

Meeting of the Board
Tuesday, August 28, 2012

Agenda
Open Session

9:00 A.M.

Room 412 East, State Capitol
Madison, Wisconsin

Tuesday, August 28, 2012

9:00 A.M.

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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.

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M. Closed Session

- | | |
|--------------------------------|---|
| 5.05 (6a) and
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. |

The Government Accountability Board has scheduled its next meeting for Tuesday, October 23, 2012 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:00 a.m.

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.

State of Wisconsin\Government Accountability Board

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JUDGE DAVID G. DEININGER
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board
Joint Committee on Finance Hearing Room, 412 East
State Capitol
Madison, Wisconsin

June 8, 2012 9:00 a.m.

Open Session Minutes

Summary of Significant Actions Taken Page

- | | | |
|----|---|---|
| A. | Approved staff recommendations to grant and deny ballot access to candidates for the 2012 Fall Election | 1 |
| B. | Approved staff report on ballot access issues | 6 |
| C. | Accepted informal status update on the migration of the Lobbying database | 6 |

Present: Board Chair Judge David G. Deininger, Judge Michael Brennan, Judge Gerald C. Nichol, Judge Thomas Cane, Judge Timothy Vocke, and present via teleconference Judge Thomas Barland

Staff Present: Kevin J. Kennedy, Jonathan Becker, Michael Haas, Ross Hein, David Buerger and Aaron P. Frailing

A. Call to Order

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

B. Director's Report of Appropriate Meeting Notice

G.A.B. Director Kevin J. Kennedy informed the Board that proper notice was given for the meeting.

C. Approval of Minutes of Previous Meeting

MOTION: Approve the minutes of the May 15, 2012 meeting of the Government Accountability Board. Moved by Judge Nichol, seconded by Judge Vocke. Motion carried unanimously.

D. Ballot Access Challenges

Staff Counsel Haas reviewed the complaints filed as challenges to ballot access for the following candidates and presented recommendations based upon the staff's analysis of the complaints and the responses. Each matter was considered and decided separately by the Board after providing

an opportunity for the parties to make oral presentations and reviewing the staff's recommendations.

1. Frederick P. Kessler Complaint against Mario Hall, Democratic Candidate for the 12th Assembly District: Complaint EL12-12

Candidate Mario Hall appeared on his own behalf.

MOTION: Adopt Staff recommendation that the Board reduce the verified signature count of Candidate Hall by 7 to 239, dismiss the remainder of the complaint, and grant ballot access to Candidate Hall. Moved by Judge Vocke, seconded by Judge Cane. Motion carried. Judge Brennan abstained.

2. Joel Diny Complaint against David VanderLeest, Republican Candidate for 90th Assembly District: Complaint EL 12-13

Jeremy Lyons under supervision of Attorney Brian Howe appeared on behalf of Joel Diny. David VanderLeest appeared on his own behalf.

MOTION: Approve challenge as to 18 signatures, add 5 signatures originally struck, verify 201 valid signatures, and grant ballot status for Candidate VanDerLeest. Moved by Judge Vocke, seconded by Judge Nichol.

Roll Call Vote:	Brennan – Aye	Barland - Aye	Cane – Aye
	Deiningger – Aye	Nichol – Aye	Vocke Aye

Motion carried unanimously.

3. Josh Zepnick Complaint against Jose Guzman, Democratic Candidate for the 9th Assembly District: Complaint EL 12-14

Attorney Michael Maistelman appeared on behalf of Josh Zepnick with his client present.

MOTION: Approve challenge as to 11 signatures and dismiss the remainder of the complaint, include an additional signature originally struck, verify 276 valid signatures, and grant ballot status for Candidate Guzman. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

4. Lena Taylor Complaint against David King, Republican Candidate for the 4th State Senate District: Complaint EL 12-15

Attorney Michael Maistelman and Eric Peterson appeared on behalf of Lena Taylor.

MOTION: Approve challenge as to 51 signatures and dismiss the remainder of the complaint, verify 405 valid signatures, and grant ballot status for Candidate King. Moved by Judge Vocke, seconded by Judge Nichol. Motion carried unanimously

5. Joel Gratz Complaint against Nancy VanderMeer, Republican Candidate for the 70th Assembly District: Complaint EL 12-16

Joel Gratz appeared on his own behalf. Nancy VanderMeer and Gene Sustesti also appeared.

MOTION: Dismiss the challenge complaint of Joel Gratz against candidate Nancy VanderMeer, verify 368 signatures, and grant ballot access for Candidate VanderMeer. Moved by Judge Cane, seconded by Judge Vocke. Motion carried unanimously.

6. Joel Gratz Complaint against Tom Lamberson, Republican Candidate for the 8th Assembly District: Complaint EL 12-17

Joel Gratz appeared on his own behalf and after reviewing the recommendation and having an opportunity to review the challenge, he officially withdrew the complaint. Tom Lamberson, appearing on his own behalf, had no response. The complaint was withdrawn.

7. Jason Diederichs Complaint against Barry Nelson, Republican Candidate for the 25th Assembly District: Complaint EL 12-18

No personal appearances.

MOTION: Dismiss complaint, verify 210 valid signatures, and grant ballot status for Candidate Nelson. Moved by Judge Nichol, seconded by Judge Cane. Motion carried unanimously.

8. Jason Diederichs Complaint against Mike Howe, Republican Candidate for the 25th Assembly District: Complaint EL 12-19

No personal appearances.

MOTION: Dismiss the complaint, verify 204 valid signatures, and grant ballot status for Candidate Howe. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

9. Robb Bradford Kahl Complaint against Amanda Mary-Mariah Hall, Democratic Candidate for the 47th Assembly District: Complaint EL 12-20

Judge Deininger recused himself due to a past relationship with the complainant.

Cindy Buchko appeared on behalf of Robb Bradford Kahl. Amanda Mary-Mariah Hall appeared on her own behalf.

MOTION: Strike four signatures against Candidate Amanda Hall, verify 206 signatures, and grant ballot access for Candidate Hall. Moved by Judge Cane, seconded by Judge Vocke. Motion carried. Judge Deininger abstained.

10. Jennifer Toftness Complaint against David Stolow, Libertarian Candidate for 32nd Assembly District: Complaint EL 12-21

Jennifer Toftness appeared on her own behalf but does not wish to speak.

MOTION: Approve challenge as to the six signatures outside of the 32nd Assembly District, dismiss the remainder of the complaint, add 11 supplemental signatures; verify 206 valid signatures, and grant ballot status for Candidate Stolow. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

11. Jennifer Toftness Complaint against Randy Bryce, Democratic Candidate for the 62nd Assembly District: Complaint EL 12-22

Jennifer Toftness appeared on her own behalf. Joel Gratz appeared on behalf of Randy Bryce.

MOTION: Adopt staff recommendation that the Board dismiss the challenge complaint of Jennifer Toftness against candidate Randy Bryce, verify 259 signatures, and grant ballot access for Candidate Bryce. Moved by Judge Cane, seconded by Judge Vocke. Motion carried unanimously

12. Jennifer Toftness Complaint against Kelley Albrecht, Democratic Candidate for the 63rd Assembly District: Complaint EL 12-23

Jennifer Toftness appeared on her own behalf but does not wish to speak. Attorney Joel Gratz appeared on behalf of Kelley Albrecht.

MOTION: Reduce the verified signature total by 15 (two duplicates and 13 out of district) dismiss all remaining challenges raised in Jennifer Toftness's complaint against Candidate Kelley Albrecht, and grant ballot access for Candidate Albrecht. (Candidate Albrecht's papers contained 451 signatures, so even with the recommended reductions, her verified total would remain above the 400 maximum permitted for Assembly candidates). Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

13. Jennifer Toftness Complaint against Cindy Moore, Democratic Candidate for the 15th Assembly District: Complaint EL 12-24

Jennifer Toftness appeared on her own behalf and withdrew the complaint. Joel Gratz appeared on behalf of Cindy Moore and had no objection. Complaint withdrawn.

14. Jennifer Toftness Complaint against Eric Prudent, Democratic Candidate for the 98th Assembly District: Complaint EL 12-25

Jennifer Toftness appeared on her own behalf but did not wish to speak. Joel Gratz appeared on behalf of Eric Prudent but did not wish to speak.

MOTION: Verify a total of 211 signatures (the original 202 valid signatures, plus nine corrected by affidavit, plus two supplemental signatures, minus two signatures which are outside of the district

and one duplicate signature), dismiss all remaining challenges of Jennifer Toftness, and grant ballot access for Candidate Prudent. Moved by Judge Nichol, seconded by Judge Brennan. Motion carried unanimously.

15. Alvin Ott Complaint against Josh Young, Independent Citizens of Wisconsin Candidate for the 3rd Assembly District: Complaint EL 12-26

No personal appearances.

MOTION: Approve challenge as to the 10 signatures on page 10 and the first 2 signatures on page 20 of the nomination papers; deny Candidate's attempt to rehabilitate 6 signatures on page 1; verify 202 valid signatures, and grant ballot status for Candidate Young. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

16. Katrina Shankland Complaint against David Verhage, Democratic Candidate for the 71st Assembly District: Complaint EL 12-27

Complaint was heard out of order to enable Katrina Shankland to appear by teleconference on this matter.

Katrina Shankland appeared via teleconference on her own behalf.

MOTION: Approve challenge as to 11 signatures, verify a total of 216 valid signatures, dismiss the remaining 176 challenges and grant ballot access to Candidate Verhage. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

17. Jennifer Toftness Complaint against Chad Bucholtz, Democratic Candidate for the 22nd Assembly District: Complaint EL 12-28

Jennifer Toftness appeared on her own behalf.

MOTION: Approve challenge as to 17 signatures, verify a total of 187 valid signatures, and deny ballot access. Moved by Judge Nichol, seconded by Judge Cane. Motion carried unanimously.

18. Matthew Spencer Complaint against Jesse Roelke, Democratic Candidate for the 84th Assembly District: Complaint EL 12-29

Joel Gratz appeared on behalf of Jesse Roelke.

MOTION: Approve challenge as to 4 signatures, deny remaining challenges, and approve 1 rehabilitated signature, to verify a total of 205 valid signatures, and grant ballot access. Moved by Judge Cane, seconded by Judge Vocke. Motion carried unanimously.

19. Joel Gratz Complaint against Jonathan Dederig, Green Party Candidate for the 78th Assembly District: Complaint EL 12-30

Joel Gratz appeared on his own behalf but had nothing to add to the complaint. Jonathan Dederig appeared on his own behalf but had nothing to add.

MOTION: Approve challenge as to 9 signatures with addresses outside the 78th Assembly District, dismiss the remainder of the complaint, verify 203 valid signatures, and grant ballot status for Candidate Dederling. Moved by Judge Vocke, seconded by Judge Cane. Motion carried unanimously.

20. Chris Kapenga Complaint against Thomas Hibbard, Democratic Candidate for the 99th Assembly District: Complaint EL 12-31

No personal appearances.

MOTION: Dismiss all of the challenges, verify 209 valid signatures, and grant ballot status for Candidate Hibbard. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

Unlisted Ballot Access Challenge

Attorney Haas advised the Board of an additional challenge filed late that he believes the Board should be aware of. The challenge was filed by Mr. Don Dunphy against Candidate Brewbaker. Both are candidates for Lincoln County District Attorney.

MOTION: Acknowledge that the challenge filed by Mr. Dunphy not be recognized as it was not filed timely and Mr. Brewbaker's candidacy is recognized as valid. Moved by Judge Cane, seconded by Judge Brennan. Motion carried unanimously.

E. Personal Appearances from Members of the Public

(This item was taken out of order to accommodate a speaker who was participating by teleconference)

Candidate Kevin Kuehl of Waupaca appeared on his own behalf with Joel Gratz to argue for leniency in his denial of ballot access. He was denied ballot access for lack of timely filing of the Declaration of Candidacy.

MOTION: Accept staff recommendation of denial of ballot access based on the failure to file required documents in a timely manner. Moved by Judge Vocke, seconded by Judge Brennan. Motion carried unanimously.

F. Staff Report on Ballot Access Procedures and Ballot Access Issues

Elections Specialist David Buerger presented the staff report on Ballot Access. In the report Mr. Buerger delineated issues that arose during nomination paper review, trends, statistics and items of note.

MOTION: Accept the staff recommendation and approve all candidates listed on the attached report who have met or exceeded the minimum valid signatures required for the office and who have filed all necessary ballot access documents by their respective deadlines. Accept the staff recommendation and deny the candidates listed who have failed to file all necessary ballot access documents by their respective deadlines. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

Director Kennedy acknowledged that this was the first time processing nomination papers under Act 75 guidelines. The new guidelines and dates for nomination papers were changed to bring the State of Wisconsin into compliance with the federal Military and Overseas Voter Empowerment Act. He believed that there would be a few issues in the future but things should become easier when the deadlines do not fall on weekends.

H. Public Comment

1. Mary Ann Hanson of Brookfield appeared on her own behalf and on behalf of others and commented on her experiences as a special voting deputy for absentee electors in statutory facilities. She asked the Government Accountability Board for better guidance on how the business processes are supposed to work in these facilities. She expressed concerns that many of the SVD's as well as the staff of those facilities were not following state statutes or were not aware of state statutes when facilitating absentee voting in these facilities.

2. Ardis Cerny of Pewaukee appeared on her own behalf to present her experiences as an elections observer in the City of Racine during the June 5, 2012 Recall Election. She stated she observed a get out the vote procedure known as *knock and drag* where individuals would knock on people's doors and offer free rides to the polls. She stated that she saw questionable behavior on behalf of some of the organizers of the event and also unorganized polling places and failure of Chief Election Inspectors to carry out their required duties.

I. Director's Report

1. Elections Division Report – election administration.

Ross Hein, Elections Supervisor, was present on behalf of Elections Division Administrator Nathaniel E. Robinson to respond to questions from the Board on the Division Report.

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

Ethics Division Administrator Jonathan Becker advised the Board on the progress of the migration from the old lobbying website to the new lobbying website. He advised that the Ethics Division would be providing webinars and other training materials for end-users and the final product would be in place by July 01, 2012. Since the Board will not meet until August he will provide a report to the Board at that time regarding the transition.

3. Office of General Counsel Report – general administration.

No report given.

J. Closed Session

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

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

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

Motion carried unanimously. The Board recessed for lunch at 12:55 p.m. and convened in closed session at 1:30 p.m.

5.05 (6a) and 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.
19.85 (1) (c)	The Board may consider performance evaluation data of a public employee over which it exercises responsibility.

The next regular meeting of the Government Accountability Board is scheduled for Tuesday, August 28, 2012, at the State Capitol in Madison, Wisconsin beginning at 9 a.m.

June 8, 2012 Government Accountability Board meeting minutes prepared by:

 Aaron P. Frailing, Elections Specialist

June 15, 2012

June 8, 2012 Government Accountability Board meeting minutes certified by:

 Judge Gerald Nichol, Board Secretary

August 28, 2012

State of Wisconsin\Government Accountability Board

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JUDGE DAVID G. DEININGER
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 28, 2012, Board Meeting

TO: Members, Government Accountability Board

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

Prepared by:
David Buerger, Elections Administration Specialist
Government Accountability Board

Presented by:
Nathaniel E. Robinson, Elections Division Administrator, and David Buerger
Government Accountability Board

SUBJECT: Ballot Access for Independent Candidates for President/Vice President of the United States

This memorandum presents a summary of important and noteworthy information about independent candidates for President and Vice President who are requesting ballot access for the 2012 General Election.

Summary

2011 Wisconsin Act 75 changed the schedule for circulating and submitting nomination papers of independent candidates for President and Vice President of the United States from August 1st through the 1st Tuesday in September, to July 1st through the 1st Tuesday in August. As such, 5:00 p.m., Tuesday, August 7, 2012, was the nomination paper filing deadline for independent candidates for the office of President/Vice President of the United States. Wis. Stat. § 8.20(8)(am). Four slates of candidates filed by the deadline:

Party	Presidential Candidate	Vice Presidential Candidate
Green Party	Jill Stein	Ben Manski
Libertarian Party	Gary Johnson	James P. Gray
Party for Socialism and Liberation	Gloria La Riva	Filberto Ramirez, Jr.
Socialist Equality Party	Jerry White	Phyllis Scherrer

Nomination papers for independent candidates for President/Vice President of the United States shall contain the signatures of not less than 2,000 and not more than 4,000 electors. Wis. Stat.

8.20(4) In review of the nomination papers submitted, staff examined each party’s submission to determine that it contained a valid number of signatures for the office. Staff used the guidance provided in GAB 2.05 in review of the nomination papers submitted to determine if a given signature was facially valid. No affirmative steps were taken to find and eliminate duplicate signatures or signatures from individuals who are ineligible to vote due to age, residency, citizenship, or other disqualifying factors. However, approximately 1,000 signatures were struck for a variety of issues including incomplete addresses, dates, or an incomplete certification of the circulator. All four slates of candidates were determined to have submitted a sufficient number of signatures to qualify for the ballot:

Party	Signatures Submitted	Signatures Verified
Green Party	2,400	2,276
Libertarian Party	2,800	2,685
Party for Socialism and Liberation	2,700	2,329
Socialist Equality Party	3,200	2,799

Each candidate is also required to file a Declaration of Candidacy in order to qualify for ballot access. Wis. Stat. § 8.21. Each slate of candidates submitted their individually prepared and notarized Declaration of Candidacy by the filing deadline.

Irregularities in Ballot Access Documents Not Affecting Ballot Status

During review of nomination papers, Elections Division staff identified an irregularity with the list of presidential electors for both the Green Party and Socialist Equality Party. A separate memo (Nomination Paper Sufficiency of Independent Candidates for President for the Green Party and Socialist Equality Party) will address this issue in further detail.

Challenges to Ballot Status

Staff received one challenge to the nomination papers submitted by independent candidates. Attached is a complaint filed with the Board challenging the eligibility of the Libertarian Party candidates for President and Vice President. The complaint alleges that the candidates did not timely file the required Declaration of Candidacy forms with the Board. This allegation was based upon the complainant’s review of the Board’s file with a member of the G.A.B. staff. That review overlooked that the Libertarian Party nominees did in fact file the Declaration of Candidacy forms by the statutory deadline, which was August 7, 2012. The relevant statutory provisions are as follows:

Wis. Stat. §8.20(6): “Nomination papers shall be accompanied by a declaration of candidacy under s. 8.21.”

Wis. Stat. §8.21(1): “Each candidate, except a candidate for presidential elector under 8.20(2)(d), shall file a declaration of candidacy, no later than the latest time provided for filing nomination papers. . .”

Wis. Stat. §8.20(8)(am): “Nomination papers for independent candidates for president and vice president, and the presidential electors designated to represent them, may be

circulated no sooner than July 1 and may be filed not later than 5 p.m. on the first Tuesday in August preceding a presidential election.”

The first Tuesday in August was August 7, 2012, and attached are the Declaration of Candidacy forms filed by the Libertarian Party’s candidates for President and Vice President, Gary Johnson and James P. Gray. The documents indicate that they were received by the Board on August 7, 2012 at 12:49 p.m., indicating that they were filed by the statutory deadline.

Board staff has attempted to contact the complainant in light of this information which was apparently overlooked in the review of the Board’s file. The complainant may decide to withdraw the complaint, but if not, Board staff recommends denying the complaint and certifying the names of Gary Johnson and James P. Gray as Libertarian Party candidates for President and Vice President of the United States, respectively.

Staff Recommendations for Ballot Status

A listing of candidates recommended for ballot status is attached and is also available on the Elections Division website at <http://gab.wi.gov>. Staff requests the Board approve the ballot status of those candidates listed.

RECOMMENDED MOTION: Deny the challenge to the Libertarian Party candidates and accept the staff recommendation to approve the candidates for the Libertarian Party and the Party for Socialism and Liberation.

Other motions addressing the Green Party and the Socialist Equality Party are presented in the “Nomination Paper Sufficiency of Independent Candidates for President for the Green Party and Socialist Equality Party” memo.

Attachments:

- Urben Complaint
- Declarations of Candidacy – Gary Johnson & James P. Gray
- Candidates Registered by Office Report (2012 Presidential and General Election)

HAND DELIVERED
RECEIVED

STATE OF WISCONSIN
BEFORE THE GOVERNMENT ACCOUNTABILITY BOARD

GOVERNMENT
ACCOUNTABILITY BOARD

GOVERNMENT
ACCOUNTABILITY BOARD

KHYLIE URBEN, Complainant

against

WGAB No.: _____

GARY JOHNSON and
JAMES P. GRAY, Respondents

VERIFIED COMPLAINT OF KHYLIE URBEN

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Khylie Urben, being first duly sworn, states as follows:

1. I am an adult resident of the Town of Middleton, Dane County, Wisconsin. My complete address is 3931 South Meadow Drive, Middleton, Wisconsin 53562.

2. I am a qualified elector in the State of Wisconsin. Pursuant to Wis. Stat. §§ 5.05 and 5.06, and Wis. Admin. Code § GAB 2.07, I am filing this written challenge to the sufficiency of the nomination papers of Gary Johnson (“Johnson”), Presidential candidate for the Libertarian Party, and James P. Gray (“Gray”), Vice-Presidential candidate for the Libertarian Party (collectively the “Nomination Papers”). Specifically, I challenge the Nomination Papers because, on information and belief, Johnson and Gray have not filed a declaration of candidacy as required by Wis. Stat. § 8.21 (“Declaration of Candidacy”).

3. On August 10, 2012, I visited the State of Wisconsin Government Accountability Board (“GAB”) office, 212 East Washington Avenue, Madison, Wisconsin, and asked to review the Nomination Papers filed on behalf of Johnson and Gray.

4. I spoke to GAB Elections Specialist Jason Fischer. Mr. Fischer let me review the documents filed on behalf of Johnson and Gray. The file did not contain GAB Form 162 or a sworn statement filed by Johnson or Gray that substantially complies with the requirements of Wis. Stat. § 8.21 for a Declaration of Candidacy.

5. GAB did possess, however, a document entitled "Certificate of Nomination," stamped as received by GAB on June 4, 2012. A copy of this Certificate of Nomination is attached to this Verified Complaint as **Exhibit A**. The Certificate of Nomination was signed by neither Johnson nor Gray. Rather, the Certificate of Nomination was signed by Mark W.A. Hinkle, Chairman of the Libertarian Party, and Alicia G. Mattson, Secretary of the Libertarian Party.

6. Included in GAB's file with the Nomination Papers was a July 10, 2012 email from GAB Lead Elections Specialist Diane M. Lowe to Mr. Hinkle and Ms. Mattson informing Mr. Hinkle and Ms. Mattson that GAB had received the Certificate of Nomination. The email also advised Mr. Hinkle and Ms. Mattson that candidates Johnson and Gray "must also each file a Declaration of Candidacy (form attached) no later than 5 pm on Tuesday, August 7, 2012." A copy of the July 10, 2012 email is attached to this Verified Complaint as **Exhibit B**.

7. Also included in GAB's file with the Nomination Papers was a document marked as Nomination Paper Receipt No. 2012GENELP-002 ("Receipt"). A copy of the Receipt is attached to this Verified Complaint as **Exhibit C**. Although the Receipt purports to show that candidates Johnson and Gray filed a Declaration of Candidacy, no Declaration of Candidacy was included in GAB's file with the Nomination Papers. Mr. Fischer could not explain the absence of any Declaration of Candidacy in the file.

8. Mr. Fischer also told me that the file reviewed by me contained all of the papers filed with GAB on behalf of Johnson and Gray.

9. Pursuant to Wis Stat. § 8.20(6), nomination papers submitted by an independent candidate for President or Vice President “shall be accompanied by a declaration of candidacy under s. 8.21.”

10. Section 8.21(1) requires that the declaration of candidacy must be filed “no later than the latest time provided for filing nomination papers.”

11. Section 8.20(8)(am), in turn, requires that “[n]omination papers for independent candidates for president and vice president, and the presidential electors designated to represent them, may be circulated no sooner than July 1 and may be filed not later than 5 p.m. on the first Tuesday in August preceding a presidential election.”

12. The first Tuesday in August of 2012 was Tuesday, August 7, 2012.

13. Pursuant to Wis. Stat. § 8.21(2), the Declaration of Candidacy must state that “the *signer* is a candidate for a named office.” (Emphasis added).

14. Section 8.21 further specifies that the declaration of candidacy must state all of the following information “[t]hat the signer meets or will at the time he or she assumes office meet, applicable age, citizenship, residency, or voting qualification requirements, if any, prescribed by the constitutions and laws of the United States and of this state” and “[t]hat the signer will otherwise qualify for office if nominated and elected.”

15. The Nomination Papers, as reviewed by me, do not contain a Declaration of Candidacy, or any document whatsoever signed by Johnson or Gray, much less do the Nomination Papers contain a document signed by Johnson or Gray specifically attesting to the

requirements of Wis. Stat. § 8.21(2). The Certificate of Nomination does not meet the statutory requirements as explained by Ms. Lowe's email of July 10, 2012.

16. Pursuant to Wis. Stat. § 8.30, GAB "*may not place a candidate's name on the ballot if the candidate fails to file a declaration of candidacy within the time prescribed under s. 8.21.*" (Emphasis added). Accordingly, GAB cannot, as a matter of law, place Johnson and Gray on the November general election ballot as independent candidates for President and Vice-President.

17. WHEREFORE, I request that GAB acknowledge that the Nomination Papers are insufficient and accordingly not place Johnson and Gray on the November general election ballot as candidates for President and Vice-President.

I, Khyllie Urben, being first duly sworn on oath state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

Khyllie Urben
Khyllie Urben

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Subscribed and sworn to before me
this 10th day of August, 2012:

Andrew L. Gonzales

Notary Public, State of Wisconsin
My Commission expires: 8/26/2012

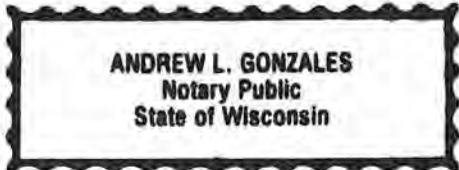




Exhibit A



Certificate of Nomination

RECEIVED
MAY 17 2012
ADMINISTRATIVE BOARD

TO THE: Secretary of State or Board of Elections
OF THE: State of Wisconsin

We do hereby certify that at a National Convention of Delegates representing the Libertarian Party of the United States, duly held and convened in Las Vegas, Nevada on the 3rd through the 6th days of May, 2012, the following persons were placed in nomination for offices to be held at the ensuing general election, November 6, 2012, viz:

<i>Title of Office To be Filled</i>	<i>Name of Candidate</i>	<i>Name of Party</i>	<i>Place of Residence of Candidate</i>
President of the United States	Gary Johnson	Libertarian	El Prado, NM
Vice-President of the United States	James P. Gray	Libertarian	Newport Beach, CA

IN TESTIMONY WHEREOF, I have hereunto set my hand this 6 day of May, 2012.

17545 Chesbro Lake Dr, Morgan Hill, CA 95037

Permanent Address of Convention Chair

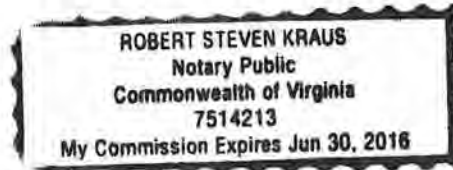
Mark W.A. Hinkle
Mark W.A. Hinkle, Chairman of the Libertarian Party

Mark W.A. Hinkle, being duly sworn that he was the presiding chair of the convention of delegates mentioned and described in the foregoing certificate and that the said Alicia G. Mattson was secretary of such convention, and that said certificate and statements therein contained are true to the best of his information and belief.

State of VA - City of Alexandria

Subscribed and sworn to before me
this 6 day of May, 2012

Robert Kraus
Notary Public



IN TESTIMONY WHEREOF, I have hereunto set my hand this 6 day of May, 2012.

11089 Arcadia Sunrise Dr, Henderson, NV 89052

Permanent Address of Convention Secretary

Alicia G. Mattson
Alicia G. Mattson, Secretary of the Libertarian Party

Alicia G. Mattson, being duly sworn that she was the secretary of the convention of delegates mentioned and described in the foregoing certificate and that the said Mark W.A. Hinkle was the chairman of such convention, and that said certificate and statements therein are true to the best of her information and belief.

