joint Committee on Finance has approximately \$267,000 in discretionary funds available.

Thank you for your consideration of this request.

Sincerely,

Government Accountability Board

A handwritten signature in black ink that reads "Kevin J. Kennedy". The signature is written in a cursive style with a large, prominent "K" at the beginning.

Kevin J. Kennedy
Director and General Counsel

cc: Joe Malkasian, Joint Committee on Finance Clerk
Legislative Fiscal Bureau (2)
Department of Administration (45)
Government Accountability Board Members
Elections Commission Members
Michael Haas, Elections Division Administrator