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MEMORANDUM

DATE: For the Meeting of December 14, 2016

TO: Members, Elections Commission

FROM: Michael Haas
Commission Interim Administrator

Prepared by:
Nathan W. Judnic
Legal Counsel

SUBJECT: Presidential Recount Report

Introduction

The statewide recount for the Office of the President of the United States concluded on Monday, December 12, 2016 with the signing of the official Statement of Canvass for President, Vice President and Presidential Electors. This memorandum is intended to provide Commission members with a high-level overview of the recount which began in earnest with the filing of the recount petitions by Candidates Jill Stein and Roque “Rocky” De La Fuente on November 25, 2016.

Recount Timeline Overview

Below is a brief timeline of events for the statewide recount:

- November 25, 2016 – Recount petitions were filed by Presidential Candidates Jill Stein and Roque “Rocky” De La Fuente, seeking a recount of all ballots cast in all wards in the State of Wisconsin for President of the United States.
- November 25, 2016-November 28, 2016 – Commission staff reviewed the recount petitions and began the process of generating the recount fee estimate by gathering estimated costs from all county clerks. Commission staff then aggregated the county costs to generate an estimate for the Stein and De La Fuente campaigns.
- November 28, 2016 – Elections Commission held a special meeting and approved the proposed recount timeline with one adjustment – requiring the county boards of canvass to be complete the recount by 8:00 p.m. on December 12, 2016 to allow the Commission staff to review the results and prepare the

final Statement of Canvass. The Commission also denied the request of Jill Stein to order a hand recount of all ballots statewide.

- November 28, 2016 – Elections Commission staff provided the Stein and De La Fuente campaigns with an estimated recount fee which was due by close of business on November 29, 2016.
- November 29, 2016 – Candidate De La Fuente withdrew his recount petition.
- November 29, 2016 – Candidate Jill Stein paid the estimated recount fee (approximately \$3.5 million) before the close of business via a secured wire transfer.
- November 29, 2016 – Recount Order was issued by the Elections Commission, which set the start date for the recount of December 1, 2016.
- November 30, 2016 – Elections Commission staff conducted a webinar teleconference with county and municipal clerks, candidates, candidate representatives, interested members of the public and the press to ensure policies and procedures would be implemented uniformly across all 72 counties conducting the recount.
- December 1, 2016 – The statewide recount commenced at 9:00 a.m. (some counties met and adjourned until a later date as allowed by statute).
- December 1, 2016-December 12, 2016 – Recount conducted statewide by 72 county boards of canvass, with counties providing the Elections Commission daily updates as to progress and results.
- December 10, 2016 – Counting process completed by all counties, and entering results into state canvass reporting system continues until December 12, 2016.
- December 12, 2016 – Certified recount results signed by the Commission Chair.

Litigation

Jill Stein v. Wisconsin Elections Commission, et al. (Case No. 16CV3060)

On November 28, 2016, Jill Stein filed a lawsuit in Dane County Circuit Court, requesting a hand recount of all ballots cast. Under Wis. Stat. § 5.90(1), the county boards of canvass have the option to either hand count, or use electronic tabulation equipment to conduct the recount. Following a hearing on November 29, 2016, the Court denied Jill Stein's request, which allowed each county board of canvass to choose their method of tabulation for the recount. Jill Stein did not appeal the Court's decision.

Great America PAC, et al., v. Wisconsin Elections Commission, et al. (Case No. 16CV0795)

On December 1, 2016, Great America PAC, Stop Hillary PAC and Ronald R. Johnson filed a lawsuit in the United States District Court for the Western District of Wisconsin, alleging that the recount would be conducted in a manner that violates the requirements set forth in *Bush v. Gore*, 531 U.S. 98 (2000) for recounts in presidential elections. Plaintiffs alleged that Wisconsin statutes governing recounts “lacks adequate protections to ensure that similarly completed ballots will be afforded similar treatment, both within the same county and across different counties.” Additionally, they alleged that the recount could extend beyond the federal “safe harbor” deadline of December 13, 2016. Plaintiff's sought an emergency temporary restraining order to halt the recount. On December 2, 2016, the motion for an emergency temporary restraining order was

denied. On December 9, 2016, the Court held a short hearing on the Plaintiff's preliminary injunction motion which was then also denied. The Plaintiffs have not appealed the Court's decision, and given that the recount is now complete, it is unlikely any such appeal will be filed.

The Wisconsin Department of Justice represented the Commission and Administrator Haas in these lawsuits. Commission staff assisted with the preparation of documents submitted with the courts and Administrator Haas testified at the hearing related to the lawsuit filed by Jill Stein.