State of VA - City of Alexandria

Subscribed and sworn to before me
this 6 day of May, 2012

Robert Kraus
Notary Public

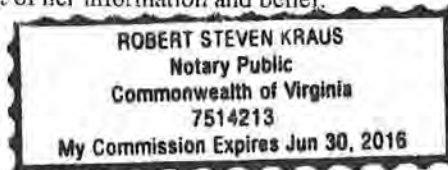


Exhibit B

From: Lowe, Diane - GAB
Sent: Tuesday, July 10, 2012 3:59 PM
To: 'info@lp.org'
Subject: Nomination of Presidential Candidate in Wisconsin
Attachments: GAB-167 Nomination Paper-Independent Pres & Vice Pres Candidates (2012-01).pdf;
GAB-162 Declaration of Candidacy (Rev.7-09).doc

Mr. Mark W. A. Hinkle, Chair
Ms. Alicia G. Mattson, Secretary

The Wisconsin Government Accountability Board is in receipt of the Certification of Nomination for candidates Gary Johnson and James P. Gray.

The Libertarian Party does not have ballot status in WI. Therefore, Libertarian candidates are considered "independent," but will be able to use "Libertarian Party" as a Statement of Principle.

Independent candidates for President and Vice President must file nomination papers with the G.A.B. no later than 5pm Tuesday, August 7, 2012. The nomination paper form is attached. The number of signatures required is a minimum of 2,000 and no more than 4,000 Wisconsin Electors.

Both candidates must also each file a Declaration of Candidacy (form attached) no later than 5 pm on Tuesday, August 7, 2012.

If you have questions, please contact me.

Diane M. Lowe
Lead Elections Specialist, CERA
Government Accountability Board, Elections Division
P.O. Box 7984
Madison, WI 53707-7984
Phone: 608-266-3276
Fax: 608-267-0500
Email: diane.lowe@wisconsin.gov
<http://gab.wi.gov>



Exhibit C

WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD
NATHANIEL E. ROBINSON, ELECTIONS DIVISION ADMINISTRATOR
212 E WASHINGTON AVE

MADISON WI 53703-2855
(608) 261-2028

Candidate ID # :
GARY JOHNSON/JAMES P. GRAY
850C CAMINO CHAMISA
SANTA FE, NM 87501-8907

This is to acknowledge receipt for the nomination papers of
GARY JOHNSON/JAMES P. GRAY
FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES

General Election - Presidential to be held November 6th, 2012

Party Affiliation: - Libertarian Party

Nomination Papers filed August 7th, 2012

Declaration of Candidacy filed August 7th, 2012

~~Statement of Economic Interest filed (Not Filed)~~ N/A

Number of Valid Signatures: 2685

This is number of valid signatures determined by the Government Accountability Board staff. This number is subject to challenge within 3 calendar days following the deadline for filing nomination papers.

Verified By

Diane Lowe

Date: August 8th, 2012

GAB-152 (Rev. 5/2010)

Nomination Paper Receipt No.: 2012GENELP-002

HAND DELIVERED

FOR OFFICE USE ONLY

RECEIVED

DECLARATION OF CANDIDACY

(See instructions for preparation on back)

2012 AUG - 7 PM
GOVERNMENT ACCOUNTABILITY BOARD

Is this an amendment? Yes No

I, Gary Johnson, being duly sworn, state that
(Candidate's name)

I am a candidate for the office of President
(Official name of office - Include district, branch or seat number)

representing Libertarian Party
(Name of political party or statement of principle - five words or less)

and I meet or will meet at the time I assume office the applicable age, citizenship, residency and voting qualification requirements, if any, prescribed by the constitutions and laws of the United States and the State of Wisconsin, and that I will otherwise qualify for office, if nominated and elected.

I have not been convicted of a felony in any court within the United States for which I have not been pardoned.¹

My present municipality of residence for voting purposes is:
850 C. Camino Chamisa Santa Fe, NM 87501
(Candidate's address for voting purposes - Include the number, street, and municipality where the candidate resides.)

My name as I wish it to appear on the official ballot is as follows:
Gary Johnson
(Any combination of first name, middle name or initials with surname. A nickname may replace a legal name.)

X Gary E Johnson
(Signature of candidate)

STATE OF WISCONSIN Nevada)
County of Clark) ss.
(County of notarization)

Subscribed and sworn to before me this 13th day of July, 12.
[Signature]
(Signature of person authorized to administer oaths)

NOTARY SEAL
NOT REQUIRED

My commission expires April 15, 2015 or is permanent.

Notary Public or _____
(Official title if not a notary)

GAB-162 (Rev. 7/2009) The information on this form is required by §8.21, Stats., Art. XIII, Sec. 3, Wis. Const., and must be filed with the filing officer in order to have a candidate's name placed on the ballot. §§8.05 (1)(j), 8.10 (5), 8.15 (4)(b), 8.17 (2), 8.20 (6), 120.06 (6)(b), Wis. Stats.

This form is prescribed by the GOVERNMENT ACCOUNTABILITY BOARD, 212 East Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, WI 53707-7984
608-266-8005, <http://gab.wi.gov> Email: gab@wi.gov

1 A 1996 constitutional amendment bars any candidate convicted of a misdemeanor which violates the public trust from running for or holding a public office. However, the legislature has not defined which misdemeanors violate the public trust. A candidate convicted of any misdemeanor is not barred from running for or holding a public office until the legislature defines which misdemeanors apply.

HAND DELIVERED

FOR OFFICE USE ONLY

RECEIVED

DECLARATION OF CANDIDACY

(See instructions for preparation on back)

GOVERNMENT
ACCOUNTABILITY BOARD

Is this an amendment? Yes No

I, JAMES POLIN GRAY, being duly sworn, state that
(Candidate's name)

I am a candidate for the office of Vice President
(Official name of office - Include district, branch or seat number)

representing Libertarian Party
(Name of political party or statement of principle - five words or less)

and I meet or will meet at the time I assume office the applicable age, citizenship, residency and voting qualification requirements, if any, prescribed by the constitutions and laws of the United States and the State of Wisconsin, and that I will otherwise qualify for office, if nominated and elected.

I have not been convicted of a felony in any court within the United States for which I have not been pardoned.¹

My present municipality of residence for voting purposes is:

2531 Crestview Newport, CA 92463
(Candidate's address for voting purposes - Include the number, street, and municipality where the candidate resides.)

My name as I wish it to appear on the official ballot is as follows:

JAMES P. GRAY
(Any combination of first name, middle name or initials with surname. A nickname may replace a legal name.)

James P. Gray
(Signature of candidate)

STATE OF ~~WISCONSIN~~ Nevada)
County of Clark) SS.
(County of notarization)

Subscribed and sworn to before me this 13th day of July, 2012.

[Signature]
(Signature of person authorized to administer oaths)

NOTARY SEAL
NOT REQUIRED

My commission expires April 15, 2015 or is permanent.

Notary Public or _____
(Official title if not a notary)

GAB-162 (Rev. 7/2009) The information on this form is required by §8.21, Stats., Art. XIII, Sec. 3, Wis. Const., and must be filed with the filing officer in order to have a candidate's name placed on the ballot. §§8.05 (1)(j), 8.10 (5), 8.15 (4)(b), 8.17 (2), 8.20 (6), 120.06 (6)(b), Wis. Stats.

This form is prescribed by the GOVERNMENT ACCOUNTABILITY BOARD, 212 East Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, WI 53707-7984
608-266-8005, <http://gab.wi.gov> Email: gab@wi.gov

1 A 1996 constitutional amendment bars any candidate convicted of a misdemeanor which violates the public trust from running for or holding a public office. However, the legislature has not defined which misdemeanors violate the public trust. A candidate convicted of any misdemeanor is not barred from running for or holding a public office until the legislature defines which misdemeanors apply.

Wisconsin Government Accountability Board

Candidates Registered by Office

2012 PRESIDENTIAL AND GENERAL ELECTION - 11/06/2012

Receipt #	ID	Candidate	Party	Declaration of Candidacy Date	Ethics Board Statement Date	Nomination Papers Date	Valid Signatures	Ballot Status	
								Primary	General
Office:		President of the United States		Incumbent:	Barack H. Obama				
2012GENELP-005		VIRGIL GOODE/JIM CLYMER 90 E Church St Rocky Mount, VA 24151-1556	Constitution	6/27/2012			0		APR
2012GENELP-003	200641	GLORIA LA RIVA/FILBERTO RAMIREZ, JR. 3207 Mission St Apt 9 San Francisco, CA 94110-5023	Independent	8/7/2012		8/7/2012	2329		APR
2012GENELP-001		JERRY WHITE/PHYLLIS SCHERRER 17580 Avilla Blvd Lathrup Vlg, MI 48076-2706	Independent	8/3/2012		8/3/2012	2799		APR
2012GENELP-002		GARY JOHNSON/JAMES P. GRAY 850C Camino Chamisa Santa Fe, NM 87501-8907	Libertarian Party	8/7/2012		8/7/2012	2685		APR
2012GENELP-004		JILL STEIN/BEN MANSKI 17 Trotting Horse Dr Lexington, MA 02421-6318	Green Party	8/7/2012		8/7/2012	2276		APR

Office Subtotal: 5

Wisconsin Government Accountability Board

Candidates Registered by Office

Receipt #	ID	Candidate	Party	Declaration of Candidacy Date	Ethics Board Statement Date	Nomination Papers Date	Valid Signatures	Ballot Status
								Primary General

Total Number of Candidates: 5

State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 28, 2012 Board 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

SUBJECT: Nomination Paper Sufficiency of Independent Candidates for President for the Green Party and Socialist Equality Party

Introduction:

On August 3, 2012, Mr. Jerry White and Ms. Phyllis Scherrer filed nomination papers with the G.A.B. for the offices of President and Vice President as independent candidates representing the Socialist Equality Party.

On August 7, 2012, Ms. Jill Stein and Mr. Ben Manski filed nomination papers with the G.A.B. for the offices of President and Vice President as independent candidates representing the Green Party.

G.A.B. staff completed its initial reviews of the White/Scherrer nomination papers on August 7, 2012 and the Stein/Manski nomination papers on August 8, 2012. G.A.B. staff discovered a flaw dealing with the residency of certain Presidential Electors identified in both sets of nomination papers. The White/Scherrer nomination papers included the identification of Presidential Electors Richard King from the 3rd Congressional District and Jessica Sweers from the 5th Congressional District, neither of whom resided in the respective Congressional Districts designated on the nomination papers. The Stein/Manski nomination papers included the identification of Presidential Elector Monte LeTourneau from the 3rd Congressional District, who does not reside in the 3rd Congressional District as designated on the nomination papers. In rejecting both sets of nomination papers, G.A.B. staff applied the requirements of Wisconsin Statute §8.20(2)(d), which requires in part that the “nomination papers for president and vice president shall list one candidate for presidential elector from each congressional district and 2 candidates for presidential elector from the state at large...” The candidates were informed of their right to dispute staff’s determination at the August 28, 2012 Board meeting.

Representatives of Candidates White and Scherrer contacted G.A.B. staff and argued that the requirement to identify Presidential Electors from each Congressional District was merely directory in nature and the failure to do so was not fatal to acceptance of their nomination papers. In support of their position, Candidates White and Scherrer cited to a Wisconsin Supreme Court order involving Ralph Nader’s 2004 candidacy for President, in which the Supreme Court specifically found that the requirements of

Wisconsin Statute §8.20(2)(d) were directory. The Supreme Court had ordered the State Elections Board to certify ballot status for Candidate Nader for the November 2004 general election.

After consultation with the Director and General Counsel, who also consulted with the Board Chair, G.A.B. staff reversed its initial rejection of the White/Scherrer and Stein/Manski nomination papers, reviewed each set of nomination papers for sufficient signatures, and on August 14, 2012, issued revised determinations to both sets of candidates recommending each set of candidates had sufficient signatures for ballot placement for the November 6, 2012 General Election, but that both should correct the identification of Presidential Electors by August 27, 2012.

Recommendations:

1. Staff recommends that the Board find that Jerome White and Phyllis Scherer submitted 2,799 valid nomination signatures and approve staff's August 14, 2012 analysis and determination of ballot status for Jerome White and Phyllis Scherrer as Independent candidates for President and Vice President at the November 6, 2012 General Election, representing the Socialist Equality Party.
2. Staff recommends that the Board find that Jill Stein and Ben Manski submitted 2,276 valid nomination signatures and approve staff's August 14, 2012 analysis and determination of ballot status for Jill Stein and Ben Manski as Independent candidates for President and Vice President at the November 6, 2012 General Election, representing the Green Party.

Background and Analysis:

To be nominated as an independent candidate for President and Vice President in Wisconsin, nomination papers are required. Wis. Stat. §8.20(2)(a). The number of required signatures on nomination papers for independent presidential electors intending to vote for the same candidates for President and Vice President shall be not less than 2,000 nor more than 4,000 electors. Wis. Stat. §8.20(4). Nomination papers shall be accompanied by a declaration of candidacy. Wis. Stat. §8.20(6). Nomination papers shall be filed in the office of the of the Board for all state offices and the offices of U.S. Senator and Representative in Congress. Wis. Stat. §8.20(7). Nomination papers for independent candidates for President and Vice President, and the presidential electors designated to represent them, may be circulated no sooner than July 1 and may be filed not later than 5 p.m. on the first Tuesday in August preceding a presidential election. Wis. Stat. §8.20(8)(b).

In the case of nomination papers of candidates for the offices of President and Vice President, the following from Wis. Stat. §8.20 apply (emphasis added):

(2)(a) Nomination is by nomination papers. Each nomination paper **shall have substantially** the following words printed at the top:

I, the undersigned, request that the name of (insert candidate's last name plus first name, nickname or initial, and middle name, former legal surname, nickname or middle initial or initials if desired, but no other abbreviations or titles), residing at (insert candidate's street address) be placed on the ballot at the (general or special) election to be held on (date of election) as a candidate [(representing the (name of party)) or (representing the principle(s) of (statement of principles))] so that voters will have the opportunity to vote for (him or her) for the office of (name of office). I am eligible to vote in the (name of jurisdiction or district in which candidate seeks office). I have not signed the nomination paper of any other candidate for the same office at this election.

(b) Each candidate **shall include** his or her mailing address on the candidate's nomination papers.

(c) In the case of candidates for the offices of president and vice president, the nomination papers **shall contain** both candidates' names; the office for which each is nominated; the residence and post-office address of each; and the party or principles they represent, if any, in 5 words or less.

(d) Nomination papers for president and vice president **shall list one candidate for presidential elector from each congressional district** and 2 candidates for presidential elector from the state at large who will vote for the candidates for president and vice president, if elected.

The statutory sections governing the time and place of filing of nomination papers are mandatory. *Ahlgrimm v. S.E.B.*, 83 Wis.2d 585, 596 (Wis. 1978). An act done in violation of a mandatory provision is void, whereas an act done in violation of a directory provision, while improper, may nevertheless be valid. *Id.* at 594. The right regulated is the original right of any qualified person to become a candidate and in construction of the election laws, we cannot therefore lose site of the fact that the regulations imposed are not conditions upon compliance with which the right comes into being, but are regulations intended merely to regulate the exercise of the right in an orderly way. *Id.* at 594-95 (citing *Manning v. Young*, 210 Wis. 588 (Wis. 1933).)

Statutes giving directions as to the mode and manner of conducting elections will be construed by the courts as directory, unless noncompliance with their terms is expressly declared to be fatal, or will change or render doubtful the result, as where the statute merely provides that certain things shall be done in a given manner without declaring that conformity to such provisions is essential to the validity of the election. *Ahlgrimm*, 83 Wis. 2d at 594. Deviations from directory provisions of election statutes are usually termed "irregularities" and do not vitiate an election. *Id.*

Even if a statutory provision that prescribes the manner in which nomination papers are to be completed is held to be directory so that substantial compliance would be sufficient, the Board has discretion to refuse to place a candidate's name on the ballot, if the nomination papers are not prepared, signed, and executed, as required in Wis. Stats. Chapter 8. Wis. Stat. §8.30(1)(a); *Ahlgrimm*, 83 Wis.2d at 596.

Upon receipt of the nomination papers from candidates White/Scherrer and Stein/Manski, G.A.B. staff conducted an initial review based upon the above statutory requirements. Both sets of candidates' nomination papers listed certain Presidential Electors that did not reside within the Congressional District specified on the nomination papers. Therefore, both sets of candidates could not comply with the requirements of Wis. Stat. §8.20(2)(d), which states in part that the candidates' nomination papers *shall list one candidate for presidential elector from each congressional district*. Pursuant to Wis. Stat. §8.30(1)(a), G.A.B. staff exercised authorized statutory discretion and notified candidates White/Scherrer and Stein/Manski that their nomination papers were insufficient, ballot access was denied, and that they had a right to appeal staff's determination to the Board. Staff believed that its determination was consistent with the Board's action in July 2010, when pursuant to Wis. Stat. §8.30(1)(c) the Board found that a legislative candidate could not qualify for the office sought due to insufficient length of residency and was therefore denied ballot access. See *Nomination Papers filed by Matthew Bitz*, GAB Case No. EL10-12, July 27, 2010 (G.A.B. ordered: Bitz not placed on ballot as candidate for Representative of the 75th Assembly District because he failed to meet the residency requirements of the Wisconsin Constitution Article IV, Section 6.)

Upon notice of the G.A.B. staff's determination, Candidates White and Scherrer challenged staff's exercise of discretion and referenced the 2004 Nader decision by the Wisconsin Supreme Court that

addressed the identical issue. The candidates argued that the Wisconsin Supreme Court already determined that the failure to identify a Presidential Elector that resided in each of the Wisconsin Congressional Districts was not fatal to nomination papers for independent candidates for President and Vice President, so long as they substantially complied with the requirements.

G.A.B. staff reviewed the September 30, 2004 Wisconsin Supreme Court Order from *State of Wisconsin ex rel. Ralph Nader and Peter Camejo v. Circuit Court for Dane County, et al.*, Case No. 04-2559-W (September 30, 2004.) This order was issued in response to an Emergency Petition for Writ of Mandamus filed with the Wisconsin Supreme Court by Ralph Nader and Peter Camejo. It is not an official opinion of precedential value. In addition, G.A.B. staff reviewed the Wisconsin Department of Justice's appellate brief submitted on behalf of the State Elections Board. While the Wisconsin Department of Justice argued that there was no residency requirement in Wis. Stat. §8.20(2)(d), the Wisconsin Supreme Court actually assumed that there was a residency requirement. However, the Court determined that this residency requirement was directory in nature. *Nader*, page 2. Under the undisputed facts and circumstances of the Nader case, the Court concluded that there was substantial compliance by Nader regarding the residency requirement of the Presidential Electors. *Id.* Finally, the Court concluded that the State Elections Board did not erroneously exercise its discretion in concluding that Candidates Nader's and Camejo's names should be placed on the ballot for the November 2, 2004 general election. *Id.*

G.A.B. staff consulted with the Director and General Counsel, who also consulted with the Board Chair, regarding the impact, if any, the *Nader* order may have on staff's initial determination. The Director and General Counsel directed staff to complete its review of the individual nomination signatures, which established that both sets of candidates had sufficient valid signatures to gain ballot access. Staff determined that Candidates Stein and Manski submitted nomination papers containing 2,276 valid nomination signatures. Staff also determined that Candidates White and Scherrer submitted nomination papers containing 2,799 valid nomination signatures.

After consultation with the Board's Director and General Counsel, as well as the Board Chair, staff acknowledged that the residency requirement of Wisconsin Statute §8.20(2)(d) had been deemed to be directory by the Wisconsin Supreme Court in *State of Wisconsin ex el. Ralph Nader and Peter Camejo v. Circuit Court for Dane County, et al.*, No. 04-2559-W. While this order was not a precedential decision by the Wisconsin Supreme Court, staff acknowledged that the former State Elections Board applied the same rationale to approve the nomination papers of Candidate Ralph Nader in 2004, having found substantial compliance with Wisconsin Statute §8.20(2)(d). In addition, staff recognized that even though the Board has discretion to deny ballot access to these candidates pursuant to Wisconsin Statute §8.30(1)(a), litigation involving these nomination papers would likely produce a result similar to the Wisconsin Supreme Court's 2004 order.

Accordingly, staff recommended approval of the Stein/Manski (Green Party) nomination papers on the condition that another presidential elector was identified by name and address to replace Monte LeTourneau who was not a resident of the 3rd Congressional District. In addition, staff recommended approval of the White/Scherrer (Socialist Equality Party) nomination papers on the condition that two additional presidential electors were identified by name and address to replace Richard King and Jessica Sweers who were not residents of the 3rd and 5th Congressional Districts respectively. Staff requested that the candidates submit this information to the G.A.B. no later than August 27, 2012.

Proposed Motions:

1. **MOTION:** The Board finds that Jerome White and Phyllis Scherer submitted 2,799 valid nomination signatures and approves staff's August 14, 2012 analysis and determination of ballot status for Jerome White and Phyllis Scherrer as Independent candidates for President and Vice President at the November 6, 2012 General Election, representing the Socialist Equality Party.
2. **MOTION:** The Board finds that Jill Stein and Ben Manski submitted 2,276 valid nomination signatures and approves staff's August 14, 2012 analysis and determination of ballot status for Jill Stein and Ben Manski as Independent candidates for President and Vice President at the November 6, 2012 General Election, representing the Green Party.

Cullen
Weston
Pines
& Bach

A Limited Liability
Partnership

Attorneys at Law

122 West Washington Avenue
Suite 900
Madison, Wisconsin 53703
(608) 251-0101
(608) 251-2883 Fax
www.cwpb.com

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2012 AUG 22 PM 3:41

GOVERNMENT
ACCOUNTABILITY BOARD

Lee Cullen
Lester A. Pines
Steven A. Bach
Alison TenBruggencate
Carol Grob
Linda L. Harfst
Jordan Loeb
Tamara B. Packard

Elise Clancy Ruoho
Susan M. Crawford
Elisabeth S. Bach-Van Horn
Jeffrey L. Vercauteren
Sean P. Lynch

Of Counsel:
Cheryl Rosen Weston
Curt F. Pawlisch

August 22, 2012

By Hand Delivery

Judge David G. Deininger, Chair
Government Accountability Board
212 East Washington Avenue, 3rd Floor
Madison, WI 53707-7984

Re: Nomination Papers of Jerome S. White and Phyllis M. Scherrer

Dear Judge Deininger:

This firm represents Jerome S. White and Phyllis M. Scherrer with regard to the above-referenced matter. In response to the GAB staff's August 14, 2012 letter regarding the nomination papers, please find a Memorandum of Law In Support of Approval of Nomination Papers of Jerome S. White and Phyllis M. Scherrer for the Board's consideration at its upcoming meeting.

Please be advised that the Campaign will submit the names and addresses of the replacement presidential electors under separate cover, on or before August 27, 2012, as directed in the August 14 letter.

Sincerely,

CULLEN WESTON PINES & BACH LLP



Susan M. Crawford

SMC:hmm
Enclosure

**In the Matter of Nomination Papers
of Jerome S. White and Phyllis M. Scherrer**

**Memorandum of Law
In Support of Approval of Nomination Papers of
Jerome S. White and Phyllis M. Scherrer**

I. INTRODUCTION

On August 3, 2012, Jerome S. White and Phyllis M. Scherrer submitted nomination papers as independent candidates for the offices of President of the United States and Vice President of the United States, respectively, to the Government Accountability Board (hereafter GAB). For the reasons presented below, the GAB should certify the names of White and Scherrer as Independent Presidential and Vice-Presidential candidates for the general election to be held on November 6, 2012.

II. PROCEDURAL HISTORY AND SUMMARY OF ISSUE

On August 8, 2012, GAB staff informed White and Scherrer that an error had been identified on their nomination papers: namely, that the individuals listed on White and Scherrer's nomination papers as presidential electors for the third and fifth congressional districts do not currently reside in the third and fifth congressional districts. GAB staff cited Wis. Stat. § 8.20(2)(d), which provides:

Nomination papers for president and vice president shall list one candidate for presidential elector from each congressional district and 2 candidates for presidential elector from the state at large who will vote for the candidates for president and vice president, if elected.

GAB staff advised White and Scherrer that it viewed the error as a “fatal flaw.”

On August 14, 2012, however, GAB staff advised White and Scherrer that the staff intended to recommend that the Board accept their nomination papers. GAB staff noted that in 2004, the State of Wisconsin Elections Board (“Elections Board” or “SWEB”), the GAB’s predecessor agency, approved the nomination papers of Ralph Nader and Peter Camejo as independent candidates for president and vice president. The nomination papers listed an individual who did not reside in the seventh congressional district as a presidential elector for that district. *See* Exh. B,¹ pp. 16, 22-22.

The Wisconsin Supreme Court upheld the Elections Board’s approval of the Nader-Camejo nomination papers, holding that “this residency requirement is *directory* in nature.” Exh. A,² p. 2, ¶5 (emphasis added). The Wisconsin Supreme Court further held that “under the undisputed facts and circumstances of this case, and mindful of the importance of ballot access and voting, this court concludes that there has been *substantial compliance* by the petitioners regarding this requirement.” *Id.* at p. 2, ¶6 (emphasis added). Accordingly, the Court “direct[ed] that the SWEB certify the names of Ralph Nader and Peter Camejo as Independent Presidential and Vice-Presidential candidates for the general election to be held on November 2, 2004.” *Id.* at p. 2, ¶8.

Given the specific facts and circumstances present in this matter, an even stronger rationale exists for finding that White and Scherrer substantially complied with

¹ State Elections Board’s Response to Petition for Supervisory Writ in *State ex rel. Nader and Camejo*, No. 04-2559-W.

² *State ex rel. Nader and Camejo v. Circuit Court for Dane County, et al.*, No. 04-2559-W (Sept. 4, 2004).

the nomination paper requirements related to presidential electors. The GAB should accept the White-Scherrer nomination papers, as recommended by GAB staff.

III. THE WHITE-SCHERRER CAMPAIGN SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF WIS. STAT. § 8.20(2)(d).

The White-Scherrer campaign has submitted affidavits that demonstrate the campaign's substantial compliance with Wis. Stat. §8.20(2)(d). The campaign was aware of the requirements of Wis. Stat. §8.20(2)(d) relating to presidential electors and made reasonable, good-faith efforts to comply. Both presidential electors who were listed for congressional districts in which they no longer reside were affected by the decennial redistricting enacted in 2011 Wisconsin Act 44. As the Board is aware, Act 44 was tied up in legal challenges in the courts for many months, coming to a conclusion only recently. The Board should find that the White-Scherrer campaign substantially complied with the statutory requirements.

A. The White-Scherrer Campaign Made Diligent and Good-Faith Efforts to Ascertain that the Presidential Electors Listed on the Nomination Papers Resided in the Congressional Districts For Which They Were Listed.

Niles Niemuth, who serves as the Wisconsin campaign manager for the White-Scherrer campaign, assisted the campaign with the preparation of the nomination papers. Exh. C.³ The nomination papers list Richard King, of 356 West Monroe Street, Spring Green, WI, 53588, as the presidential elector for the third congressional district, and Jessica Sweers, of 5171 North Santa Monica Boulevard, Apt. 2, Whitefish Bay, WI, 53217, as the presidential elector for the fifth congressional district. Exh. C, ¶¶3, 7, 9.

³ Affidavit of Niles Niemuth in the Matter of Nomination Papers of Jerome S. White and Phyllis M. Scherrer.

Niemuth confirmed the addresses of King and Sweers. Exh. C, ¶¶7, 9. To determine that the presidential electors resided in the congressional districts for which they were listed in the nomination papers, Niemuth consulted the official governmental website for the U.S. House of Representatives, found at <http://www.house.gov/representatives/find/>. Exh. C, ¶6. The House website, which provides an interactive program to identify the congressional district for a particular address, indicated that King's address is located in the 3rd Congressional District and that Sweers' address is located in the 5th Congressional District.⁴ Exh. C, ¶8, 10.

Niemuth also states that he reviewed the following GAB materials on about July 14, 2012, when he was preparing the nomination papers:

- The web page entitled "Federal Candidates," at <http://gab.wi.gov/elections-voting/candidates/federal>;
- The form entitled Nomination Paper Of Independent Candidates For President And Vice President, at http://gab.wi.gov/sites/default/files/gab_forms/3/gab_167_nomination_paper_independent_pres_vice_p_16929.pdf; and
- The memorandum entitled Wisconsin Ballot Access Requirements For President And Vice President Of The United States, at http://gab.wi.gov/sites/default/files/publication/64/presidential_ballot_access_memo_rev_01_2012_pdf_17130.pdf.

Exh. C, ¶4.⁵ As Niemuth points out, none of these GAB informational materials identifies or links to a congressional district map for use in determining the slate of

⁴ Notably, as of the date of filing of this memorandum, when the addresses for King and Sweers are entered into the House website, King's address is identified as being in the 3rd Congressional District and Sweers' address is listed as being in the 5th Congressional District.

⁵ The GAB website provides links to the Wisconsin Legislature's website, which continues to provide both the old and new maps of congressional districts.

presidential electors. Exh. C, ¶5. Thus, at the time he prepared the nomination papers, Niemuth believed King and Sweers resided in the 3rd and 5th Congressional Districts, respectively, based on his diligent and good-faith efforts to verify the districts of residence for each. Exh. C, ¶11, 12.

B. The Residences of Presidential Electors King and Sweers Were Assigned to a different Congressional District During the Recent Decennial Redistricting.

As the GAB staff correctly surmised, the “defect” it identified in the White-Scherrer nomination papers was “due to the decennial redistricting process.” The GAB staff provided the campaign with maps of the previous congressional districts and the districts created by 2011 Wisconsin Act 44. The lines of the 3rd and 5th districts were redrawn in a manner that assigned both King and Sweers to new congressional districts.

King and Sweers themselves were unaware that their residences had been redistricted when they agreed to serve as presidential electors for the White-Scherrer nominations. *See* Exh. D, E.⁶ King and Sweers both learned of the redistricting of their residences from the White-Scherrer campaign after the GAB staff raised the concern about the nomination papers on August 7, 2012. Exh. D, ¶6; Exh. E, ¶6. Neither has received any formal notification from any governmental body of the redistricting. Exh. D, ¶7; Exh. E, ¶7.

⁶ Affidavit of Jessica Sweers in the Matter of Nomination Papers of Jerome S. White and Phyllis M. Scherrer; Affidavit of Richard King in the Matter of Nomination Papers of Jerome S. White and Phyllis M. Scherrer.

C. The Requirement Of Listing Presidential Electors From Each Congressional District In The Nomination Papers, Pursuant To Wis. Stat. §8.20(2)(D), Is Directory.

The Legislature has instructed that, except as otherwise provided, election laws must be construed to give effect to the will of the electors, notwithstanding any failure to fully comply with some provision. Wis. Stat. § 5.01. In accordance with this statutory directive, the Wisconsin Supreme Court has ruled that statutes providing that certain things should be done in a certain manner in conducting elections are directory, unless noncompliance is expressly declared to be fatal. *State ex rel. Ahlgrimm v. State Elections Bd.*, 82 Wis. 2d 585, 594, 263 N.W.2d 152 (1978). Thus, the Court held that provisions for “preparing, signing and executing nomination papers” are directory, while the act of filing a paper is mandatory: “[f]iling is something that is done with the nomination papers, whereas, preparing, signing and executing are things that are done to nomination papers.” *Id.* at 596

As the Wisconsin Supreme Court ruled in the *Nader* case, the requirement that the nomination papers list presidential electors from each congressional district under Wis. Stat. §8.20(2)(d) is directory, not mandatory. Exh. A, ¶5. Notably, the Court in *Nader* assumed, without deciding, that the provision requires that such electors reside in the congressional districts.⁷

An act that does not strictly comply with a directory provision may be valid as long as there is substantial compliance with the provision. *Id.* at 594, 596. The Board

⁷ The Court noted that counsel for the Elections Board argued that the requirement in Wis. Stat. §8.20(2)(d), in requiring the listing of a presidential elector “from” each congressional district, does not require that the presidential electors *reside* in the congressional districts.

has discretion to determine whether there has been substantial compliance with the directory provisions of Wis. Stat. §8.20(2)(d). *Id.* at 596; Wis. Stat. § 8.30(1).

D. The Board Should Accept The Nomination Papers Of White And Scherrer In Light Of Their Substantial Compliance With The Requirements For Nomination Papers In Wis. Stat. §8.20(2)(D).

There is no dispute as to the facts in this matter. The White-Scherrer campaign prepared the nomination papers and listed presidential electors for each of the Wisconsin congressional districts. At the time the nomination papers were prepared, the White-Scherrer campaign believed, in good faith and through its due diligence, that King and Sweers were residents of the respective congressional districts for which they were listed as presidential electors on the papers. It is obvious that the campaign's mistake as to the congressional district in which Sweers and King resided is attributable to the decennial redistricting, which affected both Sweers and King.

The Board should give weight to the specific nature of the error in the nomination papers. A consideration of the role of electors in presidential elections strongly favors the Board's acceptance of the nomination papers of White and Scherrer.

The United States Constitution gives to each state the power to "appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress." U.S. Const. art. II, § 1.

As discussed above, independent candidates for President and Vice President must list presidential electors from each congressional district and two at-large electors on their nomination papers. By contrast, the recognized parties nominate presidential

electors from each district and two at large electors at a convention in the capitol at 10 a.m. on the first Tuesday in October of each year in which there is a presidential election. Wis. Stat. § 8.18.

Following the presidential election, the electors nominated or listed by the candidates who were elected as president and vice president meet at the state capitol at 12:00 noon the first Monday after the 2nd Wednesday in December. Wis. Stat. §7.75(1). If an elector is absent, the electors present are required to immediately fill the Electoral College vacancy by ballot, by a plurality of votes. *Id.* There is no requirement that the replacement elector be from the same congressional district as the absent elector. After establishing a full slate of electors, the electors “shall vote by ballot for that person for president and that person for vice president who are, respectively, the candidates of the political party which nominated them under s. 8.18, [or] the candidates whose names appeared on the nomination papers under s. 8.20.” Wis. Stat. §7.75(2).

The presidential electors are not the electors of any individual congressional district, but serve as the composite electoral slate of the entire state. They are not elected by the residents of each individual congressional district. Requiring a presidential elector who is elected for the entire state to be a resident of a congressional district thus serves no functional purpose. Rather, the purpose of requiring the electors nominated by the parties or listed by the candidates to be from each congressional district appears to be strictly ceremonial. Since Wisconsin is entitled to one elector for each congressional district, the Legislature has provided that the casting of electoral votes should be done by electors who symbolically represent the various districts.

However, the electors vote in accordance with the undifferentiated votes of the citizens of the entire state. Indeed, electors may cast their electoral votes for candidates who lost the popular vote in the particular district they represent.

Accordingly, the acceptance of White and Scherrer's nomination papers will not have any functional effect on the role played by the electors, in the event that White and Scherrer win election, or give them any unfair advantage over other candidates.

Notably, the nomination papers of another set of independent candidates for President and Vice President (Jill Stein and Ben Manski) included an identical mistake. The recognized political party candidates are not required to list presidential electors from each congressional district in their nomination papers. Rather, as noted above, the electors of the major party candidates are selected by the party at a convention on the first Tuesday before the election. White and Scherrer gain no unfair advantage if the Board accepts their nomination papers.

Finally, a refusal by the Board to accept White's and Scherrer's nomination papers would give rise to a serious constitutional issue. Since independent candidates must list their electors on their nomination papers, while the candidates of recognized political parties need not do so, independent candidates could be kept off the ballot for a defect that could not keep partisan candidates from being on the ballot. This disparate treatment of similarly situated classes of candidates raise concerns under the Equal Protection Clause. See *State v. Post*, 197 Wis. 2d 279, 318, 541 N.W.2d 115 (1995), *cert. denied*, 521 U.S. 1118 (1997); *Swamp v. Kennedy*, 950 F.2d 383 (7th Cir. 1991), *cert. denied*,

505 U.S. 1204 (1992) (A burden that falls disproportionately on those outside existing political parties may be unconstitutional).

Finally, the Board should accept the nomination papers of White and Scherrer to carry out the policy, written into the statutes, of interpreting election requirements in a manner that gives effect to the will of the electors. Wis. Stat. § 5.01. The GAB staff has certified 2,799 valid signatures of citizens of this state who have asked for the opportunity to vote for White for President and Scherrer for Vice President in the general election. Rejecting their nomination papers based on an inadvertent irregularity in the nomination papers, which has no relevance to the validity of the electoral process, would thwart the will of these and other potential voters, in contravention of the policy expressly established by the Legislature for the construction of election laws.

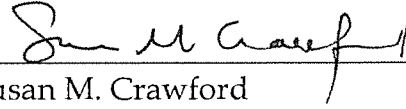
IV. CONCLUSION

For these reasons, Jerome White and Phyllis Scherrer respectfully request that the Government Accountability Board approve their nomination papers as candidates for President of the United States and Vice President of the United States, respectively.

[SIGNATURE PAGE FOLLOWS]

Dated this 12th day of August, 2012.

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APPENDIX A



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September 30, 2004

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You are hereby notified that the Court has entered the following order:

No. 04-2559-W

State of Wisconsin ex rel. Ralph Nader and Peter Camejo v.
Circuit Court for Dane County, et al. L.C. #04CV002971

The court has considered the Emergency Petition for Writ of Mandamus filed by petitioners, Ralph Nader and Peter Camejo, asking this court to accept original jurisdiction in this matter. The court has also considered the responses to this petition filed by the State of Wisconsin Elections Board (SWEB) and the Democratic Party of Wisconsin and Kim Warkentin as well as the amicus brief filed in support of the petition filed by the Republican Party of Wisconsin which this court has accepted. The court has also heard oral argument in this matter and the court being aware of the time exigencies involved,

(Continued on Page Two)

IT IS ORDERED:

1. The request for this court to accept original jurisdiction in this matter is granted.
2. Based on this court's now exclusive original jurisdiction, the court vacates all prior orders entered in this matter in the Dane County Circuit Court in Democratic Party of Wisconsin v. State of Wisconsin Elections Board, Case No. 04-CV-2971; the stay issued by this court on September 28, 2004 is also vacated. See Petition of Heil, 230 Wis. 428, 284 N.W. 42 (1939).
3. Although the court has been provided with a transcript of the hearing in this matter before the SWEB, the court declines to accept this unauthenticated transcript as part of the record.
4. Based on the September 22, 2004 order of the SWEB and the board's staff report, excerpts of which were appended to the board's response filed in this matter, this court assumes, for purposes of this action, that Wis. Stat. § 8.20(2)(d) (2001-02) which provides that "[n]omination papers [of independent candidates] for president and vice president shall list one candidate for presidential elector from each congressional district ..." requires that these candidates for presidential elector must reside in the congressional district for which each is listed; the court recognizes, however, that counsel for the SWEB interprets this provision differently.
5. The court determines that this residency requirement is directory in nature.
6. Under the undisputed facts and circumstances of this case, and mindful of the importance of ballot access and voting, this court concludes that there has been substantial compliance by the petitioners regarding this requirement. See Wis. Stat. §§ 5.01(1) and 8.30(1).
7. The court concludes, based on the SWEB's September 22, 2004 order and the excerpts of the staff report, together with reasonable inferences therefrom, that the SWEB did not erroneously exercise its discretion in concluding that the petitioners' names should be placed on the ballot for the November 2, 2004 general election.
8. Accordingly, consistent with the SWEB's order in this matter, we direct that the SWEB certify the names of Ralph Nader and Peter Camejo as Independent Presidential and Vice-Presidential candidates for the general election to be held on November 2, 2004.

Cornelia G. Clark
Clerk of Supreme Court

Page Three
September 30, 2004
No. 04-2559-W

State of Wisconsin ex rel. Ralph Nader and Peter Camejo v.
Circuit Court for Dane County, et al. L.C. #04CV002971

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¶1 LOUIS B. BUTLER, JR., J. (*concurring*). I concur. I would not have accepted this as an original action, as there was a proceeding that was litigated in the trial court. I would have treated this as a supervisory writ pursuant to Wis. Stat. § (Rule) 809.71. I share the trial court's concern about the board's order regarding whether there was an adequate showing that the board properly exercised its discretion. At the same time, I do not agree that the trial court's actions were warranted given its finding. Wis. Stat. § 227.57(5) provides that "the court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law." Because a correct interpretation in this case does not compel Nader's removal from the ballot, I conclude that the trial court should have remanded the case to the board for further action under a correct interpretation of Wis. Stat. § 8.20(2)(d).

¶2 That being said, this court chose to accept this matter as an original action. While I am extremely troubled by the end-run of established appellate procedure, I am also mindful of the fact that the eleventh-hour circumstances of this case dictate that this court reach a fair and just decision. As

there is simply no time to appropriately remand this matter to either the trial court or to the board to properly exercise its discretion, and given the right of qualified voters to cast their votes effectively, I join in the court's mandate.

APPENDIX B

STATE OF WISCONSIN
IN SUPREME COURT

No. 04-2559-W

STATE OF WISCONSIN
EX REL. RALPH NADER
and PETER CAMEJO,

Petitioners,

v.

CIRCUIT COURT FOR
DANE COUNTY, et al.,

Respondents.

RESPONSE OF STATE ELECTIONS BOARD
TO PETITION FOR SUPERVISORY WRIT

DISCUSSION

I. THIS MATTER SHOULD BE
GIVEN PREFERENCE AND
EXPEDITED.

This is a judicial review of a decision of the State Elections Board allowing Ralph Nader and Peter Miguel Camejo to appear on the ballot in the general election to be held November 2, 2004, as independent candidates for President and Vice-President of the United States.

Under the timetable established by the Legislature, the Board is supposed to certify the candidates for the general election no later than the fourth Tuesday in September, *i.e.*, September 28. Wis. Stat. §§ 7.08(2)(b) and 10.06(1)(i) (2001-02). The county clerks are supposed to distribute ballots to municipal clerks no later than thirty-one days before the election, *i.e.*, October 2. Wis. Stat. § 7.10(3)(a) (2001-02). Municipal clerks must mail out absentee ballots no later than thirty days before the election, *i.e.*, October 3. Wis. Stat. § 7.15(1)(cm) (2001-02). Any delay beyond these dates creates more practical problems as time passes for the preparation and distribution of the ballots, especially ballots sent to absentee voters. Thus, this matter should be given preference and expedited by the Court.

Expeditious treatment is feasible because the principal issue focuses on the construction of Wis. Stat. § 8.20(2)(d) (2001-02), which provides that “[n]omination papers [of independent candidates] for president and vice president shall list one candidate for presidential elector from each congressional district and 2 candidates for presidential elector from the state at large who will vote for the candidates for president and vice president, if elected.” The issue of law is whether this statute should be construed to include a requirement that a person listed as a presidential elector from a congressional district must be a resident of that district.

A subsidiary issue is whether any residency requirement is mandatory or directory so that the Board would have discretion to determine whether there had been substantial compliance.

The Board ruled that Nader and his running mate substantially complied with Wis. Stat. § 8.20(2)(d), even though the elector they listed from the Seventh Congressional District did not reside in the district at the time the nomination papers were filed.

II. THE NOMINATION PAPERS FILED BY RALPH NADER SUBSTANTIALLY COMPLY WITH THE PROVISION STATING THAT INDEPENDENT CANDIDATES FOR PRESIDENT SHOULD LIST ONE ELECTOR FROM EACH WISCONSIN CONGRESSIONAL DISTRICT.

A. There Is No Requirement That Presidential Electors Be Residents Of The District From Which They Are Listed.

Although the office of President of the United States is a federal office, the United States Constitution gives to each state the power to "appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress." U.S. Const. art. II, § 1.

The Wisconsin Legislature has directed the recognized political parties to convene a month before a presidential election "to nominate one presidential elector from each congressional district and 2 electors from the state at large." Wis. Stat. § 8.18(2) (2001-02). Independent candidates for president must "list" on their nomination papers "one candidate for presidential elector from each congressional district and 2 candidates for presidential elector from the state at large." Wis. Stat. § 8.20(2)(d) (2001-02).

The Legislature has not expressly established any qualifications for presidential electors. In particular, there is no specific requirement that persons designated as presidential electors from a particular congressional district be residents of that congressional district.

Whether there is any such requirement must be determined by a process of statutory construction.

The purpose of construing a statute is to determine what the Legislature intended by enacting it. *UFE, Inc. v. LIRC*, 201 Wis. 2d 274, 281, 548 N.W.2d 57 (1996); *J.A.L. v. State*, 162 Wis. 2d 940, 962, 471 N.W.2d 493 (1991). In making this determination, a court must first consider the language used by the Legislature to express its intent. *UFE*, 201 Wis. 2d at 281; *J.A.L.*, 162 Wis. 2d at 962. Words which have not been specifically defined by the drafters of an enactment must be given their commonly accepted meaning, except those technical terms with a special meaning in the law which must be understood in their technical sense. *State v. Williquette*, 129 Wis. 2d 239, 248, 385 N.W.2d 145 (1986); *Perry Creek Cranberry Corp. v. Hopkins Agricultural Chemical Co.*, 29 Wis. 2d 429, 435, 139 N.W.2d 96 (1966); Wis. Stat. § 990.01(1) (2001-02).

The critical word in Wis. Stat. § 8.20(2)(d) is "from." This is the only word from which any requirement of residence could be inferred.¹

The problem is that "from," rather than having any single clear commonly accepted meaning, is a function word with a multitude of meanings. The basic function of the word is to specify a starting point. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 913 (unabridged ed. 1986); THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 729 (3d ed. 1996). But the nuances and connotations of the word spread in many directions from there.

¹The word "shall" is not relevant at this point. That word does not define what is to be done, but only the manner in which whatever is to be done should be done. That question will be addressed in the second part of this memorandum.

Among other things, "from" can be used to mean native to or a resident of a place, such as people from Ohio. WEBSTER'S DICTIONARY at 913. Another meaning is the place where a person has traveled from, such as from town. WEBSTER'S DICTIONARY at 913; AMERICAN HERITAGE DICTIONARY at 729.² "From" can also be used to indicate the source or origin of something, such as a note from the teacher, AMERICAN HERITAGE DICTIONARY at 729, or emissaries from a barbarian king. WEBSTER'S DICTIONARY at 913. So the meaning of "from" depends on the way it is used.

The statute itself provides no clue whether "from" is used in the sense of a resident of a particular congressional district or in the sense of an emissary or representative from that district. Thus the word "from" and the statute in which it is used are inherently ambiguous because reasonable people could reasonably understand them in either of two different ways. See generally *Gen. Cas. Co. v. DOR*, 2002 WI App 248, ¶ 12, 258 Wis. 2d 196, 653 N.W.2d 513. They could reasonably be understood to mean that a presidential elector must be from a congressional district in the sense of a resident of the district, or they could reasonably be understood to mean that an elector must be merely an emissary or representative from the district.³ So extrinsic aids such as the history, purpose and context of the statute must be used to determine what the Legislature actually intended. *Id.*; *J.A.L.*, 162 Wis. 2d at 962-63.

²The fact that "from" is followed by a geographical term does not mean it is used to designate residence. WEBSTER'S DICTIONARY lists a half dozen examples, such as the one above, where "from" followed by a geographical term does not designate residence but some other variation of the concept of starting point.

³The question is not whether one meaning is more reasonable than another, but whether both meanings are reasonable.

To begin with, the Legislature has recognized that residence is not always a qualification for elected office. Residence is a qualification only in those instances where it is required by the constitution or laws of the state. See Wis. Stat. § 8.28(1) (2001-02).

In many cases the law clearly establishes a residency requirement. For example, state legislators must "have resided one year within the state, and be a qualified elector in the district which [they] may be chosen to represent." Wis. Const. art. IV, § 6. A "qualified elector" must have resided in the district for ten days prior to an election. Wis. Stat. § 6.02(1) (2001-02).

The fact that Wis. Stat. § 8.20(2)(d) does not similarly contain any form of the word "reside" is some indication that residence is not a qualification for the office of presidential elector.

The history of Wis. Stat. § 8.20(2)(d) shows that the absence of any form of the word "reside" was intentional, and that the Legislature did not intend to make residence a qualification for this office.

Prior to 1965, the relevant statute read,

At the general election next preceding the time fixed for the choice of president and vice president of the United States, there shall be elected, by general ticket, as many electors of president and vice president as this state may be entitled to elect senators and representatives in congress. A vote for the presidential and vice presidential nominees of any party is a vote for the electors of such nominees.

Wis. Stat. § 9.04 (1963).

There was no hint in this statute of any requirement that presidential electors even be representatives, much less residents, of any particular

congressional district. Indeed, this Court, noting that citizens did not vote for individual presidential electors but "for an entire slate of presidential electors," concluded that all the electors of a candidate "constitute one composite candidate." *State ex rel. Boulton v. Zimmerman*, 25 Wis. 2d 457, 461-62, 464, 130 N.W.2d 753 (1964).

In 1965 the Legislature revised the election laws. Among the contemplated changes, 1965 Assembly Bill 792 would have amended § 9.04 by eliminating the phrase "by general ticket." and by adding the provision that "[t]wo electors shall be elected from the state at large and one elector shall be elected from each congressional district." 54 Op. Att'y Gen. 95, 95 (1965) (quoting 1965 Assembly Bill 792). In an opinion requested by the Assembly, the Attorney General observed that the bill would significantly change the law by having voters in a particular congressional district vote for "one district elector rather than a slate" of electors. *Id.* at 100.

The bill would also have amended the existing Wis. Stat. § 9.06 to provide that any vacancy in the office of presidential elector "shall be filled by a resident of the area from which the prior elector was elected." *Id.* at 96 (quoting 1965 Assembly Bill 792). If a vacancy had to be filled by a resident of a particular congressional district, the logical inference was that the elector initially chosen had to be a resident as well.

Assembly Bill 792 was never enacted as law. Instead, the Legislature enacted the provisions relating to presidential electors in substantially their present form.

Chapter 666, Laws of 1965, created Wis. Stat. § 8.25(1), which, with some minor linguistic alterations, essentially reenacted the former § 9.04, including the important provisions that presidential electors are to be

chosen “[b]y general ballot . . .,” and that a “vote for the president and vice president nominations of any party is a vote for the electors of the nominees.” The provision reenacted in 1965 remains the same today, and the principle of vicarious voting is reiterated in Wis. Stat. § 5.10 (2001-02).

The concept of presidential electors from each congressional district found its way into Wis. Stat. § 8.18(2)(c), now Wis. Stat. § 8.18(2), and Wis. Stat. § 8.20(2)(b), now Wis. Stat. § 8.20(2)(d), which provide that parties should “nominate” and independent candidates should “list” electors from each district.

This change was apparently precipitated by the Attorney General’s opinion, which suggested that if the Legislature intended to require that presidential electors be from the various congressional districts, it should simply provide that electors should be nominated from each district. 54 Op. Att’y Gen. at 100-01.

If this were the only change made by the Legislature, perhaps it could be argued that the Legislature intended to enact the residency requirement embodied in the Assembly Bill. But the Legislature departed from the Assembly draft in a more significant way.

The proposal which would have required replacement electors to be residents of a district was discarded so that now an absent elector may be replaced by anyone on whom a plurality of the electors present can agree. Wis. Stat. § 7.75 (2001-02).

It is presumed that the Legislature intends not to enact language in an earlier version of a bill which is deleted prior to enactment. *Russello v. United States*, 464 U.S. 16, 23-24 (1983). See *Verdoljak v. Mosinee Paper Corp.*, 200 Wis. 2d 624, 633, 547 N.W.2d 602 (1996)

(omission of word or phrase in statutory amendment indicative of intent to alter meaning of provision).

Here, the Legislature plainly intended to reject the suggestion that presidential electors should be elected separately from each congressional district. By reenacting the language of the existing law that presidential electors should be elected by general ballot, the Legislature demonstrated an intent to retain the principle that presidential electors are elected by voters throughout the state. By reenacting the language of the existing law that a vote for a candidate is a vote for the candidate's electors, the Legislature demonstrated an intent to retain the principle that presidential electors are chosen as a slate constituting one composite candidate.

No functional purpose is served by requiring presidential electors to be residents of each separate congressional district when they are not elected by the residents of each individual district but by the residents of the entire state, and when they are not the electors of any individual district but the composite electoral slate of the entire state. There is no functional reason for an elector who is elected by the entire state to be a resident of any particular part of the state. There is no functional reason for an elector who is elected for the entire state to be a resident of any particular part of the state.

Most importantly, the fact that the Legislature deleted the language in Assembly Bill 792 which would have required a presidential elector to be a "resident" of a particular district unequivocally evinces an intent not to require residence in a particular district as a qualification of an elector. Indeed, the omission of any residency requirement is underscored by the fact that an elector who has been nominated or listed from a particular district may be replaced by anyone wandering around the State Capitol at 12:00 noon on the first Monday after the

second Wednesday in December when the presidential electors meet. Wis. Stat. § 7.75(1).

An additional indication of legislative intent is the exemption of candidates for presidential elector from the requirement of filing a declaration of candidacy on which, among other things, they would otherwise have to list their residence and certify that they would meet any residency requirements if elected. Wis. Stat. § 8.21 (2001-02). The fact that candidates for presidential elector do not have to certify that they would meet any residency requirements strongly suggests that there are no such requirements for presidential electors.

The purpose of the provision that electors should be nominated or listed from each congressional district, like the meeting of the electors itself, is strictly ceremonial.⁴

At one time early in the history of this country the President was really selected by the presidential electors who exercised independent judgment in their choice. 54 Op. Att'y Gen. at 98. But no more. Now presidential electors are required to vote for the presidential candidate who nominated or listed them. Wis. Stat. § 7.75(2). It is the people of Wisconsin who actually participate in electing the President by voting for a slate of electors who are required to vote for a particular candidate. Wis. Stat. § 8.25(1). So when the presidential electors meet in Madison they are simply going through a ceremony by

⁴The purpose of this provision is plainly not to insure that independent candidates have significant support in each congressional district. If the Legislature wanted to gauge geographical support it would have required, as it did in the case of those seeking nomination as partisan candidates for President by means of nomination papers, that they obtain a certain number of signatures of voters in each district. Cf. Wis. Stat. § 8.12(1)(c) (2001-02). Under the legislation in question, an independent candidate need only have a single supporter in each district, hardly a gauge of broad geographical support.

casting their obligatory electoral votes for the presidential candidate who has won the popular vote in this state.

Since Wisconsin is entitled to one elector for each congressional district, the Legislature has provided that the ceremonial casting of electoral votes should be done by electors who symbolically represent the various districts. But this is only part of the ceremony, not part of the election. The electors do not ceremonially recast the votes of the district they represent but the undifferentiated votes of the citizens of the entire state. Indeed, electors may cast their electoral votes for candidates who actually lost the popular vote in the district they represent. So while the ceremony may be enhanced if the symbolic representatives of the various districts reside in those districts, there is no reason relating to the validity of the electoral process why they have to reside in each of the various districts.

There is a good reason, though, why all candidates will certainly strive to nominate or list electors who reside in each congressional district since the failure to do so could create an issue that could be used against the candidate in the campaign.

Thus, the history of Wis. Stat. § 8.20(2)(d), as well as its interaction with other related statutes shows that it should be construed to require an independent candidate for President to list the names of electors who will ceremonially represent each of the state's congressional districts at the meeting of the electors, but who are not necessarily residents of the districts they represent.

Indeed, this provision must be construed to require representation rather than residence because a mandatory requirement to list residents of each congressional district as electors on nomination papers could raise constitutional questions, which statutes should be

construed to avoid. See generally *State v. Fry*, 131 Wis. 2d 153, 165, 388 N.W.2d 565 (1986).

Since independent candidates must list their electors on their nomination papers, while the papers of candidates of recognized political parties need not contain such a list, independent candidates could be kept off the ballot for a defect that could not keep partisan candidates from being on the ballot. This difference could raise concerns under the Equal Protection Clause, which applies when the state treats members of similarly situated classes disparately. *State v. Post*, 197 Wis. 2d 279, 318, 541 N.W.2d 115 (1995), cert. denied, 521 U.S. 1118 (1997).

Moreover, while presidential candidates of major political parties can easily find residents in each congressional district who are willing to serve as electors, independent candidates who have enough support to qualify for ballot access, but whose support lies in a confined area of the state, may not be able to do so. This might be the case with a candidate who is a member of a racial or ethnic minority and has strong support in the limited geographical area where that minority is concentrated, but no support in the areas where there are few if any members of that minority. A burden that falls disproportionately on those outside existing political parties may be unconstitutional. *Swamp v. Kennedy*, 950 F.2d 383 (7th Cir. 1991), cert. denied, 505 U.S. 1204 (1992).

- B. Even If There Were A Residency Requirement, It Would Not Be Mandatory But Only Directory So That The Board Would Have Discretion To Determine Whether There Was Substantial Compliance.