Recount Results

Ultimately, the certified results following the recount changed very little from the original results – with Donald Trump gaining 844 votes, Hillary Clinton gaining 713 votes for a net gain of 131 votes for Donald Trump. Jill Stein gained 66 votes. The chart below shows the original vote total, the final certified totals after the recount and the difference, if any, between those counts for the ballot candidates for President.

Candidate	Original Vote Total	Recount Vote Total	Difference
Donald Trump	1,404,440	1,405,284	+844
Hillary Clinton	1,381,823	1,382,536	+713
Darrell Castle	12,156	12,162	+6
Gary Johnson	106,585	106,674	+89
Jill Stein	31,006	31,072	+66
Monica Moorehead	1,769	1,770	+1
Roque "Rocky" De La Fuente	1,514	1,502	-12

Commission Staff Activities

In addition to the hard work and dedication of the county clerks, county boards of canvass, county and city elections commissions, municipal clerks, deputies, tabulators and other election workers to ensure the recount was completed accurately and by the established deadline, the Commission staff also dedicated significant time, effort and resources to ensure the recount went as smoothly as possible and finished on time. Below is a brief list of Commission staff activities which contributed to the success of the statewide recount:

- Updated and published the Election Recount Procedures Manual (November 2016) to ensure consistent recount procedures were used statewide.

- Coordinated delivery/service of the recount petitions and recount order to all candidates named on the ballot for President to ensure that candidates were aware of the recount proceedings and start date according to statute.
- Worked with the State Controller's Office and the Department of Administration to ensure that money received as the estimated recount fee was received in a timely manner and was placed in the proper account according to statute.
- Prepared, coordinated and conducted a webinar teleconference prior to the start of the recount with county and municipal clerks, candidates, candidate representatives, interested members of the public and the press to ensure consistent recount procedures were used statewide and to answer questions. The webinar was posted to the Commission website, along with a document which provided answers to the frequently asked questions that were generated during the webinar.
- Developed templates for counties to use when providing the Commission with nightly progress reports on what reporting units were recounted that day, and what changes were made to the original results. Progress reports were posted daily, with Commission staff follow-up with county clerks to obtain progress reports and explanations of a change in result which equaled more than 10 votes in a reporting unit.
- Posted certified recount results and boards of canvass minutes by county to the Commission website on a rolling basis to provide the public with a real time update as to which counties were done and which counties were still in progress.
- Developed and issued press releases, clerk communications, recount updates and social media posts to provide the candidates, clerks, the public and the press with a transparent snapshot of the recount.
- Provided advice and guidance to county boards of canvass, county clerks, county corporation counsels and candidate representatives on proper recount procedures. Also assisted by providing approaches and strategies to solving common recount issues that arose.
- Assisted the Wisconsin Department of Justice in responding to recount related litigation on an expedited timeframe.
- The internal recount team met twice daily at 10:00 a.m. and 2:00 p.m. for the duration of the recount to brief each other on issues that arose and agree on a strategy to address issues, communicate to the county boards of canvass, candidates and the public.
- Worked countless extra hours early in the morning and late into the night and on weekends to provide county boards of canvass a resource if an issue arose and they needed to call. County boards of canvass were provided after-hours phone numbers which were monitored by staff members throughout the recount period.
- Developed instructions and a template for county clerks to compile and submit actual costs of the recount to the Commission so the counties and municipalities can be reimbursed from the funds collected from the Stein campaign. Reimbursement will be provided to counties after a review of all

county submissions and a determination as to whether a refund is to be issued to the Stein campaign or additional funds must be requested.

- Prepared and monitored the Commission's canvass reporting system, to ensure that all results of the recount were properly entered and verified by all 72 counties.

Lessons Learned

Recounts can serve as a good roadmap for additional training of local election officials. The Commission staff has already begun putting together general training topics that will be addressed at a training webinar set for January 11, 2017. Commission staff will continue to review the recount minutes to identify common issues or themes that will be used as training topics for clerks and election inspectors. A more comprehensive approach and plan to address issues identified during the recount will be provided to the Commission at a future meeting.

Conclusion

The hard work of many individuals contributed to the success of the first statewide recount for President in Wisconsin. While clearly there is room for additional clerk and election inspector training on both basic and more complex election administration issues, completing a statewide recount of almost 3 million ballots in roughly 12 days is a significant achievement for the agency and local election officials. The very small number of changes in totals, given the overall number of ballots confirms that Wisconsin's Presidential Election was fair, accurate and transparent, and should promote public confidence in the election results as well as our election administration system and procedures.