The Legislature itself has instructed that, except as otherwise provided, election laws must be construed to give effect to the will of the electors, notwithstanding any failure to fully comply with some provision. Wis. Stat. § 5.01 (2001-02).

In keeping with this instruction, this Court has ruled that statutes providing that certain things should be done in a certain manner in conducting elections are directory unless noncompliance is expressly declared to be fatal. *State ex rel. Ahlgrimm v. State Elections Bd.*, 82 Wis. 2d 585, 594, 263 N.W.2d 152 (1978). Thus, provisions for preparing, signing and executing nomination papers are directory. *Id.* at 596. The court distinguished these actions from the act of filing a paper, which has mandatory time limits, stating that “[f]iling is something that is done *with* the nomination papers, whereas, preparing, signing and executing are things that are done *to* nomination papers.” *Id.*⁵

Listing a slate of electors on nomination papers is plainly something that is done *to* the papers. It is a provision for preparing the papers which is directory only.

⁵Any reliance on the general principle that the word “shall” is usually construed as mandatory is misplaced since the supreme court has construed that word as directory in the statutes relating to the content of nomination papers. Any reliance on *Ahlgrimm* for a contrary proposition is incorrect. Any reliance on *State ex rel. Lemieux v. Zimmerman*, 40 Wis. 2d 1, 161 N.W.2d 129 (1968), would also be misplaced since that case never considered any question whether a statute was mandatory or directory.

An act done in violation of a directory provision is not void. *Id.* at 594. It may be valid as long as there is substantial compliance with the provision. *Id.* at 594, 596. The Elections Board has discretion to determine whether there has been substantial compliance with the directory provisions relating to nomination papers. *Id.* at 596; Wis. Stat. § 8.30(1) (2001-02).

In this case the Board ruled that Nader's nomination papers complied with the requirement that they name a candidate for presidential elector from each of Wisconsin's eight congressional districts. At the very least, therefore, the Board found substantial compliance with this requirement.

The standard for reviewing the discretionary decision of an administrative agency is the same as for reviewing the discretionary decision of a court. *Verhaagh v. LIRC*, 204 Wis. 2d 154, 160, 554 N.W.2d 678 (Ct. App. 1996); *In re Bar Admission of Altshuler*, 171 Wis. 2d 1, 8, 490 N.W.2d 1 (1992).

The nature of discretion permits different decision-makers to reasonably make different decisions in the same situation. *State v. St. George*, 2002 WI 50, ¶ 58, 252 Wis. 2d 499, 643 N.W.2d 777; *State v. Robinson*, 146 Wis. 2d 315, 330, 431 N.W.2d 165 (1988). The reviewing tribunal may not substitute its judgment for that of the agency as to which decision may be better. *Galang v. Medical Examining Board*, 168 Wis. 2d 695, 699-700, 484 N.W.2d 375 (Ct. App. 1992); Wis. Stat. § 227.57(8). The inquiry is confined, rather, to whether the agency reached a decision that is reasonable. *Glacier State Distribution Services, Inc. v. DOT*, 221 Wis. 2d 359, 368-70, 585 N.W.2d 652 (Ct. App. 1998); *Verhaagh*, 204 Wis. 2d at 160.

It is immaterial whether the reasons stated for a decision are convincing, or even if no reasons are stated

at all, as long as the decision itself is reasonable and supported by the record. *Schauer v. DeNeveu Homeowners Ass'n*, 194 Wis. 2d 62, 71, 533 N.W.2d 470 (1995); *Conrad v. Conrad*, 92 Wis. 2d 407, 414-15, 284 N.W.2d 674 (1979). So the court should search the record for reasons to sustain the agency's exercise of discretion, and affirm the decision if it can be sustained as a proper discretionary act. *Id.* A decision which a reasonable person could reach by applying the proper legal standard to the relevant facts should be affirmed even if the court disagrees with it and would have decided the matter differently. See *Verhaagh*, 204 Wis. 2d at 160; *Galang*, 168 Wis. 2d at 700.

In this case, the Board did not state reasons for ruling that Nader's nomination papers complied with the statutory provision for listing electors. However, the Board should be given some leeway in this respect.

The Elections Board, unlike most other administrative boards, operates under severe time restraints. Because of the short time periods between nomination and election, the Elections Board must act with unique swiftness in determining whether a candidate's name should appear on the ballot. One part of the need for speed is that the Board believes that a person negatively affected by its decision should have time to seek judicial review before the ballots are printed and distributed.

Another problem is that the Elections Board does not hold contested case hearings before an administrative law judge who can write, in a leisurely way, a judicial opinion fully stating facts, law and reasoning, which the Board can then approve or modify. The Board simply meets, discusses and votes on ballot access questions.

Thus, this Court should apply in this case the principle that an administration should be upheld even if

even if the agency fails to state its reasoning as long as the decision itself is reasonable and supported by the record.

There is available, nevertheless, some indication of the Board's reasoning in the form of a memo written by the Board's staff, the relevant pages of which are attached. The memo indicates that the Board's staff believes that the provisions of Wis. Stat. § 8.20(2)(d) are directory rather than mandatory, and that the Board has discretion to determine whether there has been substantial compliance with the provisions.

In this case, the facts are undisputed. Nader listed residents of seven congressional districts as his electors from those districts. In only one district, the Seventh, did he fail to name a resident as his elector. And in that case, the named elector resides in Vilas County, which adjoins the Seventh Congressional District. *See map at 1 WISCONSIN STATUTES 18 (2001-02).* Under these circumstances, the Board could reasonably find that Nader substantially complied with any statutory requirement that he list electors who are residents of each congressional district.

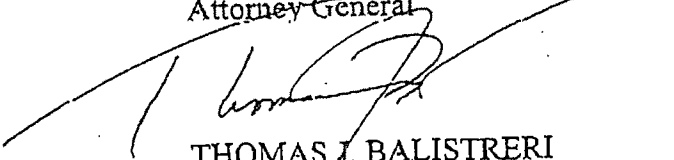
3,685 citizens of this state have asked for the opportunity to vote for Nader for President in the general election. To thwart the will of these and other potential voters because of an irregularity in Nader's nomination papers that has no relevance to the validity of the electoral process would contravene the policy expressly established by the Legislature for the construction of election laws.

CONCLUSION

It is therefore respectfully submitted that the decision of the State Elections Board to place the names of Ralph Nader and Peter Miguel Camejo on the ballot for the November general election as independent candidates for President and Vice-President of the United States should be affirmed.

Dated this 29 day of September, 2004.

PEGGY A. LAUTENSCHLAGER
Attorney General



THOMAS J. BALISTRERI
Assistant Attorney General
State Bar #1009785

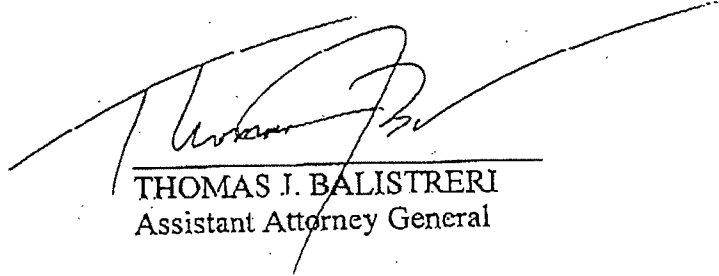
Attorneys for State Elections
Board

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-1523

CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. § 809.62(4)(b) for a response produced with a proportional serif font. The length of this response is 4,509 words.

Dated this 19 day of September, 2004.



THOMAS J. BALISTRERI
Assistant Attorney General

nominated, before the deadline for filing nomination papers shall file a written statement with the same person with whom he or she files nomination papers stating the person's party or office preference. If the candidate fails to select the party or office, the filing officer shall place the candidate's name on the ballot under either party or office, but may not permit it to appear more than once. If a candidate is nominated at a primary election for partisan office or nonpartisan state office on a ballot where his or her name appears or by nomination papers filed by the candidate, and is also nominated by write-in votes at the primary election to another office, or to the same office as the candidate of a different party, the candidate does not have a choice, but shall be placed on the ballot for the election under the office and party for which the candidate's name appeared on the primary ballot or for which the candidate had filed nomination papers.

(2) Subsection (1) shall not apply when a candidate for the office of president or vice president of the United States is nominated for another elective office during the same election. If the candidate is elected president or vice president of the United States such election shall void the candidate's election to any other office. A special election shall be held to fill any office vacated under this subsection.

(2m) A candidate may appear on the ballot for more than one local nonpartisan office at the same election.

(3) This section does not affect the law of compatibility of offices.

8.20 Nomination of independent candidates. (see above)

DISCUSSION

The Board's staff prefaces its discussion of the issues raised by the complaint with the acknowledgment that it was unable to find any clear, definitive authority on either issue. In other words, a case or statute that says that the failure of a named presidential elector to reside in the congressional district which he or she was designated to represent on the candidates' nomination papers is fatal to the validity of those nomination papers; or, conversely, a case or statute that says that the non-residence (in the designated congressional district) of a presidential elector is harmless error that may be corrected by the candidate after circulation or after filing, has not been found. And a case or statute that says that a person may not (or may) file nomination papers or qualify for Wisconsin's ballot as an independent candidate for the office of President (even) if that person is named on the ballot of any other state as the candidate of a recognized political party for the same office, has not been found.

Consequently, the staff's discussion and the conclusions that follow are based on the staff's interpretation of Wisconsin's statutes governing nomination of independent candidates for the offices of President and Vice President, rather than on definitive authority. That also means that, absent the proffering of such definitive authority by the complainants or respondents, the Board's decision will also be based on its discretionary interpretation of those statutes.

(I.) The Failure of Presidential Elector, Christian M. Meier, to Reside in the 7th Congressional District Which he was Named, on the Respondents' Nomination Papers, to Represent, Does Not Preclude the Respondents from Ballot Status under s.8.20 of the Wisconsin Statutes.

Because the respondents have timely filed nomination papers containing over 2,000 signatures of electors of the State of Wisconsin, the respondents' nomination papers have qualified them for ballot status if the nomination papers meet the requirements of s.8.20, Stats. The only nomination paper issue raised by the challenge is that the respondents' nomination papers fail to comply with the requirement of s.8.20(2)(d), Stats. - that "Nomination papers for president and vice president shall list one candidate for presidential elector from each congressional district and 2 candidates for presidential elector from the state at large who will vote for the candidates for president and vice president, if elected" - because the respondents' named elector from the 7th Congressional District does not reside in the 7th Congressional District.

The Board's staff believes that the nomination paper requirement of s.8.20(2)(d), Stats., like many other requirements in ch.8 of the Statutes is directory, rather than mandatory meaning that the standard for compliance with that requirement is substantial compliance, not strict compliance. Consequently, the respondents' naming of an elector, whom the respondents believed to have resided in the 7th Congressional District, to represent the 7th Congressional District substantially complied with the requirements of s.8.20, Stats., and qualified the nomination papers to nominate for the offices of President and Vice President.

Because the statute (s.8.20(9), Stats.) directs that each elector named in independent candidates' nomination papers "will vote for the candidates for president and vice president, [who named the electors] if elected," the presidential electors' residence in different congressional districts of Wisconsin is largely ceremonial or superfluous. The presidential electors don't really represent their district because they vote for the candidates who have named them and who have been elected, not for the candidate who got the most votes in their district. They represent the candidates who named them: the candidates for whom the statute says they "will vote."

Also, the United States Constitution does not require that each of the presidential electors represent a separate congressional district of the elector's state. Instead, Article II, Section 1. of the Constitution provides that each state may decide how electors are chosen:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in Congress. . . .

In nominating independent candidates for President and Vice President, the residence of the elector in the congressional district for which he or she has been named is not an essential element of nomination. The essential elements of nomination (for the offices of President and Vice President) are: the names of the candidates; the offices for which they

are nominated; the election at which they are candidates and whether the candidate represents a political party or seeks nomination as an independent. The residence of the electors is not an essential element of nomination because the persons who sign the nomination papers do so to nominate the candidates named, not to nominate the electors. Persons who sign the nomination papers of independent candidates for President and Vice President invariably do not know who the electors are, (even in their own district), and do not sign those nomination papers based on the identity or residence of the presidential electors.

Under s.7.75(1), Stats, presidential electors may be replaced if they are unable or unwilling to act:

If there is a vacancy in the office of an elector due to death, refusal to act, failure to attend or other cause, the electors present shall immediately proceed to fill by ballot, by a plurality of votes, the electoral college vacancy.

The statute calls for replacement by a vote of the electors present, but that is because the statute speaks to the occasion of the electors' meeting after the election. If the electors may replace one of their members at that meeting, that, at least, raises the question why one of the electors cannot be replaced at an earlier date by the candidate who named the elector.

II. Candidates for Independent Nomination to the Offices of President and Vice President Are Not Ineligible for Ballot Placement in Wisconsin Because their Names Appear as the Candidates of Recognized Political Parties on Ballots in other States.

The prohibition in s.8.20(9), Stats. – “if the candidate’s name already appears under a recognized political party, it may not be listed on the independent ballot” – applies only to a candidate whose name appears on the Wisconsin ballot as the candidate of a recognized political party. The prohibition does not apply to a candidate whose name appears as the candidate of a recognized political party only on ballots of states other than Wisconsin. Although the words, “on the Wisconsin ballot,” are silent in the Wisconsin statute, they, nevertheless, are understood to be included or implied in the word “appears.” Thus, if candidates Nader and Camejo appeared on the Wisconsin ballot as the candidates of one of the five ballot-recognized political parties in Wisconsin, their names “may not be listed on the independent ballot.” But candidates Nader and Camejo do not appear on the Wisconsin ballot as the candidates of one of the five ballot-recognized political parties in Wisconsin.

In regulating Wisconsin’s ballot (and not any other state’s ballot), the statute (s.8.20(9), Stats.), precludes a candidate who has accepted nomination by a political party in Wisconsin, from appearing on the same ballot as an independent candidate. In essence, the statute precludes a candidate from getting “two bites of the apple” by appearing on the Wisconsin ballot in two different places for the same office – one as the candidate of one of the five ballot-recognized political parties and the other as an independent candidate. The advantage to a candidate by having his or her name appear on the ballot

APPENDIX C

In the Matter of Nomination Papers
of Jerome S. White and Phyllis M. Scherrer

Affidavit of Niles Niemuth

Under oath or affirmation, I state:

1. I serve as the Wisconsin campaign manager for the campaigns of Jerome White for President and Phyllis Scherrer for Vice President of the United States.
2. From about July 12, 2012 to August 3, 2012, I assisted with the preparation of the nomination papers for Jerome White for President and Phyllis Scherrer for Vice President of the United States.
3. The nomination papers for White and Scherrer listed Richard King as the presidential elector for the 3rd Congressional District and Jessica Sweers as the presidential elector for the 5th Congressional District.
4. In preparing the nomination papers, I utilized the following materials furnished by the Government Accountability Board on its public website:
 - a. The web page entitled "Federal Candidates," at <http://gab.wi.gov/elections-voting/candidates/federal>;
 - b. The form entitled Nomination Paper Of Independent Candidates For President And Vice President, at http://gab.wi.gov/sites/default/files/gab_forms/3/gab_167_nomination_paper_independent_pres_vice_p_16929.pdf; and

- c. The memorandum entitled Wisconsin Ballot Access Requirements For President And Vice President Of The United States, at http://gab.wi.gov/sites/default/files/publication/64/presidential_ballot_access_memo_rev_01_2012.pdf.
5. When I reviewed the above materials on the Government Accountability Board website on or about July 12, 2012, none of the materials identified or linked to a congressional district map for use in determining the slate of presidential electors.
6. To determine that the presidential electors listed in the nomination papers resided in the congressional districts for which they were listed, I relied on the official governmental website for the U.S. House of Representatives, which provides an interactive program identifying the congressional district for a particular address: <http://www.house.gov/representatives/find/>
7. I confirmed that Richard King's residence is located at 356 West Monroe Street, Spring Green, WI 53588.
8. On or about August 3, 2012, the House of Representatives' website indicated that the address for Richard King was located in the 3rd Congressional District.
9. I confirmed with Jessica Sweers that her residence was located at 5171 North Santa Monica Boulevard, Apt. 2, Whitefish Bay, WI 53217.

10. On or about August 3, 2012, the House of Representatives' website indicated that the address for Jessica Sweers was located in the 5th Congressional District.
11. At the time I was preparing the nomination papers for White and Scherrer, I was not aware that the residence of King was no longer located in the 3rd Congressional District and the residence of Sweers was no longer located in the 5th Congressional District, as a result of legislative redistricting of the Wisconsin congressional districts.
12. At the time I was preparing the nomination papers for White and Scherrer, I believed, to the best of my knowledge and based on my good-faith efforts, that the residence of King was located in the 3rd Congressional District of Wisconsin and that the residence of Sweers was located in the 5th Congressional District of Wisconsin.

Dated: 8/20/2012

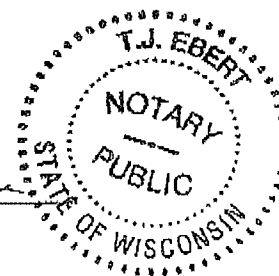
Niles Niemuth

Niles Niemuth

Subscribed and sworn to or affirmed before me on August 20, 2012

T.J. Ebert

Notary Public, State of Wisconsin, County of Milwaukee
My commission is permanent/ expires on 9/7/2014



APPENDIX D

In the Matter of Nomination Papers of
Jerome S. White and Phyllis M. Scherrer

Affidavit of Richard King

Under oath or affirmation, I state:

1. I reside at 356 West Monroe Street, Spring Green, WI 53588.
2. I have resided at the above address since August 1986.
3. On or about July 20th, I agreed to serve as a Presidential Elector for the 3rd Congressional District for the nomination of Jerry White as a candidate for President of the United States and for Phyllis Scherrer as Vice-President of the United States.
4. At the time I agreed to serve as a Presidential Elector for the nomination of White and Scherrer, I believed I resided in the 3rd Congressional District for Wisconsin.
5. I became aware on August 8th that my residence was affected by the legislative redistricting of congressional districts in Wisconsin and is now located in the 2nd Congressional District for Wisconsin.
6. I first learned of the redistricting on August 8th when I was contacted by Jerry White and notified of the challenge by the Government Accountability Board of my Presidential Elector status.
7. As of the undersigned date, I have not received any official notification that my residence has been assigned to a different congressional district.

8. I believe I am qualified to serve as a Presidential Elector for the nominations of White and Scherrer for the offices of President and Vice President of the United States regardless of the redistricting of my place of residence.

Dated: August 18, 2012 Richard J. King
Richard King

Subscribed and sworn to or affirmed before me on 8-18-12

[Signature]
Notary Public, State of Wisconsin, County of Dane
My commission is permanent/expires on 1-10-16



APPENDIX E

In the Matter of Nomination Papers of
of Jerome S. White and Phyllis M. Scherrer

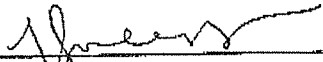
Affidavit of Jessica Sweers

Under oath or affirmation, I state:

1. I reside at 5171 North Santa Monica Boulevard, Apt. 2, Whitefish Bay, WI 53217.
2. I have resided at the above address since August 2011.
3. On or about July 20th 2012, I agreed to serve as a Presidential Elector for the 5th Congressional District for the nomination of Jerry White as a candidate for President of the United States and for Phyllis Scherrer as Vice-President of the United States.
4. At the time I agreed to serve as a Presidential Elector for the nomination of White and Scherrer, I believed I resided in the 5th Congressional District for Wisconsin.
5. I became aware on August 8th 2012 that my residence was affected by the legislative redistricting of congressional districts in Wisconsin and is now located in the 4th Congressional District for Wisconsin.
6. I learned of redistricting when I was contacted by Niles Niemuth on August 8th 2012 to inform me of the challenge to my elector status by the Government Accountability Board.
7. As of the undersigned date, I have not received any official notification that my residence has been assigned to a different congressional district.


8. I believe I am qualified to serve as a Presidential Elector for the nominations of White and Scherrer for the offices of President and Vice President of the United States regardless of the redistricting of my place of residence.

Dated: 8.20.12

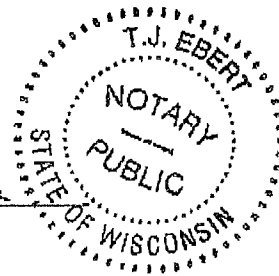


Jessica Sweers

Subscribed and sworn to or affirmed before me on August 20, 2012



Notary Public, State of Wisconsin, County of Milwaukee
My commission is permanent/expires on 9/7/2014.



Cullen
Weston
Pines
& Bach

A Limited Liability
Partnership

Attorneys at Law

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GOVERNMENT
ACCOUNTABILITY BOARD

Lee Cullen
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Steven A. Bach
Alison TenBruggencate
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Jordan Loeb
Tamara B. Packard

Elise Clancy Ruoho
Susan M. Crawford
Elisabeth S. Bach-Van Horn
Jeffrey L. Vercauteren
Sean P. Lynch

Of Counsel:
Cheryl Rosen Weston
Curt F. Pawlisch

August 22, 2012

By Hand Delivery

Judge David G. Deininger, Chair
Government Accountability Board
212 East Washington Avenue, 3rd Floor
Madison, WI 53707-7984

Re: The Matter of Nomination Papers of Jill Stein and Ben Manski

Dear Judge Deininger:

This firm represents Jill Stein and Ben Manski with regard to the above-referenced matter. In response to the GAB staff's August 14, 2012 letter regarding the nomination papers, please find a Memorandum of Law In Support of Approval of Nomination Papers of Jill Stein and Ben Manski for the Board's consideration at its upcoming meeting.

Please be advised that the Campaign will submit the name and address of the replacement presidential elector under separate cover, on or before August 27, 2012, as directed in the August 14 letter.

Sincerely,

CULLEN WESTON PINES & BACH LLP



Susan M. Crawford

SMC:hmm
Enclosure

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State of Wisconsin

Government Accountability Board

2012 AUG 22 PM 3:12

**In the Matter of Nomination Papers
of Jill Stein and Ben Manski**

GOVERNMENT
ACCOUNTABILITY BOARD

**Memorandum of Law
In Support of Approval of Nomination Papers of
Jill Stein and Ben Manski**

I. INTRODUCTION

On August 7, 2012, Jill Stein and Ben Manski submitted nomination papers as independent candidates for the offices of President of the United States and Vice President of the United States, respectively, to the Government Accountability Board (hereafter GAB). For the reasons presented below, the GAB should certify the names of Stein and Manski as Independent Presidential and Vice-Presidential candidates for the general election to be held on November 6, 2012.

II. PROCEDURAL HISTORY AND SUMMARY OF ISSUE

On August 9, 2012, GAB staff informed Stein and Manski that an error had been identified on their nomination papers: namely, that the individual listed on Stein and Manski's nomination papers as presidential elector for the third congressional district does not currently reside in the third congressional district. GAB staff cited Wis. Stat. § 8.20(2)(d), which provides:

Nomination papers for president and vice president shall list one candidate for presidential elector from each congressional district and 2 candidates for presidential elector from the state at large who will vote for the candidates for president and vice president, if elected.

GAB staff advised Stein and Manski that it viewed the error as a “fatal flaw.”

On August 14, 2012, however, GAB staff advised Stein and Manski that the staff intended to recommend that the Board accept their nomination papers. GAB staff noted that in 2004, the State of Wisconsin Elections Board (“Elections Board” or “SWEB”), the GAB’s predecessor agency, approved the nomination papers of Ralph Nader and Peter Camejo as independent candidates for president and vice president. The nomination papers listed an individual who did not reside in the seventh congressional district as a presidential elector for that district. *See* Exh. A,¹ pp. 16, 22-22.

The Wisconsin Supreme Court upheld the Elections Board’s approval of the Nader-Camejo nomination papers, holding that “this residency requirement is *directory* in nature.” Exh. B,² p. 2, ¶5 (emphasis added). The Wisconsin Supreme Court further held that “under the undisputed facts and circumstances of this case, and mindful of the importance of ballot access and voting, this court concludes that there has been *substantial compliance* by the petitioners regarding this requirement.” *Id.* at p. 2, ¶6 (emphasis added). Accordingly, the Court “direct[ed] that the SWEB certify the names of Ralph Nader and Peter Camejo as Independent Presidential and Vice-Presidential candidates for the general election to be held on November 2, 2004.” *Id.* at p. 2, ¶8.

Given the specific facts and circumstances present in this matter, an even stronger rationale exists for finding that Stein and Manski substantially complied with

¹ State Elections Board’s Response to Petition for Supervisory Writ in *State ex rel. Nader and Camejo*, No. 04-2559-W.

² *State ex rel. Nader and Camejo v. Circuit Court for Dane County, et al.*, No. 04-2559-W (Sept. 4, 2004).

the nomination paper requirements related to presidential electors. The GAB should accept the Stein-Manski nomination papers, as recommended by GAB staff.

III. THE STEIN-MANSKI CAMPAIGN SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF WIS. STAT. § 8.20(2)(d).

The Stein-Manski campaign has submitted affidavits that demonstrate the campaign's substantial compliance with Wis. Stat. §8.20(2)(d). The campaign was aware of the requirements of Wis. Stat. §8.20(2)(d) relating to presidential electors and made reasonable, good-faith efforts to comply. The presidential elector who was listed for a congressional district in which he no longer resides was affected by the decennial redistricting enacted in 2011 Wisconsin Act 44. As the Board is aware, Act 44 was tied up in legal challenges in the courts for many months, coming to a conclusion only recently. The Board should find that the Stein-Manski campaign substantially complied with the statutory requirements.

A. The Stein-Manski Campaign Made Diligent and Good-Faith Efforts to Ascertain that the Presidential Electors Listed on the Nomination Papers Resided in the Congressional Districts For Which They Were Listed.

Ron Hardy, a volunteer for the Stein-Manski campaign, assisted the campaign with the preparation of the nomination papers. Exh. C, ¶1, 2.³ The campaign identified Monte LeTourneau as the presidential elector from the 3rd Congressional District to list in the nomination papers. *Id.*, ¶2. LeTourneau was previously listed as the congressional elector in the nomination papers for the Green Party candidate in 2008. *Id.* at ¶3.

³ Affidavit of Ron Hardy in the Matter of Nomination Papers of Jill Stein and Ben Manski.

Hardy contacted Monte LeTourneau on or about June 23, 2012 and confirmed that his residence is at 14466 North 20th Avenue, Necedah, WI 54646. *Id.* at ¶4. To verify that Monte LeTourneau's residence is in the 3rd Congressional District of Wisconsin, Hardy examined maps of Congressional Districts on the Wisconsin State Legislature's website.⁴ *Id.* at ¶5. He compared the location of LeTourneau's address using Google Maps to the map of the third Congressional District that he examined on the Wisconsin State Legislature's website. *Id.* 6. He believed that he was looking at the map of the newly-drawn congressional districts after legislative redistricting. *Id.* at ¶7. The map indicated that LeTourneau's address was located in the 3rd Congressional District. *Id.* at ¶8.

Thus, at the time he prepared the nomination papers for Stein and Manski, Hardy believed, to the best of his knowledge and based on his good-faith efforts, that the residence of Monte Letourneau was located in the 3rd Congressional District of Wisconsin. *Id.* at ¶9. He was unaware at that time that LeTourneau's residence was no longer in the 3rd Congressional District due to redistricting. *Id.* at ¶10.

Hardy learned that Monte LeTourneau's residence is no longer in the 3rd Congressional District on August 10, 2012, when he read an article reporting that the state elections office questioned Stein's nomination papers based on the residency of the presidential electors listed in the papers.⁵ *Id.* at ¶11.

⁴ http://legis.wisconsin.gov/ltsb/redistricting/congressional_districts.htm

⁵ The article is available online at <http://www.ballot-access.org/2012/08/09/four-presidential-petitions-filed-in-wisconsin-state-elections-office-questions-validity-of-two-of-them/>

As the GAB staff correctly surmised, the error it identified in the Stein-Manski nomination papers was “due to the decennial redistricting process.” In its August 9, 2012 letter, the GAB staff provided the campaign with maps of the previous congressional districts and the new districts created by 2011 Wisconsin Act 44. The lines of the 3rd district were redrawn in a manner that assigned LeTourneau to a new congressional district.

B. The Requirement Of Listing Presidential Electors From Each Congressional District In The Nomination Papers, Pursuant To Wis. Stat. §8.20(2)(D), Is Directory.

The Legislature has instructed that, except as otherwise provided, election laws must be construed to give effect to the will of the electors, notwithstanding any failure to fully comply with some provision. Wis. Stat. § 5.01. In accordance with this statutory directive, the Wisconsin Supreme Court has ruled that statutes providing that certain things should be done in a certain manner in conducting elections are directory, unless noncompliance is expressly declared to be fatal. *State ex rel. Ahlgrimm v. State Elections Bd.*, 82 Wis. 2d 585, 594, 263 N.W.2d 152 (1978). Thus, the Court held that provisions for “preparing, signing and executing nomination papers” are directory, while the act of filing a paper is mandatory: “[f]iling is something that is done with the nomination papers, whereas, preparing, signing and executing are things that are done to nomination papers.” *Id.* at 596

As the Wisconsin Supreme Court ruled in the *Nader* case, the requirement that the nomination papers list presidential electors from each congressional district under Wis. Stat. §8.20(2)(d) is directory, not mandatory. Exh. A, ¶5. Notably, the Court in

Nader assumed, without deciding, that the provision requires that such electors reside in the congressional districts.⁶

An act that does not strictly comply with a directory provision may be valid as long as there is substantial compliance with the provision. *Id.* at 594, 596. The Board has discretion to determine whether there has been substantial compliance with the directory provisions of Wis. Stat. §8.20(2)(d). *Id.* at 596; Wis. Stat. § 8.30(1).

C. The Board Should Accept The Nomination Papers Of Stein and Manski In Light Of Their Substantial Compliance With The Requirements For Nomination Papers In Wis. Stat. §8.20(2)(D).

There is no dispute as to the facts in this matter. The Stein-Manski campaign prepared the nomination papers and listed presidential electors for each of the Wisconsin congressional districts, plus two at-large electors. At the time the nomination papers were prepared, the Stein-Manski campaign believed, in good faith and through its due diligence, that LeTourneau was a resident of the 3rd Congressional District, for which he was listed as presidential elector on the papers. The campaign's mistake as to the congressional district in which LeTourneau resided is clearly attributable to the decennial redistricting.

The Board should give weight to the specific nature of the error in the nomination papers. A consideration of the role of electors in presidential elections strongly favors the Board's acceptance of the nomination papers of Stein and Manski.

⁶ The Court noted that counsel for the Elections Board argued that the requirement in Wis. Stat. §8.20(2)(d), in requiring the listing of a presidential elector "*from*" each congressional district, does not require that the presidential electors *reside* in the congressional districts.

The United States Constitution gives to each state the power to “appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress.” U.S. Const. art. II, § 1.

As discussed above, independent candidates for President and Vice President must list presidential electors from each congressional district and two at-large electors on their nomination papers. By contrast, the recognized parties nominate presidential electors from each district and two at large electors at a convention in the capitol at 10 a.m. on the first Tuesday in October of each year in which there is a presidential election. Wis. Stat. § 8.18.

Following a presidential election, the electors nominated or listed by the candidates elected as President and Vice President meet at the state capitol at noon on the first Monday after the 2nd Wednesday in December. Wis. Stat. §7.75(1). If an elector is absent, the electors present are required to immediately fill the electoral college vacancy by ballot, by a plurality of votes. *Id.* There is no requirement that the replacement elector be from the same congressional district as the absent elector. After establishing a full slate of electors, the electors “shall vote by ballot for that person for president and that person for vice president who are, respectively, the candidates of the political party which nominated them under s. 8.18, [or] the candidates whose names appeared on the nomination papers under s. 8.20.” Wis. Stat. §7.75(2).

The presidential electors are not the electors of any individual congressional district, but serve as the composite electoral slate of the entire state. They likewise are

not elected or chosen by the residents of each individual congressional district. Requiring a presidential elector who is elected for the entire state to be a resident of a congressional district thus serves no functional purpose. Rather, the requirement that the electors nominated by the parties or listed by the candidates be from each congressional district appears to be strictly ceremonial. Since Wisconsin is entitled to one elector for each congressional district, the Legislature has provided that the casting of electoral votes should be done by electors who symbolically represent the various districts. However, the electors vote in accordance with the undifferentiated votes of the citizens of the entire state. Indeed, electors must cast their electoral votes for the candidates for whom they serve as electors, even though the candidates may not have won the popular vote in the particular district they represent.

Accordingly, the acceptance of Stein and Manski's nomination papers will not have any functional effect on the role played by the electors, in the event that Stein and Manski win election, or give them any unfair advantage over other candidates. Notably, the nomination papers of another set of independent candidates for President and Vice President (Jerry White and Phyllis Scherrer) included an identical mistake. The recognized political party candidates are not required to list presidential electors from each congressional district in their nomination papers. Rather, as noted above, the electors of the major party candidates are selected by the party at a convention on the first Tuesday before the election. Stein and Manski gain no unfair advantage if the Board accepts their nomination papers and permits them to provide a substitute elector who resides in the 3rd Congressional District.

Finally, a refusal by the Board to accept Stein's and Manski's nomination papers would give rise to a serious constitutional issue. Since independent candidates must list their electors on their nomination papers, while the candidates of recognized political parties need not do so, independent candidates could be kept off the ballot for a defect that could not keep partisan candidates from being on the ballot. This disparate treatment of similarly situated classes of candidates raise concerns under the Equal Protection Clause. *See State v. Post*, 197 Wis. 2d 279, 318, 541 N.W.2d 115 (1995), *cert. denied*, 521 U.S. 1118 (1997); *Swamp v. Kennedy*, 950 F.2d 383 (7th Cir. 1991), *cert. denied*, 505 U.S. 1204 (1992) (A burden that falls disproportionately on those outside existing political parties may be unconstitutional).

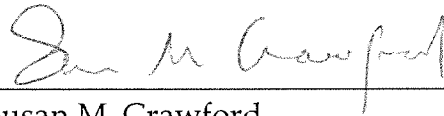
Finally, the Board should accept the nomination papers of Stein and Manski to carry out the policy, written into the statutes, of interpreting election requirements in a manner that gives effect to the will of the electors. Wis. Stat. § 5.01. The GAB staff has certified 2,276 valid signatures of citizens of this state who have asked for the opportunity to vote for Stein for President and Manski for Vice President in the general election. Rejecting their nomination papers based on an inadvertent irregularity in the nomination papers, which has no relevance to the validity of the electoral process, would thwart the will of these and other potential voters, in contravention of the policy expressly established by the Legislature for the construction of election laws.

IV. CONCLUSION

For these reasons, Jill Stein and Ben Manski respectfully request that the Government Accountability Board approve their nomination papers as candidates for President of the United States and Vice President of the United States, respectively.

Dated this 22nd day of August, 2012.

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APPENDIX A



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September 30, 2004

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You are hereby notified that the Court has entered the following order:

No. 04-2559-W State of Wisconsin ex rel. Ralph Nader and Peter Camejo v.
Circuit Court for Dane County, et al. L.C. #04CV002971

The court has considered the Emergency Petition for Writ of Mandamus filed by petitioners, Ralph Nader and Peter Camejo, asking this court to accept original jurisdiction in this matter. The court has also considered the responses to this petition filed by the State of Wisconsin Elections Board (SWEB) and the Democratic Party of Wisconsin and Kim Warkentin as well as the amicus brief filed in support of the petition filed by the Republican Party of Wisconsin which this court has accepted. The court has also heard oral argument in this matter and the court being aware of the time exigencies involved,

(Continued on Page Two)

IT IS ORDERED:

1. The request for this court to accept original jurisdiction in this matter is granted.
2. Based on this court's now exclusive original jurisdiction, the court vacates all prior orders entered in this matter in the Dane County Circuit Court in Democratic Party of Wisconsin v. State of Wisconsin Elections Board, Case No. 04-CV-2971; the stay issued by this court on September 28, 2004 is also vacated. See Petition of Heil, 230 Wis. 428, 284 N.W. 42 (1939).
3. Although the court has been provided with a transcript of the hearing in this matter before the SWEB, the court declines to accept this unauthenticated transcript as part of the record.
4. Based on the September 22, 2004 order of the SWEB and the board's staff report, excerpts of which were appended to the board's response filed in this matter, this court assumes, for purposes of this action, that Wis. Stat. § 8.20(2)(d) (2001-02) which provides that "[n]omination papers [of independent candidates] for president and vice president shall list one candidate for presidential elector from each congressional district ..." requires that these candidates for presidential elector must reside in the congressional district for which each is listed; the court recognizes, however, that counsel for the SWEB interprets this provision differently.
5. The court determines that this residency requirement is directory in nature.
6. Under the undisputed facts and circumstances of this case, and mindful of the importance of ballot access and voting, this court concludes that there has been substantial compliance by the petitioners regarding this requirement. See Wis. Stat. §§ 5.01(1) and 8.30(1).
7. The court concludes, based on the SWEB's September 22, 2004 order and the excerpts of the staff report, together with reasonable inferences therefrom, that the SWEB did not erroneously exercise its discretion in concluding that the petitioners' names should be placed on the ballot for the November 2, 2004 general election.
8. Accordingly, consistent with the SWEB's order in this matter, we direct that the SWEB certify the names of Ralph Nader and Peter Camejo as Independent Presidential and Vice-Presidential candidates for the general election to be held on November 2, 2004.

Cornelia G. Clark
Clerk of Supreme Court

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State of Wisconsin ex rel. Ralph Nader and Peter Camejo v.
Circuit Court for Dane County, et al. L.C. #04CV002971

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¶1 LOUIS B. BUTLER, JR., J. (*concurring*). I concur. I would not have accepted this as an original action, as there was a proceeding that was litigated in the trial court. I would have treated this as a supervisory writ pursuant to Wis. Stat. § (Rule) 809.71. I share the trial court's concern about the board's order regarding whether there was an adequate showing that the board properly exercised its discretion. At the same time, I do not agree that the trial court's actions were warranted given its finding. Wis. Stat. § 227.57(5) provides that "the court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law." Because a correct interpretation in this case does not compel Nader's removal from the ballot, I conclude that the trial court should have remanded the case to the board for further action under a correct interpretation of Wis. Stat. § 8.20(2)(d).

¶2 That being said, this court chose to accept this matter as an original action. While I am extremely troubled by the end-run of established appellate procedure, I am also mindful of the fact that the eleventh-hour circumstances of this case dictate that this court reach a fair and just decision. As

there is simply no time to appropriately remand this matter to either the trial court or to the board to properly exercise its discretion, and given the right of qualified voters to cast their votes effectively, I join in the court's mandate.

APPENDIX B

STATE OF WISCONSIN
IN SUPREME COURT

No. 04-2559-W

STATE OF WISCONSIN
EX REL. RALPH NADER
and PETER CAMEJO,

Petitioners,

v.

CIRCUIT COURT FOR
DANE COUNTY, et al.,

Respondents.

RESPONSE OF STATE ELECTIONS BOARD
TO PETITION FOR SUPERVISORY WRIT

DISCUSSION

I. THIS MATTER SHOULD BE
GIVEN PREFERENCE AND
EXPEDITED.

This is a judicial review of a decision of the State Elections Board allowing Ralph Nader and Peter Miguel Camejo to appear on the ballot in the general election to be held November 2, 2004, as independent candidates for President and Vice-President of the United States.

Under the timetable established by the Legislature, the Board is supposed to certify the candidates for the general election no later than the fourth Tuesday in September, *i.e.*, September 28. Wis. Stat. §§ 7.08(2)(b) and 10.06(1)(i) (2001-02). The county clerks are supposed to distribute ballots to municipal clerks no later than thirty-one days before the election, *i.e.*, October 2. Wis. Stat. § 7.10(3)(a) (2001-02). Municipal clerks must mail out absentee ballots no later than thirty days before the election, *i.e.*, October 3. Wis. Stat. § 7.15(1)(cm) (2001-02). Any delay beyond these dates creates more practical problems as time passes for the preparation and distribution of the ballots, especially ballots sent to absentee voters. Thus, this matter should be given preference and expedited by the Court.

Expeditious treatment is feasible because the principal issue focuses on the construction of Wis. Stat. § 8.20(2)(d) (2001-02), which provides that “[n]omination papers [of independent candidates] for president and vice president shall list one candidate for presidential elector from each congressional district and 2 candidates for presidential elector from the state at large who will vote for the candidates for president and vice president, if elected.” The issue of law is whether this statute should be construed to include a requirement that a person listed as a presidential elector from a congressional district must be a resident of that district.

A subsidiary issue is whether any residency requirement is mandatory or directory so that the Board would have discretion to determine whether there had been substantial compliance.

The Board ruled that Nader and his running mate substantially complied with Wis. Stat. § 8.20(2)(d), even though the elector they listed from the Seventh Congressional District did not reside in the district at the time the nomination papers were filed.

II. THE NOMINATION PAPERS FILED BY RALPH NADER SUBSTANTIALLY COMPLY WITH THE PROVISION STATING THAT INDEPENDENT CANDIDATES FOR PRESIDENT SHOULD LIST ONE ELECTOR FROM EACH WISCONSIN CONGRESSIONAL DISTRICT.

A. There Is No Requirement That Presidential Electors Be Residents Of The District From Which They Are Listed.

Although the office of President of the United States is a federal office, the United States Constitution gives to each state the power to "appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress." U.S. Const. art. II, § 1.

The Wisconsin Legislature has directed the recognized political parties to convene a month before a presidential election "to nominate one presidential elector from each congressional district and 2 electors from the state at large." Wis. Stat. § 8.18(2) (2001-02). Independent candidates for president must "list" on their nomination papers "one candidate for presidential elector from each congressional district and 2 candidates for presidential elector from the state at large." Wis. Stat. § 8.20(2)(d) (2001-02).

The Legislature has not expressly established any qualifications for presidential electors. In particular, there is no specific requirement that persons designated as presidential electors from a particular congressional district be residents of that congressional district.

Whether there is any such requirement must be determined by a process of statutory construction.

The purpose of construing a statute is to determine what the Legislature intended by enacting it. *UFE, Inc. v. LIRC*, 201 Wis. 2d 274, 281, 548 N.W.2d 57 (1996); *J.A.L. v. State*, 162 Wis. 2d 940, 962, 471 N.W.2d 493 (1991). In making this determination, a court must first consider the language used by the Legislature to express its intent. *UFE*, 201 Wis. 2d at 281; *J.A.L.*, 162 Wis. 2d at 962. Words which have not been specifically defined by the drafters of an enactment must be given their commonly accepted meaning, except those technical terms with a special meaning in the law which must be understood in their technical sense. *State v. Williquette*, 129 Wis. 2d 239, 248, 385 N.W.2d 145 (1986); *Perry Creek Cranberry Corp. v. Hopkins Agricultural Chemical Co.*, 29 Wis. 2d 429, 435, 139 N.W.2d 96 (1966); Wis. Stat. § 990.01(1) (2001-02).

The critical word in Wis. Stat. § 8.20(2)(d) is "from." This is the only word from which any requirement of residence could be inferred.¹

The problem is that "from," rather than having any single clear commonly accepted meaning, is a function word with a multitude of meanings. The basic function of the word is to specify a starting point. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 913 (unabridged ed. 1986); THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 729 (3d ed. 1996). But the nuances and connotations of the word spread in many directions from there.

¹The word "shall" is not relevant at this point. That word does not define what is to be done, but only the manner in which whatever is to be done should be done. That question will be addressed in the second part of this memorandum.

Among other things, "from" can be used to mean native to or a resident of a place, such as people from Ohio. WEBSTER'S DICTIONARY at 913. Another meaning is the place where a person has traveled from, such as from town. WEBSTER'S DICTIONARY at 913; AMERICAN HERITAGE DICTIONARY at 729.² "From" can also be used to indicate the source or origin of something, such as a note from the teacher, AMERICAN HERITAGE DICTIONARY at 729, or emissaries from a barbarian king. WEBSTER'S DICTIONARY at 913. So the meaning of "from" depends on the way it is used.

The statute itself provides no clue whether "from" is used in the sense of a resident of a particular congressional district or in the sense of an emissary or representative from that district. Thus the word "from" and the statute in which it is used are inherently ambiguous because reasonable people could reasonably understand them in either of two different ways. See generally *Gen. Cas. Co. v. DOR*, 2002 WI App 248, ¶ 12, 258 Wis. 2d 196, 653 N.W.2d 513. They could reasonably be understood to mean that a presidential elector must be from a congressional district in the sense of a resident of the district, or they could reasonably be understood to mean that an elector must be merely an emissary or representative from the district.³ So extrinsic aids such as the history, purpose and context of the statute must be used to determine what the Legislature actually intended. *Id.*; *J.A.L.*, 162 Wis. 2d at 962-63.

²The fact that "from" is followed by a geographical term does not mean it is used to designate residence. WEBSTER'S DICTIONARY lists a half dozen examples, such as the one above, where "from" followed by a geographical term does not designate residence but some other variation of the concept of starting point.

³The question is not whether one meaning is more reasonable than another, but whether both meanings are reasonable.

To begin with, the Legislature has recognized that residence is not always a qualification for elected office. Residence is a qualification only in those instances where it is required by the constitution or laws of the state. *See* Wis. Stat. § 8.28(1) (2001-02).

In many cases the law clearly establishes a residency requirement. For example, state legislators must "have resided one year within the state, and be a qualified elector in the district which [they] may be chosen to represent." Wis. Const. art. IV, § 6. A "qualified elector" must have resided in the district for ten days prior to an election. Wis. Stat. § 6.02(1) (2001-02).

The fact that Wis. Stat. § 8.20(2)(d) does not similarly contain any form of the word "reside" is some indication that residence is not a qualification for the office of presidential elector.

The history of Wis. Stat. § 8.20(2)(d) shows that the absence of any form of the word "reside" was intentional, and that the Legislature did not intend to make residence a qualification for this office.

Prior to 1965, the relevant statute read,

At the general election next preceding the time fixed for the choice of president and vice president of the United States, there shall be elected, by general ticket, as many electors of president and vice president as this state may be entitled to elect senators and representatives in congress. A vote for the presidential and vice presidential nominees of any party is a vote for the electors of such nominees.

Wis. Stat. § 9.04 (1963).

There was no hint in this statute of any requirement that presidential electors even be representatives, much less residents, of any particular

congressional district. Indeed, this Court, noting that citizens did not vote for individual presidential electors but "for an entire slate of presidential electors," concluded that all the electors of a candidate "constitute one composite candidate." *State ex rel. Boulton v. Zimmerman*, 25 Wis. 2d 457, 461-62, 464, 130 N.W.2d 753 (1964).

In 1965 the Legislature revised the election laws. Among the contemplated changes, 1965 Assembly Bill 792 would have amended § 9.04 by eliminating the phrase "by general ticket," and by adding the provision that "[t]wo electors shall be elected from the state at large and one elector shall be elected from each congressional district." 54 Op. Att'y Gen. 95, 95 (1965) (quoting 1965 Assembly Bill 792). In an opinion requested by the Assembly, the Attorney General observed that the bill would significantly change the law by having voters in a particular congressional district vote for "one district elector rather than a slate" of electors. *Id.* at 100.

The bill would also have amended the existing Wis. Stat. § 9.06 to provide that any vacancy in the office of presidential elector "shall be filled by a resident of the area from which the prior elector was elected." *Id.* at 96 (quoting 1965 Assembly Bill 792). If a vacancy had to be filled by a resident of a particular congressional district, the logical inference was that the elector initially chosen had to be a resident as well.

Assembly Bill 792 was never enacted as law. Instead, the Legislature enacted the provisions relating to presidential electors in substantially their present form.

Chapter 666, Laws of 1965, created Wis. Stat. § 8.25(1), which, with some minor linguistic alterations, essentially reenacted the former § 9.04, including the important provisions that presidential electors are to be

chosen “[b]y general ballot . . .,” and that a “vote for the president and vice president nominations of any party is a vote for the electors of the nominees.” The provision reenacted in 1965 remains the same today, and the principle of vicarious voting is reiterated in Wis. Stat. § 5.10 (2001-02).

The concept of presidential electors from each congressional district found its way into Wis. Stat. § 8.18(2)(c), now Wis. Stat. § 8.18(2), and Wis. Stat. § 8.20(2)(b), now Wis. Stat. § 8.20(2)(d), which provide that parties should “nominate” and independent candidates should “list” electors from each district.

This change was apparently precipitated by the Attorney General’s opinion, which suggested that if the Legislature intended to require that presidential electors be from the various congressional districts, it should simply provide that electors should be nominated from each district. 54 Op. Att’y Gen. at 100-01.

If this were the only change made by the Legislature, perhaps it could be argued that the Legislature intended to enact the residency requirement embodied in the Assembly Bill. But the Legislature departed from the Assembly draft in a more significant way.

The proposal which would have required replacement electors to be residents of a district was discarded so that now an absent elector may be replaced by anyone on whom a plurality of the electors present can agree. Wis. Stat. § 7.75 (2001-02).

It is presumed that the Legislature intends not to enact language in an earlier version of a bill which is deleted prior to enactment. *Russello v. United States*, 464 U.S. 16, 23-24 (1983). See *Verdoljak v. Mosinee Paper Corp.*, 200 Wis. 2d 624, 633, 547 N.W.2d 602 (1996)

(omission of word or phrase in statutory amendment indicative of intent to alter meaning of provision).

Here, the Legislature plainly intended to reject the suggestion that presidential electors should be elected separately from each congressional district. By reenacting the language of the existing law that presidential electors should be elected by general ballot, the Legislature demonstrated an intent to retain the principle that presidential electors are elected by voters throughout the state. By reenacting the language of the existing law that a vote for a candidate is a vote for the candidate's electors, the Legislature demonstrated an intent to retain the principle that presidential electors are chosen as a slate constituting one composite candidate.

No functional purpose is served by requiring presidential electors to be residents of each separate congressional district when they are not elected by the residents of each individual district but by the residents of the entire state, and when they are not the electors of any individual district but the composite electoral slate of the entire state. There is no functional reason for an elector who is elected by the entire state to be a resident of any particular part of the state. There is no functional reason for an elector who is elected for the entire state to be a resident of any particular part of the state.

Most importantly, the fact that the Legislature deleted the language in Assembly Bill 792 which would have required a presidential elector to be a "resident" of a particular district unequivocally evinces an intent not to require residence in a particular district as a qualification of an elector. Indeed, the omission of any residency requirement is underscored by the fact that an elector who has been nominated or listed from a particular district may be replaced by anyone wandering around the State Capitol at 12:00 noon on the first Monday after the

second Wednesday in December when the presidential electors meet. Wis. Stat. § 7.75(1).

An additional indication of legislative intent is the exemption of candidates for presidential elector from the requirement of filing a declaration of candidacy on which, among other things, they would otherwise have to list their residence and certify that they would meet any residency requirements if elected. Wis. Stat. § 8.21 (2001-02). The fact that candidates for presidential elector do not have to certify that they would meet any residency requirements strongly suggests that there are no such requirements for presidential electors.

The purpose of the provision that electors should be nominated or listed from each congressional district, like the meeting of the electors itself, is strictly ceremonial.⁴

At one time early in the history of this country the President was really selected by the presidential electors who exercised independent judgment in their choice. 54 Op. Att'y Gen. at 98. But no more. Now presidential electors are required to vote for the presidential candidate who nominated or listed them. Wis. Stat. § 7.75(2). It is the people of Wisconsin who actually participate in electing the President by voting for a slate of electors who are required to vote for a particular candidate. Wis. Stat. § 8.25(1). So when the presidential electors meet in Madison they are simply going through a ceremony by

⁴The purpose of this provision is plainly not to insure that independent candidates have significant support in each congressional district. If the Legislature wanted to gauge geographical support it would have required, as it did in the case of those seeking nomination as partisan candidates for President by means of nomination papers, that they obtain a certain number of signatures of voters in each district. Cf. Wis. Stat. § 8.12(1)(c) (2001-02). Under the legislation in question, an independent candidate need only have a single supporter in each district, hardly a gauge of broad geographical support.

casting their obligatory electoral votes for the presidential candidate who has won the popular vote in this state.

Since Wisconsin is entitled to one elector for each congressional district, the Legislature has provided that the ceremonial casting of electoral votes should be done by electors who symbolically represent the various districts. But this is only part of the ceremony, not part of the election. The electors do not ceremonially recast the votes of the district they represent but the undifferentiated votes of the citizens of the entire state. Indeed, electors may cast their electoral votes for candidates who actually lost the popular vote in the district they represent. So while the ceremony may be enhanced if the symbolic representatives of the various districts reside in those districts, there is no reason relating to the validity of the electoral process why they have to reside in each of the various districts.

There is a good reason, though, why all candidates will certainly strive to nominate or list electors who reside in each congressional district since the failure to do so could create an issue that could be used against the candidate in the campaign.

Thus, the history of Wis. Stat. § 8.20(2)(d), as well as its interaction with other related statutes shows that it should be construed to require an independent candidate for President to list the names of electors who will ceremonially represent each of the state's congressional districts at the meeting of the electors, but who are not necessarily residents of the districts they represent.

Indeed, this provision must be construed to require representation rather than residence because a mandatory requirement to list residents of each congressional district as electors on nomination papers could raise constitutional questions, which statutes should be

construed to avoid. See generally *State v. Fry*, 131 Wis. 2d 153, 165, 388 N.W.2d 565 (1986).

Since independent candidates must list their electors on their nomination papers, while the papers of candidates of recognized political parties need not contain such a list, independent candidates could be kept off the ballot for a defect that could not keep partisan candidates from being on the ballot. This difference could raise concerns under the Equal Protection Clause, which applies when the state treats members of similarly situated classes disparately. *State v. Post*, 197 Wis. 2d 279, 318, 541 N.W.2d 115 (1995), cert. denied, 521 U.S. 1118 (1997).

Moreover, while presidential candidates of major political parties can easily find residents in each congressional district who are willing to serve as electors, independent candidates who have enough support to qualify for ballot access, but whose support lies in a confined area of the state, may not be able to do so. This might be the case with a candidate who is a member of a racial or ethnic minority and has strong support in the limited geographical area where that minority is concentrated, but no support in the areas where there are few if any members of that minority. A burden that falls disproportionately on those outside existing political parties may be unconstitutional. *Swamp v. Kennedy*, 950 F.2d 383 (7th Cir. 1991), cert. denied, 505 U.S. 1204 (1992).

B. Even If There Were A Residency Requirement, It Would Not Be Mandatory But Only Directory So That The Board Would Have Discretion To Determine Whether There Was Substantial Compliance.

The Legislature itself has instructed that, except as otherwise provided, election laws must be construed to give effect to the will of the electors, notwithstanding any failure to fully comply with some provision. Wis. Stat. § 5.01 (2001-02).

In keeping with this instruction, this Court has ruled that statutes providing that certain things should be done in a certain manner in conducting elections are directory unless noncompliance is expressly declared to be fatal. *State ex rel. Ahlgrimm v. State Elections Bd.*, 82 Wis. 2d 585, 594, 263 N.W.2d 152 (1978). Thus, provisions for preparing, signing and executing nomination papers are directory. *Id.* at 596. The court distinguished these actions from the act of filing a paper, which has mandatory time limits, stating that “[f]iling is something that is done *with* the nomination papers, whereas, preparing, signing and executing are things that are done *to* nomination papers.” *Id.*⁵

Listing a slate of electors on nomination papers is plainly something that is done *to* the papers. It is a provision for preparing the papers which is directory only.

⁵Any reliance on the general principle that the word “shall” is usually construed as mandatory is misplaced since the supreme court has construed that word as directory in the statutes relating to the content of nomination papers. Any reliance on *Ahlgrimm* for a contrary proposition is incorrect. Any reliance on *State ex rel. Lemieux v. Zimmerman*, 40 Wis. 2d 1, 161 N.W.2d 129 (1968), would also be misplaced since that case never considered any question whether a statute was mandatory or directory.

An act done in violation of a directory provision is not void. *Id.* at 594. It may be valid as long as there is substantial compliance with the provision. *Id.* at 594, 596. The Elections Board has discretion to determine whether there has been substantial compliance with the directory provisions relating to nomination papers. *Id.* at 596; Wis. Stat. § 8.30(1) (2001-02).

In this case the Board ruled that Nader's nomination papers complied with the requirement that they name a candidate for presidential elector from each of Wisconsin's eight congressional districts. At the very least, therefore, the Board found substantial compliance with this requirement.

The standard for reviewing the discretionary decision of an administrative agency is the same as for reviewing the discretionary decision of a court. *Verhaagh v. LIRC*, 204 Wis. 2d 154, 160, 554 N.W.2d 678 (Ct. App. 1996); *In re Bar Admission of Altshuler*, 171 Wis. 2d 1, 8, 490 N.W.2d 1 (1992).

The nature of discretion permits different decision-makers to reasonably make different decisions in the same situation. *State v. St. George*, 2002 WI 50, ¶ 58, 252 Wis. 2d 499, 643 N.W.2d 777; *State v. Robinson*, 146 Wis. 2d 315, 330, 431 N.W.2d 165 (1988). The reviewing tribunal may not substitute its judgment for that of the agency as to which decision may be better. *Galang v. Medical Examining Board*, 168 Wis. 2d 695, 699-700, 484 N.W.2d 375 (Ct. App. 1992); Wis. Stat. § 227.57(8). The inquiry is confined, rather, to whether the agency reached a decision that is reasonable. *Glacier State Distribution Services, Inc. v. DOT*, 221 Wis. 2d 359, 368-70, 585 N.W.2d 652 (Ct. App. 1998); *Verhaagh*, 204 Wis. 2d at 160.

It is immaterial whether the reasons stated for a decision are convincing, or even if no reasons are stated

at all, as long as the decision itself is reasonable and supported by the record. *Schauer v. DeNeveu Homeowners Ass'n*, 194 Wis. 2d 62, 71, 533 N.W.2d 470 (1995); *Conrad v. Conrad*, 92 Wis. 2d 407, 414-15, 284 N.W.2d 674 (1979). So the court should search the record for reasons to sustain the agency's exercise of discretion, and affirm the decision if it can be sustained as a proper discretionary act. *Id.* A decision which a reasonable person could reach by applying the proper legal standard to the relevant facts should be affirmed even if the court disagrees with it and would have decided the matter differently. See *Verhaagh*, 204 Wis. 2d at 160; *Galang*, 168 Wis. 2d at 700.

In this case, the Board did not state reasons for ruling that Nader's nomination papers complied with the statutory provision for listing electors. However, the Board should be given some leeway in this respect.

The Elections Board, unlike most other administrative boards, operates under severe time restraints. Because of the short time periods between nomination and election, the Elections Board must act with unique swiftness in determining whether a candidate's name should appear on the ballot. One part of the need for speed is that the Board believes that a person negatively affected by its decision should have time to seek judicial review before the ballots are printed and distributed.

Another problem is that the Elections Board does not hold contested case hearings before an administrative law judge who can write, in a leisurely way, a judicial opinion fully stating facts, law and reasoning, which the Board can then approve or modify. The Board simply meets, discusses and votes on ballot access questions.

Thus, this Court should apply in this case the principle that an administration should be upheld even if

even if the agency fails to state its reasoning as long as the decision itself is reasonable and supported by the record.

There is available, nevertheless, some indication of the Board's reasoning in the form of a memo written by the Board's staff, the relevant pages of which are attached. The memo indicates that the Board's staff believes that the provisions of Wis. Stat. § 8.20(2)(d) are directory rather than mandatory, and that the Board has discretion to determine whether there has been substantial compliance with the provisions.

In this case, the facts are undisputed. Nader listed residents of seven congressional districts as his electors from those districts. In only one district, the Seventh, did he fail to name a resident as his elector. And in that case, the named elector resides in Vilas County, which adjoins the Seventh Congressional District. *See map at 1 WISCONSIN STATUTES 18 (2001-02).* Under these circumstances, the Board could reasonably find that Nader substantially complied with any statutory requirement that he list electors who are residents of each congressional district.

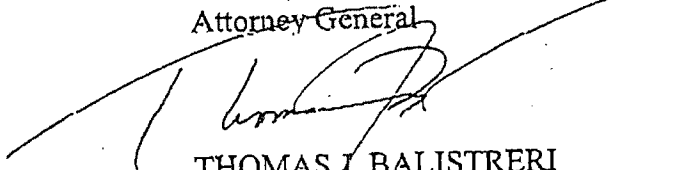
3,685 citizens of this state have asked for the opportunity to vote for Nader for President in the general election. To thwart the will of these and other potential voters because of an irregularity in Nader's nomination papers that has no relevance to the validity of the electoral process would contravene the policy expressly established by the Legislature for the construction of election laws.

CONCLUSION

It is therefore respectfully submitted that the decision of the State Elections Board to place the names of Ralph Nader and Peter Miguel Camejo on the ballot for the November general election as independent candidates for President and Vice-President of the United States should be affirmed.

Dated this 29 day of September, 2004.

PEGGY A. LAUTENSCHLAGER
Attorney General



THOMAS J. BALISTRERI
Assistant Attorney General
State Bar #1009785

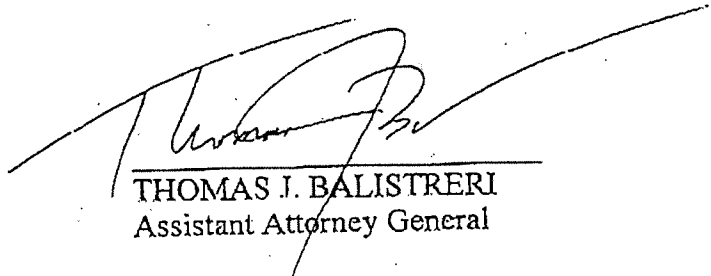
Attorneys for State Elections
Board

Wisconsin Department of Justice
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CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. § 809.62(4)(b) for a response produced with a proportional serif font. The length of this response is 4,509 words.

Dated this 19 day of September, 2004.



THOMAS J. BALISTRERI
Assistant Attorney General

nominated, before the deadline for filing nomination papers shall file a written statement with the same person with whom he or she files nomination papers stating the person's party or office preference. If the candidate fails to select the party or office, the filing officer shall place the candidate's name on the ballot under either party or office, but may not permit it to appear more than once. If a candidate is nominated at a primary election for partisan office or nonpartisan state office on a ballot where his or her name appears or by nomination papers filed by the candidate, and is also nominated by write-in votes at the primary election to another office, or to the same office as the candidate of a different party, the candidate does not have a choice, but shall be placed on the ballot for the election under the office and party for which the candidate's name appeared on the primary ballot or for which the candidate had filed nomination papers.

(2) Subsection (1) shall not apply when a candidate for the office of president or vice president of the United States is nominated for another elective office during the same election. If the candidate is elected president or vice president of the United States such election shall void the candidate's election to any other office. A special election shall be held to fill any office vacated under this subsection.

(2m) A candidate may appear on the ballot for more than one local nonpartisan office at the same election.

(3) This section does not affect the law of compatibility of offices.

8.20 Nomination of independent candidates. (see above)

DISCUSSION

The Board's staff prefaces its discussion of the issues raised by the complaint with the acknowledgment that it was unable to find any clear, definitive authority on either issue. In other words, a case or statute that says that the failure of a named presidential elector to reside in the congressional district which he or she was designated to represent on the candidates' nomination papers is fatal to the validity of those nomination papers; or, conversely, a case or statute that says that the non-residence (in the designated congressional district) of a presidential elector is harmless error that may be corrected by the candidate after circulation or after filing, has not been found. And a case or statute that says that a person may not (or may) file nomination papers or qualify for Wisconsin's ballot as an independent candidate for the office of President (even) if that person is named on the ballot of any other state as the candidate of a recognized political party for the same office, has not been found.

Consequently, the staff's discussion and the conclusions that follow are based on the staff's interpretation of Wisconsin's statutes governing nomination of independent candidates for the offices of President and Vice President, rather than on definitive authority. That also means that, absent the proffering of such definitive authority by the complainants or respondents, the Board's decision will also be based on its discretionary interpretation of those statutes.

(I.) The Failure of Presidential Elector, Christian M. Meier, to Reside in the 7th Congressional District Which he was Named, on the Respondents' Nomination Papers, to Represent, Does Not Preclude the Respondents from Ballot Status under s.8.20 of the Wisconsin Statutes.

Because the respondents have timely filed nomination papers containing over 2,000 signatures of electors of the State of Wisconsin, the respondents' nomination papers have qualified them for ballot status if the nomination papers meet the requirements of s.8.20, Stats. The only nomination paper issue raised by the challenge is that the respondents' nomination papers fail to comply with the requirement of s.8.20(2)(d), Stats. - that "Nomination papers for president and vice president shall list one candidate for presidential elector from each congressional district and 2 candidates for presidential elector from the state at large who will vote for the candidates for president and vice president, if elected" - because the respondents' named elector from the 7th Congressional District does not reside in the 7th Congressional District.

The Board's staff believes that the nomination paper requirement of s.8.20(2)(d), Stats., like many other requirements in ch.8 of the Statutes is directory, rather than mandatory meaning that the standard for compliance with that requirement is substantial compliance, not strict compliance. Consequently, the respondents' naming of an elector, whom the respondents believed to have resided in the 7th Congressional District, to represent the 7th Congressional District substantially complied with the requirements of s.8.20, Stats., and qualified the nomination papers to nominate for the offices of President and Vice President.

Because the statute (s.8.20(9), Stats.) directs that each elector named in independent candidates' nomination papers "will vote for the candidates for president and vice president, [who named the electors] if elected," the presidential electors' residence in different congressional districts of Wisconsin is largely ceremonial or superfluous. The presidential electors don't really represent their district because they vote for the candidates who have named them and who have been elected, not for the candidate who got the most votes in their district. They represent the candidates who named them: the candidates for whom the statute says they "will vote."

Also, the United States Constitution does not require that each of the presidential electors represent a separate congressional district of the elector's state. Instead, Article II, Section 1, of the Constitution provides that each state may decide how electors are chosen:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in Congress. . . .

In nominating independent candidates for President and Vice President, the residence of the elector in the congressional district for which he or she has been named is not an essential element of nomination. The essential elements of nomination (for the offices of President and Vice President) are: the names of the candidates; the offices for which they

are nominated; the election at which they are candidates and whether the candidate represents a political party or seeks nomination as an independent. The residence of the electors is not an essential element of nomination because the persons who sign the nomination papers do so to nominate the candidates named, not to nominate the electors. Persons who sign the nomination papers of independent candidates for President and Vice President invariably do not know who the electors are, (even in their own district), and do not sign those nomination papers based on the identity or residence of the presidential electors.

Under s.7.75(1), Stats, presidential electors may be replaced if they are unable or unwilling to act:

If there is a vacancy in the office of an elector due to death, refusal to act, failure to attend or other cause, the electors present shall immediately proceed to fill by ballot, by a plurality of votes, the electoral college vacancy.

The statute calls for replacement by a vote of the electors present, but that is because the statute speaks to the occasion of the electors' meeting after the election. If the electors may replace one of their members at that meeting, that, at least, raises the question why one of the electors cannot be replaced at an earlier date by the candidate who named the elector.

II. Candidates for Independent Nomination to the Offices of President and Vice President Are Not Ineligible for Ballot Placement in Wisconsin Because their Names Appear as the Candidates of Recognized Political Parties on Ballots in other States.

The prohibition in s.8.20(9), Stats. – “if the candidate’s name already appears under a recognized political party, it may not be listed on the independent ballot” – applies only to a candidate whose name appears on the Wisconsin ballot as the candidate of a recognized political party. The prohibition does not apply to a candidate whose name appears as the candidate of a recognized political party only on ballots of states other than Wisconsin. Although the words, “on the Wisconsin ballot,” are silent in the Wisconsin statute, they, nevertheless, are understood to be included or implied in the word “appears.” Thus, if candidates Nader and Camejo appeared on the Wisconsin ballot as the candidates of one of the five ballot-recognized political parties in Wisconsin, their names “may not be listed on the independent ballot.” But candidates Nader and Camejo do not appear on the Wisconsin ballot as the candidates of one of the five ballot-recognized political parties in Wisconsin.

In regulating Wisconsin’s ballot (and not any other state’s ballot), the statute (s.8.20(9), Stats.), precludes a candidate who has accepted nomination by a political party in Wisconsin from appearing on the same ballot as an independent candidate. In essence, the statute precludes a candidate from getting “two bites of the apple” by appearing on the Wisconsin ballot in two different places for the same office – one as the candidate of one of the five ballot-recognized political parties and the other as an independent candidate. The advantage to a candidate by having his or her name appear on the ballot

APPENDIX C

**In the Matter of
Nomination Papers of Jill Stein**

Affidavit of Ron Hardy

Under oath or affirmation, I state:


1. I serve as a volunteer for the campaigns of Jill Stein for President and Ben Manski for Vice President of the United States.
2. On or about June 23, 2012 I assisted with the preparation of the nomination papers for Jill Stein for President and Ben Manski for Vice President of the United States.
3. I was aware that Cynthia McKinney, the Green Party candidate for President in 2008, listed Monte LeTourneau in her nomination papers as a Presidential Elector for the Third Congressional District.
4. I contacted Monte LeTourneau on or about June 23, 2012 and confirmed that his residence is located at 14466 North 20th Avenue, Necedah, WI 54646.
5. On or about June 27, 2012, to verify that Monte LeTourneau's residence is in the 3rd Congressional District of Wisconsin, I examined several maps of Congressional Districts on the Wisconsin State Legislature's website at: http://legis.wisconsin.gov/ltsb/redistricting/congressional_districts.htm.
6. I compared the location of LeTourneau's address using Google Maps to the map of the third Congressional District that I examined on the Wisconsin State Legislature's website.

7. I believed that I was looking at the map of the newly drawn congressional districts after legislative redistricting.
8. The map that I reviewed clearly indicated that LeTourneau's address was located in the 3rd Congressional District.
9. At the time I was preparing the nomination papers for Stein and Manski, I believed, to the best of my knowledge and based on my good-faith efforts, that the residence of Monte Letourneau was located in the 3rd Congressional District of Wisconsin.
10. At the time I was preparing the nomination papers for Stein and Manski, I was not aware that the residence of Monte LeTourneau was no longer located in the 3rd Congressional District as a result of legislative redistricting of the Wisconsin congressional districts.
11. I became aware that Monte LeTourneau's residence is no longer located in the 3rd Congressional District, as a result of legislative redistricting of the Wisconsin congressional districts, on August 10, 2012, when I read an article on the website Ballot Access News reporting that the state elections office questioned the nomination petitions of Jill Stein based on the residency of the presidential electors named in the petitions. See <http://www.ballot-access.org/2012/08/09/four-presidential-petitions-filed-in-wisconsin-state-elections-office-questions-validity-of-two-of-them/>

12. After reading this article, I printed a copy of Jill Stein's nomination petition and re-examined each elector's listed address with the congressional district maps on the Wisconsin State Legislature's website.

13. Upon checking Monte LeTourneau's address against the maps of congressional districts that show the district boundaries after redistricting, I discovered that LeTourneau's residence is now located in the Seventh Congressional District.

Dated: AUG 17, 2012



Ron Hardy

Subscribed and sworn to or affirmed before
me on 8/17/2012

Marta J. Krueger, State of Wisconsin
Notary Public, State of Wisconsin

My commission is permanent/expires on 8/21/2015



State of Wisconsin \ Government Accountability Board

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JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 28, 2012, Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by:
David Buerger
Election Specialist
Government Accountability Board

Presented by:
Ross Hein
Elections Supervisor
Government Accountability Board

SUBJECT: Election Systems and Software (ES&S)
Petition for Approval of Electronic Voting System
Unity 3.2.0.0 Revision 3

Introduction

Election Systems and Software (ES&S) is submitting Unity 3.2.0.0 Revision 3 for approval in Wisconsin. This is a new version of the currently in-use Unity 3.2.0.0 Election Management System. This new version addresses various issues that were first publicly discovered in Cuyahoga County, Ohio during pre-election testing in April 2010. A subsequent investigation by the United States Election Assistance Commission (US-EAC) substantiated three anomalies:

1. Intermittent screen freezes, system lockups and shutdowns that prevent the voting system from operating normally.
2. Failure to log all normal and abnormal voting system events.
3. When a 17" ballot was inserted at an angle, the DS200 did not consistently count the mark properly.

US-EAC issued a formal report of its investigation on December 2011 and issued a Notice of Noncompliance to ES&S on February 1, 2012. ES&S addressed these specific issues and incorporated those changes into Unity 3.2.0.0 Revision 3. As this was a modification of a system previously certified to the 2002 Voting System Standards, upon successful completion of testing, the US EAC certified the new version to the 2002 Voting System Standards on May 16, 2012.

The Government Accountability Board previously approved the Unity Election Management Suite, version 3.2.0.0; DS200, version 1.3.10.0; and AutoMARK electronic ballot marking device versions 1.0, 1.1, and 1.3.1 on December 17, 2009. All of the pieces of equipment tested in July 2012 were upgrades to the above equipment that are currently approved for use in Wisconsin. This is not a new system. The prior version of this system is currently used in Lincoln, Portage, and Wood counties and no significant problems with the equipment have been reported.

Recommendation

Based on the federal testing and certification of this system and on Board staff’s own functional testing of this equipment, Board staff is recommending approval of ES&S Unity 3.2.0.0 Revision 3 for use in Wisconsin. More detailed recommendations are listed on pages 11-12, following the analysis of the functional testing

Decertification of Unity 3.2.0.0

Now that there is a federally-certified solution (Unity 3.2.0.0 Revision 3) for the problems identified in Unity 3.2.0.0, ES&S has voluntarily requested the US-EAC withdraw the certification of Unity 3.2.0.0 effective August 15, 2012. The US-EAC agreed to this resolution and withdrew Unity 3.2.0.0’s certification effective August 15, 2012. This means that at this time, there are three counties (Lincoln, Portage, and Wood) who need to find another voting equipment option before the November 6, 2012 election if the Board was to deny certification. These jurisdictions are likely under a contract with ES&S that may provide other remedies to them in the instance of a decertification, such as ES&S’s provision of other replacement equipment. Additionally, should Revision 3 be approved by the Board, ES&S has committed to providing this solution to municipalities that currently have the DS200 at no additional charge. Since municipalities purchase their own voting systems and contract separately with manufacturers, other contractual remedies have not been verified by staff.

Background

No electronic voting equipment may be offered for sale or utilized in Wisconsin unless the Board approves it. Wis. Stat. § 5.91. The Board has also adopted administrative rules detailing the approval process. Wis. Admin. Code Ch. GAB 7.

On June 15, 2012, the Government Accountability Board (Board) staff received a request from ES&S to have Unity 3.2.0.0 Revision 3 approved for sale and use in Wisconsin. However, ES&S submitted its application using outdated application forms and staff rejected the initial application. On July 11, 2012, ES&S resubmitted their application and Board staff scheduled voting equipment evaluation and demonstrations for ES&S during the week of July 30, 2012. ES&S submitted the following components of Unity 3.2.0.0 Revision 3 for testing:

Equipment	Hardware Version(s)	Firmware Version	Type
DS200	1.2 1.3.10.0	1.6.1.0	Precinct Optical Scan Ballot Counter
AutoMark Voter Assist Terminal (VAT)	1.0 1.1 1.3.1 with Print Engineering Board 1.65 1.3.1 with Print Engineering Board 1.70	1.3.2906	Ballot Marking Device

The DS200 is a digital paper ballot tabulator used primarily as a precinct counting system to tabulate paper ballots at the polling place. Each system can process ballots for up to ten wards or reporting

units. After the voter makes a selection with a marker, or a ballot marking device (AutoMARK VAT), the ballot is inserted into the DS200 for immediate tabulation. The precinct count optical scanner tabulates votes and feeds inserted ballots into an attached secured storage bin.

The system includes a large touch screen display to provide feedback to the voter on the disposition of their ballot. If any errors or irregularities (overvote/crossover vote/blank ballot) are recognized, the voter has the ability to return the ballot for review, or instruct the system to read it as-is. Both sides of the ballots are scanned using a high-resolution image-scanning device, and the votes and ballot images of an election are stored on an external USB flash drive. The flash drive can be removed and transported to the central tabulation location. The DS200 does not store any ballot data, election totals or election images in its internal memory. Results may not be “modemed-in” from the DS200 to a central location.

The AutoMARK VAT is comprised of a color touch screen monitor and integral ballot printer. To use the device, the voter inserts a pre-printed blank ballot into the input tray of the device. The mechanism draws in the ballot and scans a preprinted bar code on the ballot to determine which form of ballot has been inserted. The VAT then displays a series of menu-driven voting choices on its screen. The voter uses the touch screen or key pad provided to make voting selections. The VAT stores these choices in its internal memory.

When the voter has completed the selection process, the VAT provides a summary report for the voter to review his or her choices, and the AutoMARK VAT marks the ballot using its built-in printer. The print mechanism is a duplex device and can print both sides of the ballot. When the printing of the ballot is completed, the VAT feeds the ballot back to the voter. Once the ballot has been marked and is provided to the voter, the AutoMARK VAT clears its internal memory and the paper ballot is the only lasting record of the voting selections made. The voter may visually confirm his or her selections, or the ballot may be re-inserted into the VAT and the voter selections summary report will provide an audio summary for voters with visual impairments. The voter proceeds to enter the ballot into an optical scan voting system for tabulation or a secured ballot box to be hand tabulated by election inspectors after the polls have closed.

Overvotes and crossover votes cannot occur on this equipment and a voter is warned about undervotes prior to the completion of voting. The AutoMARK VAT generates audio voting instructions that guide a visually impaired voter through the election sequence. The voter wears headphones to hear the spoken instructions. The voter makes his or her selections by pressing on a specially designed switch panel. The voter can adjust the volume and the screen may be “blacked out” to deactivate the LCD screen, to provide enhanced privacy. The voter may adjust the tempo (speed) of the audio instructions and the VAT accommodates a sip-puff device. The VAT can be programmed in multiple languages, although languages other than English are not currently required in most Wisconsin municipalities. The City of Milwaukee is subject to a Spanish language requirement under Section 203 of the Voting Rights Act and the VAT accommodates that requirement.

Unity 3.2.0.0 Revision 3 also includes the following software, which was verified by staff:

- Audit Manager v. 7.5.2.0
- Election Data Manager v. 7.8.1.0
- ES&S Image Manager v. 7.7.1.0
- Hardware Programming Manager v. 5.7.1.0
- Election Reporting Manager v. 7.5.4.0
- AutoMARK Information Management System (AIMS) v. 1.3.157
- AutoMARK VAT Previewer 1.3.2906
- LogMonitor Service 1.0.0.0

ES&S submitted complete specifications for hardware, firmware and software related to the systems to G.A.B. staff. In addition, ES&S submitted technical manuals, documentation and instruction materials necessary for the operation of the equipment. The Voting System Test Laboratory responsible for testing the ES&S systems, Wyle Laboratories, recommended the US-EAC to certify ES&S Unity 3.2.0.0 Revision 3. Although all testing on the modifications to the system were tested according to the EAC 2005 Voluntary Voting System Guidelines, the system as a whole was not tested to the 2005 standards and as such was only recommended to receive a 2002 Voting Systems Standards certification. ES&S provided the Wyle report to the Board along with the application for approval of electronic voting equipment. The EAC certified ES&S Unity 3.2.0.0 Revision 3 on May 16, 2012, and issued it certification number ESSUnity3200Rev3.

Functional Testing

As part of the review process, Board staff examined the ES&S application along with the manuals, specifications, documents, reports and instructions necessary for the operation of the equipment. As required by GAB 7.02(1), staff conducted three mock elections with each component of the voting system: a partisan primary, a general election with both a presidential and gubernatorial vote, and a nonpartisan election combined with a presidential preference vote. To ensure the ability of the system to accept these combinations of elections, staff also added a nonpartisan recall election to the partisan primary and a special partisan election to the nonpartisan election. The mock elections offered an opportunity for staff to perform functional testing to ensure the system conforms to all Wisconsin requirements.

Staff designed a test deck of approximately 1,000 test ballots using various configurations of ballot positions over the three separate mock elections to verify the accuracy and functional capabilities of the system. The four AutoMARK hardware configurations were tested by marking approximately 80 ballots with the equipment using various ballot marking configurations and ballot styles. The Auto-MARKed ballots were then verified by staff before being tabulated by the DS200 optical scan equipment. Staff determined the results produced by the optical scan system matched the expected results from the staff's test plan.¹

Public Demonstration

Following the mock elections, an evening public demonstration of the voting system was conducted August 1 from 5:00 – 7:00 p.m. and members of the public were able to personally use the system and provide comment. A number of advocates for hand-count paper ballots appeared at this demonstration with signs and appeared to want to use this demonstration as a forum. The audience was told Wis. Stat. § 5.40 requires the use of electronic voting systems for every municipality with a population of 7,500 or more. The public comments provided seemed to be less specific to this voting system and more critical of electronic voting equipment in general.

Comments from the public demonstration are included in the appendices.

Wisconsin Election Administration Council Demonstration

Also, on August 2 from 9:30 a.m. – 12:00 p.m., the Wisconsin Election Administration Council (WI-EAC), which is made up of municipal and county clerks, representatives of the disability community, and community advocates, participated in a demonstration by the manufacturer and evaluated the equipment. Some advocates for hand-count paper ballots also appeared at this meeting and again appeared to want to use this meeting as a forum for criticism of electronic voting equipment in general,

¹ In the mock General Election test, two ballots (309 & 310) from the AutoMARK test were accidentally omitted from the ballot run through the DS200. Another ballot (322) was marked incorrectly. When the two missing ballots' votes are included along with the incorrectly marked ballot's votes, the results add up perfectly to the tape for the first run. A second run of the ballots, including the two missing ballots and a correctly remade ballot #322 returned the originally expected result.

but WI-EAC members were given preference by staff moderating the meeting both for questions and use of the equipment.

Comments from the WI-EAC are included in the appendices.

Board Staff's Feedback

The Unity Election Management System was used successfully to program each of the four hardware versions of the AutoMARK Voter Assist Terminal and the two DS200 optical scan ballot tabulators. ES&S demonstrated within Unity how to create the election / ballots for each given election. After the equipment counted the ballots, ES&S demonstrated the tabulation of the election results within Unity. ES&S also demonstrated the maintenance of the results by transferring the election data (ballot definition, ballot images, and results) to a different flash drive, which the staff then verified could also be transferred to a computer's hard drive. Staff visually verified the version numbers for each component of the Unity 3.2.0.0 Revision 3 EMS by checking the component's configuration display.

As part of EAC certification for the system, the US-EAC requires all election programming and results reporting to use a "hardened system" for the Unity EMS and AIMS. A "hardened system" is a computer that contains only the Unity EMS and / or AIMS program and is used only for programming and results reporting. No other program or application is permitted on the unit.

AutoMARK Voter Assist Terminal

- Although there were no errors with the physical marking of the test ballot by the AutoMARK and the four hardware configurations produced accurate marks, there were some instances in which the system produced error messages that would require intervention by an election inspector. The messages displayed by the systems during testing were "paper misfeed", "error while printing" and "ballot not recognized." These errors were generally infrequent and fixed by simply re-feeding the ballot into the machine.
- The AutoMARK does not arguably provide absolute privacy and independence for voters with disabilities, especially voters with dexterity or motor disabilities, as voters may need assistance inserting the ballot, removing the ballot and placing the ballot in the ballot box or tabulator. However, it does provide substantial compliance with these objectives.
- For the Partisan Primary, if the voter does not select a party preference they are taken directly to the first party's contests and if they make any selections, will automatically be taken through that party's ballot only and may not be alerted there were other parties' contests on the ballot.

DS200 Optical Scan Tabulator

- Although there were no errors with the tabulation of the test ballots by the DS200 and both hardware configurations produced accurate results, there were some instances in which the DS200 produced error messages that may require intervention by an election inspector. Among the messages by the systems during testing were "ballot too long," "ballot not recognized," and "missed orientation marks." With each of these errors, there was an audio alert notifying the voter of an issue with the ballot. These errors were generally infrequent and fixed by simply re-feeding the ballot into the machine.
- The DS200 was able to correctly read marks in pencil, black pen, blue pen, red pen, and green pen as well as by the ES&S-provided markers.

- The ability of the DS200 to capture digital ballot images automatically may provide a more cost-effective alternative to groups requesting to conduct post-election audits of the vote by review of the paper ballots.
- Write-in votes in the DS200 ballot bin are marked with a small pink circle and depending on the ballot box used, may or may not be separated into a separate write-in bin. The system can be easily configured to capture ballot images of ballots with write-ins and store them on the external USB flash drive, which would permit write-in votes to be easily verified within the Unity EMS. However, this would not replace the need for inspectors to manually inspect each ballot to detect write-in votes where the voter did not fill in the target area next to the write-in line.
- The DS200's ballot input slot may be difficult for individuals with certain types of disabilities to insert a ballot without assistance due to the height and location of ballot input slot.
- There were a few occasions where a ballot jam occurred while inserting the ballot into the DS200. An error message is displayed on the touch screen directing the voter to contact a poll worker and there is also an audio alert notifying the voter. The ballot is returned back to the voter and can be reinserted to be counted.
- While the DS200 includes a large touch screen display to provide feedback to the voter on the disposition of their ballot, the manufacturer's default configuration allows the voter to instruct the DS200 to accept the ballot as is, even if it contains any fatal errors or irregularities such as overvotes or crossover votes. The manufacturer can also set the configuration to automatically reject all ballots with overvotes or crossover votes, which permits the voter to correct the error by remaking his or her ballot and so as to ensure that electors do not mistakenly process a ballot on which a vote for one candidate or all candidates will not count.
- The automatic rejection configuration of the DS200, however, creates issues for processing absentee ballots because no voter is present to remake the ballot. There are three options to address a tabulator ballot count that is inconsistent with the voter count: 1) maintain the ballots rejected by the tabulator and manually add those to the number of ballots identified by the DS200; 2) election inspectors remake ballots rejected by the DS200 (overvotes or crossover votes); or 3) at some point during the Election Day or at the end of the night, the DS200 configuration is changed to permit the election inspectors to override the rejection and allow the tabulator to accept the ballots. Having the configuration of the DS200 changed at some point during the Election Day or at the end of the night may raise questions about the integrity of the results.
- Ballots marked with a party preference choice selection only but no individual votes in the partisan primary are accepted with no feedback provided to the voter on the disposition of their ballot. The DS200 reads this marking as a contest.
- The voting systems upgrades will not be compatible with other ES&S precinct-based optical scan voting equipment currently approved for use in Wisconsin. Municipalities using other ES&S precinct-based optical scan voting equipment will have to either upgrade older versions of firmware or purchase equipment included within this test.
- During the public test, one member of the public placed his own USB memory device in a slot that would normally be locked and sealed on Election Day. (For purposes of the public test only, the equipment had been left open to permit maximum public inspection.) The system was unaffected and properly logged that the memory device was connected. To perpetrate an actual attack on this system in the field would require the perpetrator to avoid the detection of election inspectors while they break the security tag/tamper-evident seal, unlock the secure memory device compartment, replace the memory device with their own device which would need self-

executing code that would somehow circumvent the automated logging system before the tampering was recorded on the tape, re-lock the memory device compartment, and re-apply an identical security tag or tamper-evident seal. While such an attack is possible, it is not probable that such an attacker would avoid detection and apprehension.

- Some legacy systems approved under NASED have the ability to “modem-in” their results to a central office for tabulation. As voting equipment results for Revision 3 were not federally tested nor certified, results are not permitted to be “modemed-in” under the EAC 2005 Voluntary Voting Systems Guidelines. Many municipalities wishing to purchase and use the DS200 would need to change their process for tabulating the election results. This may create delays in how quickly unofficial results are made available to the public as flash drives will need to be physically delivered to the central tabulation site. While the ability to “modem-in” results is not a requirement for certification, the lack of such capacity in the system is noted as a drawback by many local election officials. Staff are advised that the next generation of the Unity system is expected to provide this functionality.

Statutory Compliance

Wis. Stat. § 5.91 provides the following requirements voting systems must meet to be approved for use in Wisconsin. Please see the below text of each requirement and staff’s compliance analysis.

§ 5.91 (1)
The voting system enables an elector to vote in secret.
Staff Analysis
The ES&S voting system meets this requirement by allowing a voter to vote a paper ballot in the privacy of a voting booth or at the accessible voting station without assistance.

§ 5.91 (3)
The voting system enables the elector, for all elections, except primary elections, to vote for a ticket selected in part from the nominees of one party, and in part from nominees from other parties and write-in candidates
Staff Analysis
The ES&S voting system allows voter to split their ballot among as many parties as they wish during any election that is not a partisan primary.

§ 5.91 (4)
The voting system enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted.
Staff Analysis
The ES&S voting system allows write-ins where permitted.

§ 5.91 (5)
The voting systems accommodate all referenda to be submitted to electors in the form provided by law.
Staff Analysis
The ES&S voting system meets this requirement.

§ 5.91 (6)
The voting system permits an elector in a primary election to vote for the candidates of the recognized political party of his or her choice, and the system rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where a party designation is made or where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector.
Staff Analysis
The ES&S voting system can be configured to always reject crossover votes without providing an opportunity for the voter to override. It is recommended that the Board continue to require this configuration due to potential voter confusion over the error message and voter's ability to submit a ballot upon which no votes will be counted.

§ 5.91 (7)
The voting system enables the elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.
Staff Analysis
The voting system meets these requirements with one exception: where the elector casts excess write-in votes in addition to voting for a named candidate. All currently-certified systems will interpret this scenario as an overvote and reject such ballots and require the voter to make the necessary revisions to the ballot. To meet this requirement, election procedures require election inspectors to inspect all ballots for write-in votes that may not be properly counted and separated into the proper receptacle by the voting system; this ensures all ballots are properly accounted for.

§ 5.91 (8)
The voting system permits an elector at a General Election by one action to vote for the candidates of a party for President and Vice President or for Governor and Lieutenant Governor.
Staff Analysis
The ES&S voting system meets this requirement.

§ 5.91 (9)
The voting system prevents an elector from voting for the same person more than once, except for excess write-in votes upon a ballot that is distributed to the elector.
Staff Analysis
The ES&S voting system meets this requirement.

§ 5.91 (10)
The voting system is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently and accurately in the conduct of elections and counting of ballots.
Staff Analysis
The ES&S voting system meets this requirement.

§ 5.91 (11)
The voting system records and counts accurately every vote and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved.
Staff Analysis
The ES&S voting system meets this requirement.

§ 5.91 (12)
The voting system minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting system, or other related equipment or materials.
Staff Analysis
The ES&S voting system meets this requirement if it is configured to automatically reject all overvote and crossover ballots like other optical scan systems currently in use in Wisconsin. This is a requirement of the Board's prior 2009 certification.
In the alternative, if configured to provide error prompts, it is recommended that as a required protocol, an election inspector be stationed to support the DS200 by explaining the options to voters who may receive such an error prompt.

§ 5.91 (13)
The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained.
Staff Analysis
The ES&S voting system meets this requirement.

§ 5.91 (14)
The voting system does not use any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.
Staff Analysis
The ES&S voting system does not use any such mechanism to record votes.

§ 5.91 (15)
The voting system permits an elector to privately verify the votes selected by the elector before casting his or her ballot.
Staff Analysis
The ES&S voting system meets this requirement.

§ 5.91 (16)
The voting system provides an elector the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.
Staff Analysis
The ES&S voting system meets this requirement.

§ 5.91 (17)
Unless the ballot is counted at a central counting location, the voting system includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office the ballot will not be counted, and provides the elector with an opportunity to correct his or her ballot or to receive a replacement ballot.
Staff Analysis
The ES&S voting system meets this requirement.

§ 5.91 (18)
If the voting system consists of an electronic voting machine, the voting system generates a complete, permanent paper record showing all votes cast by the elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.
Staff Analysis
Since the ES&S voting system presented for approval requires paper ballots to be used to cast votes, this requirement does not apply.

The Help America Vote Act of 2002 (HAVA) also provides the following applicable requirements that voting systems must meet:

HAVA § 301(a)(1)(A)
The voting system shall: <ul style="list-style-type: none"> (i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted; (ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and (iii) if the voter selects votes for more than one candidate for a single office – <ul style="list-style-type: none"> (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and, (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted
HAVA § 301(a)(1)(C)
The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.
HAVA § 301(a)(3)(A)
The voting system shall— <ul style="list-style-type: none"> (A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as other voters
Staff Analysis
The ES&S voting system meets these requirements. However, concerns were stressed regarding the accessibility and privacy of the AutoMARK and the DS200 optical scan

system and that the entire voting process is not completely accessible. There are approximately 1,000 AutoMARK units used in polling places to provide accessible means to the disabled voters and the upgrades would supplement these systems if the jurisdiction determined to upgrade their entire system.

The AutoMARK voting systems for which approval is being sought, do not change the degree of accessibility currently provided by previously approved AutoMARK systems. Accessibility was determined by the former Elections Board to apply to the act of voting, not the insertion or removal of the ballot into the marking device and placing the ballot into the ballot box or optical scan voting system.

Conclusion

To determine whether a voting system should be approved for use in Wisconsin, the following recommendations are based upon three goals.

1. Can the voting system successfully run an open, fair and secured Wisconsin election in compliance with Wisconsin Statutes?

Staff's Response: Yes. Each system accurately completed the mock elections and was able to accommodate the voting requirements of the Wisconsin election process.

2. Does the system enhance access to the electoral process for individuals with disabilities?

Staff's Response: This system does not enhance access to the electoral process for individuals with disabilities, and neither does it reduce or mitigate access for disabled voters. The current scope and degree of accessibility remains substantially the same.

3. Does the voting system meet Wisconsin's statutory requirements?

Staff's Response: Yes. The voting system complies with all applicable state and federal requirements.

Recommendations

1. Board staff recommends approval of this ES&S voting system, Unity 3.2.0.0 Revision 3 and components set forth on page 3. The system accurately completed the mock elections and was able to accommodate the voting requirements of the Wisconsin election process.
2. Board staff recommends that as a continuing condition of the Board's approval, that ES&S may not impose customer deadlines contrary to requirements provided in Wisconsin Statutes, as determined by the Board. In order to enforce this provision, local jurisdictions purchasing ES&S equipment shall also include such a provision in their respective purchase contract or amend their contract if such a provision does not currently exist.
3. Board staff recommends that as a continuing condition of the Board's approval, that this system must always be configured to include the following options:
 - a. Automatic rejection of overvoted ballots with no opportunity for the voter to override.
 - b. Automatic rejection of crossover ballots with no opportunity for the voter to override.
 - c. Digital ballot images to be captured for all ballots tabulated by the system.

4. Board staff recommends election inspectors shall remake all absentee ballots automatically rejected for overvotes and crossover votes so that the ballot count is consistent with total voter numbers.
5. As part of EAC certificate: ESSUnity3200Rev3, only systems included in this certificate are allowed to be used together to conduct an election in Wisconsin. Previous versions that were approved for use by the former Elections Board are not compatible with the new ES&S voting system, and are not to be used together with the equipment versions seeking approval by the Board, as this would void the US-EAC certificate. If a jurisdiction upgrades to Unit 3.2.0.0 Rev 3, they need to upgrade each and every component of the system to the requirements of what is approved herein.
6. Unity EMS 3.2.0.0 Rev 3 may only program the AutoMARK Voter Assist Terminal (VAT), versions 1.0, 1.1, 1.3.1 ((Print Engineering Board (PEB)1.65)), 1.3.1 (PEB 1.70).

Proposed Board Motion

MOTION: The Government Accountability Board approves that staff's recommendation for the ES&S voting systems application to be used in Wisconsin, in compliance with EAC certificate: ESSUnity3200Rev3.

Attachments

- ✓ Appendix 1: Wisconsin Election Administration Council Feedback
- ✓ Appendix 2: Public Feedback
- ✓ Wisconsin Statutes § 5.91
- ✓ Wisconsin Administrative Code, GAB 7
- ✓ US-EAC Certificate of Conformance
- ✓ US-EAC Scope of Certification

APPENDIX 1: Wisconsin Election Administration Council's Feedback

These comments were provided via a structured feedback form

1. How would you rate the functionality of the equipment?

Very Poor	Poor	Fair	Good	Excellent
1	0	3	2	1

- I like this equipment. I think that the fact it rejects cross-voted or over-voted ballots is great! - Election Inspectors should be determining voter intent not a programmed machine. Machine is a little finicky in reading marks but I think that is ok too. I wish the connectivity for reporting results was wireless rather than land line (when the functionality is available). The storage bins on both pieces were small with a lot of handling by election inspectors. Write-in function stamp is not useful. Some functionality, like inability to use colored ballots, is just not a big deal- change is good.
- Like the equipment – to give results at the end of night.
- I question the ability & consistency of counting the markings. It seemed to count a “dot” but not a line? It caused confusion. Error message was not helpful. The red marking is too hard to see. The inability to modem is a huge negative.
- In general the equipment reads the ballots just fine.
- The machine was user friendly.
- When the machine rejected an over voted or blank ballot the description didn't give the voter much information. I could see someone saying I voted (maybe by putting a check beside the name instead of filling in the circle) and they would think they can just accept the ballot. Or if they accept it too quickly and then ask the election worker it would be too late. I guess I would feel better with a different safeguard. Even if the machine said that no votes were read; please contact election official for assistance before they press accept. I like the idea that the newer version would let us customize those screens.
- The same width ballot was kind of interesting to me. I guess I don't have a real issue with that; in some ways it is easier for us and the ballots probably feed more consistently than the smaller width ballots.
- There was lots of discussion about the USB port and securing it and using a store bought one versus their's. At the minimum with all the security concerns with elections the USB should be program that it has to be unlocked with a code before the machine would accept ballots. This way someone could not swap the flash drive out unless they knew the security code. We have to unlock the flashcard for the AutoMARK now and that should be same for this machine.
- Securing the USB port on election day. From what I understood there is a way to secure the USB card in the machine. He said something about putting a security sticker over the top. If that is sticker on “plastic” or “metal” it probably could be easily removed and no one would even know it. To me that would be a useless step.

- I particularly did not like that the machine did not have a modem. For today’s technology that seemed “old school” to me. In Dane County we modem and this particular machine would be a step backwards for us.
- The plastic bin did not provide a separate bin for write-in votes. With lots of ballots that would be an extra headache to sort through to find the faint red circle. That circle should be twice the size and filled in at the minimum! We go through all of our ballots at the end of election night, with the separate bin I can get poll workers working on tallying those write-ins sooner than later if I had to sort through all the ballots first it would be another unnecessary delay.
- It is not good that the machine cannot read colored paper. That could be a real nightmare for multiple jurisdictions at one polling place. Not in the sense of reading the ballots, but making sure the voter gets the correct ballot.
- I believe the machine functioned as explained to us. I did find that the slot to insert the ballot into the reader was very finicky and you had to insert it just right before it would be accepted. I think this will be frustrating for some of the older/disabled voters who may struggle with lining the ballot up just right to get it to feed.
- I would prefer that the tape prints errors as they happen and not just at the end of the night. This will allow the inspectors to monitor the types of errors and make adjustments to the instructions given to voters. Without this printed record, only the person at the machine at that time will know what the errors have been and will have to remember them.

2. How would you rate the accessible features?

Very Poor	Poor	Fair	Good	Excellent
1	0	3	1	1

- I would like to see the screen be a little larger. The messages seem to be very readable but I do not know the accessible requirements for type size or style. I like that it reads AutoMARK ballots.
- Good
- The machine seems to sit too high? The screen would be difficult to access in a wheelchair/scooter.
- Some people were checking the height of the machines on the cabinets. Just from looking at it, not measuring, it seemed rather tall for someone that would be sitting in a wheel chair. I would think someone may have a hard time reaching the screen if they needed to touch the screen for any purpose.
- The optical scan machine seems high for a person in a wheel chair, especially if they have to reach and touch the screen to accept or return a ballot. I think the warning to the voter should be more clear when the machine thinks the ballot is blank so the voter does not “accept” when there are no votes.

3. Rate your overall impression of the system.

Very Poor	Poor	Fair	Good	Excellent
1	0	1	3	0

- I would like to use this equipment!
- Prefer a system of hand ballots
- Excellent
- Security features are met but not the best. With tape on the machine. Without the ability to modem is a hindrance. It meets the standards but still has some issues.
- Overall the machine did work and functions reasonably enough that it can be useful to some jurisdictions. I personally would wait for the newer version to be approved before purchasing this model. Some of that reasoning is I know what I have now and this particular model doesn't make our job that much easier. I don't see the advantage to going this route. In some ways now it works better; we have the Optech Eagles, it returns the ballot to the voter if there is an error, the election worker tells them what happened and the voter understands they can go correct it and do it again. You will still need an election worker accessible to answer what the voter is supposed to do if the ballot is returned to them.
- I did not like the fact that the machine could not read colored ballots. We use them to differentiate between which voters get what ballots, as do many municipalities. I understand that the machine is capable of printing a colored header on the screen, but I do not believe this will be very helpful.
- I understand that the election inspectors have a duty to inspect each ballot for write-ins at the end of the night. But not to have the capability to sort ballots with write-ins from the rest, I think will add time to the checkout at the end of the night and account for more errors when people who have already worked all day must now try to find the hundreds of write-ins we get at a big election.
- Some of the Clerks were saying how they override the ballot if it was over voted versus remaking a ballot (these issues happen most of the time with absentees). When Bob Ohlsen trained us he said when a ballot is rejected we are NOT to override it but remake it at all times. Is this not the requirement? It appears people are doing it differently all over the State. Maybe that should be clarified to everyone. It's kind of a touchy situation because if you are remaking a ballot you have that chance for an error. And if the systems are program correctly they should count those offices with the exception of the over voted offices if you override it. Maybe Bob trained us with never overriding because of issues that happen in a recount. If you take that over voted office component out there is less debate. Your feedback would be appreciated.

APPENDIX 2: Public Feedback

These comments were provided via a structured feedback form

1. How would you rate the functionality of the equipment?

Very Poor	Poor	Fair	Good	Excellent
11	1	1	2	1

*one person created their own rating of zero

- I am concerned that it can be hacked.
- I believe the integrity is compromised. Too many thing can and WILL go wrong. PAPER BALLOTS!!
- Marking ballot via Auto mark v. time-consuming 7 tedious w/a ballot containing many races if the elector chooses not to select a party preference.
- Ward 2 ballots were set out when neither machine accepted it. Perhaps human error more, but the machines had their part as well
- One of the ballots was wrong for any of the machines →organizational problem though... Very awkward to use the marking machines.
- I have no confidence that the machines aren't hackable.
- Don't know- can't see the source code.
- I don't trust the equipment. Bring back hand counted paper ballots!
- Paper ballots (illegible hand-writing)
- Easy to insert USB. (with a downward arrow)
- I don't understand the Public purpose of the Equipment.
- Cannot rate functionality without seeing the code- machine's kept coming up with errors.
- Totally NON FUNCTIONAL!! Lacks Election Integrity. Into the End of America's Democracy. A BLACK HOLE fit for rigging!
- Not finger-tip sensitive
- Touch screen –have to hit the key exactly center rather firmly. The screen printouts on both machines are more distracting than need be and therefore confusing – a simple black text on white background list would be easier to read on the touch screen. Very confusing how to scroll down the list of who you are voting for.

2. How would you rate the accessible features?

Very Poor	Poor	Fair	Good	Excellent
10	0	2	2	2

- My grandfather would be unable to use or/operate these as he is not up to date with technology. He can't even work a VCR.
- Handicap features are very good.
- I didn't use the features –assuming you mean AutoMark, of course, I didn't use it but I know of it.
- I'm curious about the port for using an accessible accessory- would have liked a demo.
- I have no confidence that the machines aren't hackable.
- Accessible? Like the source code?
- I don't trust the machines (because they can be rigged) Hand counted paper ballots!
- I'm learning that many poll workers are unsure of how to work the machines already in use. They are easy to "bully" by people w/ agendas.
- Human Assistance would be superior in several ways, including building community & educating the populace about different abilities.
- Very poor
- ?Hand held Manipulative? Only to "mark" ballot/then has to move to tabulator How 2 honestly substantiate marks?
- See above (Not finger –tip sensitive)
- Good except for these comments: can wheelchair people easily reach the machine?

3. Rate your overall impression of the system.

Very Poor	Poor	Fair	Good	Excellent
11	1	2	2	0

*one person created their own rating of zero

- I don't trust it or the people who operate it.
- Paper Ballots are the only secure option.
- Do not trust the programming of the software. Why isn't its source code available to be reviewed?

Petition for Approval of Electronic Voting System

Unity 3.2.0.0 Revision 3

Appendix 2 – Public Feedback

- We need hand count paper
- Not impressed. Not only are they hackable, but clerks are breaking laws sending them in way too early.
- Tabulator is slower than Eagles currently used in Madison --- could create a backup in busy elections.
- Hand count. Only way for voting integrity PERIOD – END OF STORY
- No access to source code so not sure what I was testing.
- I'm not concerned w/ my ballot marks. I'm concerned with my ballot being counted... correctly. And there is still no way to confirm that.
- I didn't like it. I don't want it in Wisconsin. HAND COUNTED PAPER BALLOTS.
- I have no confidence that the machines aren't hackable.
- No source code makes me dubious.
- Get rid of electronic voting machines! R.I.P. Wisconsin
- No confidence in any voting machine.
- Machines not set up to read the ballots you provided...
- GAB should require (as a condition of approval) that the system always be configured to store all ballot images on the memory stick.
- Unnecessary complication, cost & degrades participatory democracy- introduces needless doubt.
- Very disappointed. It's sad our system has come to this.
- Terrible presentation! The use of Invalid ballots wasted people's time & confused an interested citizen! Does NOT pass the smell test! There are the people, representatives and machines WI votes will be trusted to? WTW? NO WAY! Absolutely not! No credibility for an honest election/GREAT for any fascist intent on RIGGING THE ELECTION!!
- Very concerned about voting machines- lack of accountability.
- I wish you could ship through the under-votes.
- Would be nice for you to include security test results and why your machines are hackable.

Comments not associated with a particular question:

- Room too small, not air conditioned, very hot. Not enough seating for even half of the people that showed up! Inadequate, hackable, no way to trace votes once machines are gone. Not secure Hand count Paper Ballots!
- Thanks for having this demonstration!

tronic voting machines are used, the board of canvassers shall perform the recount using the permanent paper record of the votes cast by each elector, as generated by the machines.

(2) Any candidate, or any elector when for a referendum, may, by the close of business on the next business day after the last day for filing a petition for a recount under s. 9.01, petition the circuit court for an order requiring ballots under sub. (1) to be counted by hand or by another method approved by the court. The petitioner in such an action bears the burden of establishing by clear and convincing evidence that due to an irregularity, defect, or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect recount results and that there is a substantial probability that recounting the ballots by hand or another method will produce a more correct result and change the outcome of the election.

(3) A court with whom a petition under sub. (2) is filed shall hear the matter as expeditiously as possible, without a jury. The court may order a recount of the ballots by hand or another method only if it determines that the petitioner has established by clear and convincing evidence that due to an irregularity, defect, or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect recount results and that there is a substantial probability that recounting the ballots by hand or another method will produce a more correct result and change the outcome of the election. Nothing in this section affects the right of a candidate or elector aggrieved by the recount to appeal to circuit court under s. 9.01 (6) upon completion of the recount.

History: 1979 c. 311; 1987 a. 391; 2005 a. 92, 451; 2007 a. 96.
Cross-reference: See also ch. GAB 7, Wis. adm. code.

5.905 Software components. (1) In this section, “software component” includes vote-counting source code, table structures, modules, program narratives and other human-readable computer instructions used to count votes with an electronic voting system.

(2) The board shall determine which software components of an electronic voting system it considers to be necessary to enable review and verification of the accuracy of the automatic tabulating equipment used to record and tally the votes cast with the system. The board shall require each vendor of an electronic voting system that is approved under s. 5.91 to place those software components in escrow with the board within 90 days of the date of approval of the system and within 10 days of the date of any subsequent change in the components. The board shall secure and maintain those software components in strict confidence except as authorized in this section. Unless authorized under this section, the board shall withhold access to those software components from any person who requests access under s. 19.35 (1).

(3) The board shall promulgate rules to ensure the security, review and verification of software components used with each electronic voting system approved by the board. The verification procedure shall include a determination that the software components correspond to the instructions actually used by the system to count votes.

(4) If a valid petition for a recount is filed under s. 9.01 in an election at which an electronic voting system was used to record and tally the votes cast, each party to the recount may designate one or more persons who are authorized to receive access to the software components that were used to record and tally the votes in the election. The board shall grant access to the software components to each designated person if, before receiving access, the person enters into a written agreement with the board that obligates the person to exercise the highest degree of reasonable care to maintain the confidentiality of all proprietary information to which the person is provided access, unless otherwise permitted in a contract entered into under sub. (5).

(5) A county or municipality may contract with the vendor of an electronic voting system to permit a greater degree of access to

software components used with the system than is required under sub. (4).

History: 2005 a. 92.

5.91 Requisites for approval of ballots, devices and equipment. No ballot, voting device, automatic tabulating equipment or related equipment and materials to be used in an electronic voting system may be utilized in this state unless it is approved by the board. The board may revoke its approval of any ballot, device, equipment or materials at any time for cause. No such ballot, voting device, automatic tabulating equipment or related equipment or material may be approved unless it fulfills the following requirements:

(1) It enables an elector to vote in secrecy and to select the party for which an elector will vote in secrecy at a partisan primary election.

(3) Except in primary elections, it enables an elector to vote for a ticket selected in part from the nominees of one party, and in part from the nominees of other parties, and in part from independent candidates and in part of candidates whose names are written in by the elector.

(4) It enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted.

(5) It accommodates all referenda to be submitted to the electors in the form provided by law.

(6) The voting device or machine permits an elector in a primary election to vote for the candidates of the recognized political party of his or her choice, and the automatic tabulating equipment or machine rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where a party designation is made or where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector.

(7) It permits an elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.

(8) It permits an elector, at a presidential or gubernatorial election, by one action to vote for the candidates of a party for president and vice president or for governor and lieutenant governor, respectively.

(9) It prevents an elector from voting for the same person more than once for the same office, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.

(10) It is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently and accurately in the conduct of elections and counting of ballots.

(11) It records correctly and counts accurately every vote properly cast and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved.

(12) It minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting device, automatic tabulating equipment or related equipment or materials.

(13) The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained.

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(14) It does not employ any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.

(15) It permits an elector to privately verify the votes selected by the elector before casting his or her ballot.

(16) It provides an elector with the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.

(17) Unless the ballot is counted at a central counting location, it includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office that his or her votes for that office will not be counted, and provides the elector with an opportunity to correct his or her ballot or to receive and cast a replacement ballot.

(18) If the device consists of an electronic voting machine, it generates a complete, permanent paper record showing all votes cast by each elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.

History: 1979 c. 311; 1983 a. 484; 1985 a. 304; 2001 a. 16; 2003 a. 265; 2005 a. 92; 2011 a. 23, 32.

Cross-reference: See also ch. GAB 7, Wis. adm. code.

5.92 Bond may be required. Before entering into a contract for the purchase or lease of an electronic voting system or any ballots, voting devices, automatic tabulating equipment or related equipment or materials to be used in connection with a system, any municipality may require the vendor or lessor to provide a performance bond with a licensed surety company as surety, guaranteeing the supply of additional equipment, parts or materials, provision of adequate computer programming, preventive

maintenance or emergency repair services, training of election officials and other municipal employees or provision of public educational materials for a specified period, or guaranteeing the security of the computer programs or other equipment or materials to be utilized with the system to prevent election fraud, or such other guarantees as the municipality determines to be appropriate.

History: 1979 c. 311.

Cross-reference: See also ch. GAB 7, Wis. adm. code.

5.93 Administration. The board may promulgate reasonable rules for the administration of this subchapter.

History: 1979 c. 311; 1985 a. 332 s. 251 (1).

Cross-reference: See also ch. GAB 7, Wis. adm. code.

5.94 Sample ballots; publication. When an electronic voting system employing a ballot that is distributed to electors is used, the county and municipal clerk of the county and municipality in which the polling place designated for use of the system is located shall cause to be published, in the type B notices, a true actual-size copy of the ballot containing the names of offices and candidates and statements of measures to be voted on, as nearly as possible, in the form in which they will appear on the official ballot on election day. The notice may be published as a newspaper insert. Municipal clerks may post the notice if the remainder of the type B notice is posted.

History: 1979 c. 311; 2001 a. 16.

5.95 Elector information. The board shall prescribe information to electors in municipalities and counties using various types of electronic voting systems to be published in lieu of the information specified in s. 10.02 (3) in type B notices whenever the type B notice information is inapplicable.

History: 1979 c. 311.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter GAB 7

APPROVAL OF ELECTRONIC VOTING EQUIPMENT

GAB 7.01 Application for approval of electronic voting system.
GAB 7.02 Agency testing of electronic voting system.

GAB 7.03 Continuing approval of electronic voting system.

Note: Chapter EIBd 7 was renumbered chapter GAB 7 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628.

GAB 7.01 Application for approval of electronic voting system. (1) An application for approval of an electronic voting system shall be accompanied by all of the following:

(a) A signed agreement that the vendor shall pay all costs, related to approval of the system, incurred by the board, its designees and the vendor.

(b) Complete specifications for all hardware, firmware and software.

(c) All technical manuals and documentation related to the system.

(d) Complete instruction materials necessary for the operation of the equipment and a description of training available to users and purchasers.

(e) Reports from an independent testing authority accredited by the national association of state election directors (NASED) demonstrating that the voting system conforms to all the standards recommended by the federal elections commission.

(f) A signed agreement requiring that the vendor shall immediately notify the board of any modification to the voting system and requiring that the vendor will not offer, for use, sale or lease, any modified voting system, if the board notifies the vendor that the modifications require that the system be approved again.

(g) A list showing all the states and municipalities in which the system has been approved for use and the length of time that the equipment has been in use in those jurisdictions.

(2) The board shall determine if the application is complete and, if it is, shall so notify the vendor in writing. If it is not complete, the board shall so notify the vendor and shall detail any insufficiencies.

(3) If the application is complete, the vendor shall prepare the

voting system for three mock elections, using offices, referenda questions and candidates provided by the board.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

GAB 7.02 Agency testing of electronic voting system. (1) The board shall conduct a test of a voting system, submitted for approval under s. GAB 7.01, to ensure that it meets the criteria set out in s. 5.91, Stats. The test shall be conducted using a mock election for the partisan primary, a mock general election with both a presidential and gubernatorial vote, and a mock non-partisan election combined with a presidential preference vote.

(2) The board may use a panel of local election officials and electors to assist in its review of the voting system.

(3) The board may require that the voting system be used in an actual election as a condition of approval.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

GAB 7.03 Continuing approval of electronic voting system. (1) The board may revoke the approval of any existing electronic voting system if it does not comply with the provisions of this chapter. As a condition of maintaining the board's approval for the use of the voting system, the vendor shall inform the board of all changes in the hardware, firmware and software and all jurisdictions using the voting system.

(2) The vendor shall, at its own expense, furnish, to an agent approved by the board, for placement in escrow, a copy of the programs, documentation and source code used for any election in the state.

(3) The electronic voting system must be capable of transferring the data contained in the system to an electronic recording medium, pursuant to the provisions of s. 7.23, Stats.

(4) The vendor shall ensure that election results can be exported on election night into a statewide database developed by the board.

(5) For good cause shown, the board may exempt any electronic voting system from strict compliance with ch. GAB 7.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.



United States Election Assistance Commission



Certificate of Conformance

ES&S Unity 3.2.0.0 Rev 3 Election Systems & Software

The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the *2002 Voting System Standards (2002 VSS)*. Components evaluated for this certification are detailed in the attached Scope of Certification document. This certificate applies only to the specific version and release of the product in its evaluated configuration. The evaluation has been verified by the EAC in accordance with the provisions of the *EAC Voting System Testing and Certification Program Manual* and the conclusions of the testing laboratory in the test report are consistent with the evidence produced. This certificate is not an endorsement of the product by any agency of the U.S. Government and no warranty of the product is either expressed or implied.

Product Name: Unity _____

Model or Version: _____ Version 3.2.0.0 Revision 3

Name of VSTL: _____ Wyle Laboratories

EAC Certification Number: **ESSUnity3200Rev3** _____

Date Issued: **May 16, 2012** _____

*Chief Operating Officer and Acting Executive Director,
U.S. Election Assistance Commission*

Scope of Certification Attached

Manufacturer: Election Systems & Software (ES&S)

Laboratory: Wyle Laboratories

System Name: Unity 3.2.0.0 Rev. 3

Standard: 2002 VSS

Certificate: ESSUnity3200Rev3

Date: May 16, 2012

Scope of Certification

This document describes the scope of the validation and certification of the system defined above. Any use, configuration changes, revision changes, additions or subtractions from the described system are not included in this evaluation.

Significance of EAC Certification

An EAC certification is an official recognition that a voting system (in a specific configuration or configurations) has been tested to and has met an identified set of Federal voting system standards. An EAC certification is **not**:

- An endorsement of a Manufacturer, voting system, or any of the system's components.
- A Federal warranty of the voting system or any of its components.
- A determination that a voting system, when fielded, will be operated in a manner that meets all HAVA requirements.
- A substitute for State or local certification and testing.
- A determination that the system is ready for use in an election.
- A determination that any particular component of a certified system is itself certified for use outside the certified configuration.

Representation of EAC Certification

Manufacturers may not represent or imply that a voting system is certified unless it has received a Certificate of Conformance for that system. Statements regarding EAC certification in brochures, on Web sites, on displays, and in advertising/sales literature must be made solely in reference to specific systems. Any action by a Manufacturer to suggest EAC endorsement of its product or organization is strictly prohibited and may result in a Manufacturer's suspension or other action pursuant to Federal civil and criminal law.

System Overview:

ES&S Unity 3.2.0.0 Rev. 3 is comprised of the AutoMARK Voter Assist Terminal (AutoMARK), DS200 Precinct Digital Scanner (DS200), Model 650 high-speed Central Count Scanner (M650), Audit Manager (AM), Election Data Manager (EDM) and ES&S Ballot Image Manager (ESSIM), Hardware Program Manager (HPM), Election Reporting Manager (ERM), Log Monitor Service, and VAT Previewer.

- AutoMARK Voter Assist Terminal enables voters who are visually or physically impaired and voters more comfortable reading or hearing instructions and choices in an alternative language to privately mark optical scan ballots. The AutoMARK supports navigation through touchscreen, physical keypad or ADA support peripheral such as a sip and puff device or two position switch.

- DS200 digital scanner is a paper ballot tabulator designed for use as a polling place scanner. After the voter makes their selections on their paper ballot, their ballot is inserted into the unit for immediate tabulation. Both sides of the ballot are scanned at the same time using a high-resolution image-scanning device that produces ballot images.
- M650 high-speed central count scanner is programmed by jurisdiction officials for a specific election with an election definition from a Zip disk. M650 prints a continuous audit log to a dedicated audit log printer and can print results reports directly from the scanner to a second connected printer. The scanner saves results to a Zip disk that officials can use to format and print results from a PC running Election Reporting Manager.
- Audit Manager runs in the background of the other Unity programs and provides password security and a real-time audit log of all user inputs and system outputs. Election coders use Audit Manager to set Unity system passwords and track user activity.
- Election Data Manager (EDM) is used to enter the election definition. Typically, a master election database is created one time and contains all precincts, districts, and precinct and district relationships. This master file is then used to build each election-specific file to which election-specific contests can be manually added or merged from a previous election file.
- ESSIM is a desktop publishing tool that allows users to design and print ES&S paper ballots. ESSIM uses ballot style information created by EDM to display the WYSIWYG ballots. Users can then apply typographic formatting (font, size, attributes, etc.) to individual components of the ballot. Text and graphic frames can also be added to the ballot.
- Hardware Program Manager (HPM) enables the user to import, format, and convert the election file; define districts; specify election contests and candidates; create election definitions for ballot scanning equipment; burn PC Cards, EPROMS, MemoryPacks or PEBs; and create the Data Acquisition Manager Precinct List. The Hardware Programming Manager is primarily used for converting the election IFC file for use with the Election Reporting Manager and for creating and loading election parameters; however, it may also be used for coding the election.
- Election Reporting Manager (ERM) is ES&S's election results reporting program. ERM generates paper and electronic reports for election workers, candidates, and the media. ERM can also display updated election totals on a monitor as ballot data is tabulated, and it can send results reports directly to media outlets.

Certified System before Modification:

ES&S Unity 3.2.0.0 Rev. 1

Certification Number: ESSUnity3200Rev1

ES&S Unity 3.2.0.0

Certification Number: ESSUnity3200

Anomalies and/or Additions addressed in Unity 3.2.0.0 Rev. 3:

The focus of this test campaign was to test all additions and modifications made to the system's software, hardware and firmware since the certification of Unity 3.2.0.0. Wyle performed full-functional testing on the DS200 with the primary focus on the modifications of the DS200 firmware to fix the anomalies addressed specifically in the EAC's Formal Investigation Report. These include:

- Intermittent screen freezes, the system lockups and shutdowns which prevents the voting system from operating in the manner in which it was designed.
- Failure to log all normal and abnormal voting system events.
- Skewing of the ballot resulting in a negative effect on system accuracy.
- Unresponsive Touch Screen

Mark definition:

ES&S's declared level of mark recognition for the DS200 is a mark across the oval that is 0.2" long X 0.03" wide at any direction.

Tested Marking Devices:

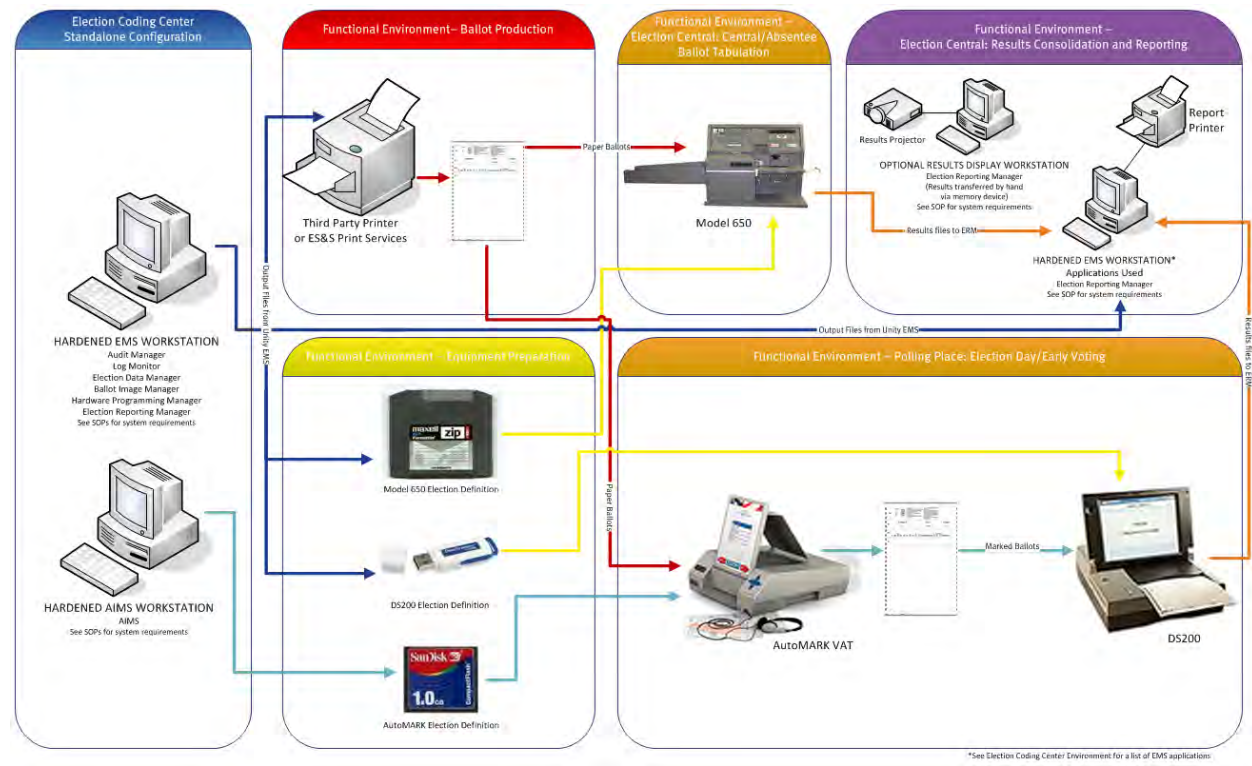
Bic Grip Roller Pen

Language capability:

System supports: English and Spanish.

Components Included:

This section provides information describing the components and revision level of the primary components included in this Certification.



System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comments
DS200	1.6.1.0	1.2		Precinct Digital Scanner
Model 650	2.2.2.0	1.1, 1.2		Central Count Scanner, high-speed
AutoMARK A100	1.3.2906	1.0		ADA Ballot Marking Device
AutoMARK A200	1.3.2906	1.1, 1.3		ADA Ballot Marking Device
Ballot Box Hardware		1.2, 1.3		Plastic ballot box
Ballot Box Hardware		1.0, 1.1, 1.2		Metal ballot box with diverter
Audit Manager (AM)	7.5.2.0			
Election Data Manager (EDM)	7.8.1.0			
ESS Ballot Image Manager (ESSIM)	7.7.1.0			
Hardware Programming Manager (HRM)	5.7.1.0			
Election Results Manager (ERM)	7.5.4.0			
Log Monitor Service	1.0.0.0			
AutoMARK Information Management System (AIMS)	1.3.157			
VAT Previewer	1.3.2906			
Server PC		Dell Optiplex GX20		
Server PC		Dell Precision T3500		
Client PC		Dell Optiplex 760		
Ballot on Demand Printer		OKI C9650		
Report Printer		HP LaserJet 4050N		
Zip Disk				Results storage for M650
Headphones		Avid FV 60		

System Limitations

This table depicts the limits the system has been tested and certified to meet.

Characteristic	Limiting Component	Limit	Comment
Precincts Allowed in an Election	HPM/ERM	2900	1639 if using paper ballot coded by precinct
Precinct included per poll (reporting limit)	ERM	1900	
Candidate/counters per election	ERM	21000	
Maximum candidates	HPM	9900	
Contest allowed in an election	ERM	Depends on election	Limited by 21000 maximum counters
Candidates/counters allowed per precinct	ERM import	1000	
Ballot styles allowed per election	HPM (ballot sequence code)	5500	1639 if using paper ballot coded by style
Contests allowed per ballot style	HPM	200	Or number of ballot positions
Precincts allowed per ballot style	HPM	1500	
Candidates (ballot choices) allowed per contest	HPM	175	
Count for any precinct element	ERM Report (ERM results import)	500000	65550 from any tabulator media
Number of parties allowed	HPM	18	
"Vote for" per contest	HPM	90	

Component Limitations:

PAPER BALLOT LIMITATIONS

1. The paper ballot code channel, which is the series of black boxes that appear between the timing track and ballot contents, limits the number of available ballot variations depending on how a jurisdiction uses this code to differentiate ballots. The code can be used to differentiate ballots by Sequence (limited to 1-1639 variations), Type (1-30 variations) or Split (1-40 variations).

2. If Sequence is used as a ballot style ID, it must be unique election-wide and the Split code will always be 1.

3. If Sequence is used as a precinct ID, it limits the number of styles in a precinct to 1200 (30 Types x 40 Splits).

DS200

1. A DS200 coded for Election Day counting will not support more than 18 precincts.

2. The DS200 does not support more than 40 ballot styles in a single absentee precinct in a ballot by-style election. If an election definition contains more than 40 ballot styles, the user

has to define more than one absentee precinct and then separate the ballots into groups for processing.

3. All optical scan ballots used in a given election must be the same size and have the same position capacity.

4. An early vote station will only support a maximum limit of 9999 precincts. A large number of precincts may result in small ballot processing delays.

6. An early vote station will not be able to print a precinct-by-precinct report by default.

MODEL 650

1. The Model 650 supports a maximum 37503 candidates or counters for any election.

2. The M650 does not support more than 100 ballot styles for a single absentee precinct in a ballot by-style election. If an election definition contains more than 100 ballot styles, the user has to define more than one absentee precinct and then separate the ballots into groups for processing

3. All optical scan ballots used in a given election must be the same size and have the same position capacity.

4. The M650 does not support the Arrow style response area.

5. Ballots must be fed in one particular orientation.

6. The Model 650 can interpret a maximum of 1499 office group codes in an election definition. (An “office group” is defined as the collection of one or more contests (including rotation) that always appear together on any ballot style.). This limitation restricts the number of precincts allowed in an election if “precinct only” offices are defined (District Type PRC) because each “precinct only” office always appears in a different office group.

AUTOMARK VOTER ASSIST TERMINAL

1. ES&S AutoMARK capacities exceed all documented limitations for the ES&S election management, vote tabulation and reporting system. For this reason, Election Management System and ballot tabulator limitations define the boundaries and capabilities of the AutoMARK system as the maximum capacities of the ES&S AutoMARK are never approached during testing

2. The AutoMARK recognizes ballot content by the code channel. If the Sequence code is used for Ballot Style ID and the election definition has more than one precinct that uses a specific ballot style, the AutoMARK will not determine which precinct the ballot is associated with. The user should not define ballot style names in the election definition that imply precinct.

ELECTION DATA MANAGER

1. In both open and closed primary elections, operational procedures to define the election in EDM must be strictly followed.

2. The user must input the Party Preference (or Pick Contest) title as „Party Preference“ in the Office Title box in the Add Office Information window.

3. The user must add a “crossover party” using the Parties option under the **County** menu when the election is an open primary with a party preference race.

4. There is a limitation of 99 candidates for rotation positions. This limit does not apply to positions that float and do not change candidate order.
5. The maximum number of languages supported is 13.
6. The ability to delete parties under the **County** and **Election** menu is not supported.
7. In a primary election, the system does not support displaying the contest(s) from another party's ballot if a third party in the election has candidates in that contest.

ES&S BALLOT IMAGE MANAGER

1. ESS Image Manager requires the installation of Adobe Type Manager for assurance that screen displays of the ballot match the printed ballot.
2. ESSIM does not give a column number or position to straight party candidates in the .ifc. The user must assign these manually in HPM.

BALLOT ON DEMAND

1. Ballot on Demand requires an Oki printer.
2. Batch Ballot printing is not reflected in any BOD reports.
3. Batch Ballot serial numbers are not supported with multi-page ballots.

HARDWARE PROGRAMMING MANAGER (WINDOWS)

1. Hardware Programming Manager supports no more than 18 parties for a single election. This limit is reduced to 12 parties, counting "nonpartisan" as a party, for an Open Primary election that uses two page ballots with the second page containing only non-partisan contests. Party/partisan contents CANNOT flow between pages in an Open Primary.
2. When coding an election for an Open primary, the user cannot include (in total voting) the crossover party listed in the **Description** box in the Election Specifications window. The party type displays in the numbered description box, but the user should clear the **Include** check box next to the crossover party type.
3. When coding an election for an open primary, the party preference contests must be identified as nonpartisan.
4. There is a maximum of 31 Statistical Party Counters.
5. Change/Add Polling Place
 - A polling place may be identified to contain all precinct in the election
 - There is a limit of 80 Precincts that can be assigned to a Polling Place with the following exceptions:
 - The M100 and DS200 have a limit of 18 individually selected precincts that can be assigned to a polling place.
6. Ballot Styles
 - In an Open Primary, the number of contest associated with any party (or „nonpartisan“ designation) within a ballot style cannot exceed 70. For an Open Primary election, this limitation replaces the 200 contest limit.

7. Districts

- A district is identified by a code that contains 7 positions but is constructed of a 3 position District Type code and a 4 position District code within the type. There are a limit of 19 District Types and 39 Districts for any given type except for the „PRC“ district type. The “PRC” district type is used in an election where virtually all precincts have one or two unique precinct specific contests. When the “PRC” district type is active, the District code is designated by the 4 position precinct ID code. The number of precincts that can use this code is a function of the election content and limited by the M650. See “Section 2.2.1.”
- A precinct can only have 39 total districts associated with it.

8. Candidates

- The maximum number of candidate rotations per contest is 140. This includes candidate position sets where candidate order is not changed, but use alternate position numbers.

ELECTION REPORTING MANAGER

1. The Election Reporting Manager requires a minimum monitor screen resolution of 800 x 600.
2. ERM's maximum page size for reports is 5,000 pages.
3. Serve650 continues to run after ERM is stopped via the Windows Task Manager. If the ERM task is ended, Serve650 must also be canceled, or the PC rebooted.
6. Mixed equipment within a single SPP file is not supported. Each equipment type must have its own SPP file.
7. Contest/Precinct selection pop up display limited to 2,900 contests/precincts.
8. Dynamic Precinct Reports are not supported when updating results from iVotronic Audit Data.
9. Foreign characters are not supported in ERM. This has to do with the creation of the XML results file out of ERM.
10. Generating a District Canvass Report without first properly creating a .DST file can result in inaccurate totals reports and inconsistent report formatting.
11. When retrieving election data from DS200 tabulators; ERM supports a maximum of 1900 precincts for an “All Precincts Included” Poll.

AUTOMARK INFORMATION MANAGEMENT SYSTEM (AIMS)

If the number of precincts imported from Election Data Manager exceeds 840, an election administrator must manually configure the code channel for precinct number 840 within AIMS. Code channel information for all other precincts imports properly.

Functionality

Supported Functionality Declaration

Feature/Characteristic	Yes/No	Comment
Voter Verified Paper Audit Trails		
VVPAT	N	

Feature/Characteristic	Yes/No	Comment
Accessibility		
Forward Approach	Y	
Parallel (Side) Approach	N	
Closed Primary		
Primary: Closed	Y	
Open Primary		
Primary: Open Standard (provide definition of how supported)	Y	
Primary: Open Blanket (provide definition of how supported)	N	
Partisan & Non-Partisan:		
Partisan & Non-Partisan: Vote for 1 of N race	Y	
Partisan & Non-Partisan: Multi-member ("vote for N of M") board races	Y	
Partisan & Non-Partisan: "vote for 1" race with a single candidate and write-in voting	Y	
Partisan & Non-Partisan "vote for 1" race with no declared candidates and write-in voting	Y	
Write-In Voting:		
Write-in Voting: System default is a voting position identified for write-ins.	Y	
Write-in Voting: Without selecting a write in position.	Y	
Write-in: With No Declared Candidates	Y	
Write-in: Identification of write-ins for resolution at central count	Y	
Primary Presidential Delegation Nominations & Slates:		
Primary Presidential Delegation Nominations: Displayed delegate slates for each presidential party	N	
Slate & Group Voting: one selection votes the slate.	N	
Ballot Rotation:		
Rotation of Names within an Office; define all supported rotation methods for location on the ballot and vote tabulation/reporting	Y	
Straight Party Voting:		
Straight Party: A single selection for partisan races in a general election	Y	
Straight Party: Vote for each candidate individually	Y	
Straight Party: Modify straight party selections with crossover votes	Y	
Straight Party: A race without a candidate for one party	Y	
Straight Party: "N of M race (where "N">1)	Y	
Straight Party: Excludes a partisan contest from the straight party selection	Y	
Cross-Party Endorsement:		
Cross party endorsements, multiple parties endorse one candidate.	Y	
Split Precincts:		

Feature/Characteristic	Yes/No	Comment
Split Precincts: Multiple ballot styles	Y	
Split Precincts: P & M system support splits with correct contests and ballot identification of each split	Y	
Split Precincts: DRE matches voter to all applicable races.	N	
Split Precincts: Reporting of voter counts (# of voters) to the precinct split level; Reporting of vote totals is to the precinct level	Y	System lists the # of voters.
Vote N of M:		
Vote for N of M: Counts each selected candidate, if the maximum is not exceeded.	Y	
Vote for N of M: Invalidates all candidates in an overvote (paper)	Y	
Recall Issues, with options:		
Recall Issues with Options: Simple Yes/No with separate race/election. (Vote Yes or No Question)	N	
Recall Issues with Options: Retain is the first option, Replacement candidate for the second or more options (Vote 1 of M)	N	
Recall Issues with Options: Two contests with access to a second contest conditional upon a specific vote in contest one. (Must vote Yes to vote in 2 nd contest.)	N	
Recall Issues with Options: Two contests with access to a second contest conditional upon any vote in contest one. (Must vote Yes to vote in 2 nd contest.)	N/A	Overtured - US District Court 7/29/03: CA Election Code sect. 11383
Cumulative Voting		
Cumulative Voting: Voters are permitted to cast, as many votes as there are seats to be filled for one or more candidates. Voters are not limited to giving only one vote to a candidate. Instead, they can put multiple votes on one or more candidate.	N	
Ranked Order Voting		
Ranked Order Voting: Voters can write in a ranked vote.	N	
Ranked Order Voting: A ballot stops being counting when all ranked choices have been eliminated	N	
Ranked Order Voting: A ballot with a skipped rank counts the vote for the next rank.	N	
Ranked Order Voting: Voters rank candidates in a contest in order of choice. A candidate receiving a majority of the first choice votes wins. If no candidate receives a majority of first choice votes, the last place candidate is deleted, each ballot cast for the deleted candidate counts for the second choice candidate listed on the ballot. The process of eliminating the last place candidate and recounting the ballots continues until one candidate receives a majority of the vote	N	

Feature/Characteristic	Yes/No	Comment
Ranked Order Voting: A ballot with two choices ranked the same, stops being counted at the point of two similarly ranked choices.	N	
Ranked Order Voting: The total number of votes for two or more candidates with the least votes is less than the votes of the candidate with the next highest number of votes, the candidates with the least votes are eliminated simultaneously and their votes transferred to the next-ranked continuing candidate.	N	
Provisional or Challenged Ballots		
Provisional/Challenged Ballots: A voted provisional ballots is identified but not included in the tabulation, but can be added in the central count.	Y	
Provisional/Challenged Ballots: A voted provisional ballots is included in the tabulation, but is identified and can be subtracted in the central count	Y	
Provisional/Challenged Ballots: Provisional ballots maintain the secrecy of the ballot.	Y	
Overvotes (must support for specific type of voting system)		
Overvotes: P & M: Overvote invalidates the vote. Define how overvotes are counted.	Y	
Overvotes: DRE: Prevented from or requires correction of overvoting.	N	
Overvotes: If a system does not prevent overvotes, it must count them. Define how overvotes are counted.	Y	
Overvotes: DRE systems that provide a method to data enter absentee votes must account for overvotes.	N	
Undervotes		
Undervotes: System counts undervotes cast for accounting purposes	Y	
Blank Ballots		
Totally Blank Ballots: Any blank ballot alert is tested.	Y	
Totally Blank Ballots: If blank ballots are not immediately processed, there must be a provision to recognize and accept them	Y	
Totally Blank Ballots: If operators can access a blank ballot, there must be a provision for resolution.	Y	
Networking		
Wide Area Network – Use of Modems	N	
Wide Area Network – Use of Wireless	N	
Local Area Network – Use of TCP/IP	N	
Local Area Network – Use of Infrared	N	
Local Area Network – Use of Wireless	N	
FIPS 140-2 validated cryptographic module	N	
Used as (if applicable):		
Precinct counting device	Y	DS200

Feature/Characteristic	Yes/No	Comment
Central counting device	Y	M650

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JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 28, 2012 Board Meeting

TO: Members, Government Accountability Board

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

Prepared and Presented by:
Michael Haas, Staff Counsel

SUBJECT: 2012 Recall Elections and Senate District 21 Recount

As the Board is aware, the G.A.B. and local election officials conducted recall elections for six state offices on June 5, 2012 – the offices of Governor, Lieutenant Governor, and State Senate Districts 13, 21, 23, and 29. These elections, of course, were the culmination of a series of recall elections which started in 2011.

Conducting the additional statewide primary and recall elections in May and June, immediately after the regular Spring Election, continued to stretch and stress Wisconsin's system for conducting elections, at both the State and local levels. Municipal and county clerks have raised concerns regarding the impact of the elections on local budgets, as well as the increasing number of clerks and election inspectors who have either decided to or are considering terminating their service due to the number of recent elections and the complexity of and continually changing statutes governing elections.

After an initial vote margin of 834 votes in the 21st Senate District recall election, Senator Van Wanggaard filed a recount petition and a recount was conducted in Racine County, resulting in certified results reflecting a margin of 819 votes. Once again, the recount process confirmed the reliability of the voting equipment in tabulating ballots cast by voters. Board staff issued the recount order, held a planning teleconference with Racine County Clerk Wendy Christensen and the candidates' representatives, and posted daily updates of the recount status. This was the second recount conducted by the Racine County Board of Canvassers for a state office this year, and Clerk Christensen and the canvassing board conducted a well-organized recount.

In addition to certifying election results, recounts are an opportunity to review practices and procedures used by election inspectors and municipal clerks. The 21st Senate District recount was no exception, and it revealed several practices that need to be improved and issues that need to be addressed in future elections, particularly in the City of Racine. For example, some voters were allowed to receive a ballot without signing the poll list, some registration applications were not completed properly by the City Clerk, some inspectors made incorrect decisions regarding

acceptable documents to establish a voter's residence, and some chief inspectors were unable to properly regulate the conduct of observers.

Similar issues most likely arose at polling places around the State, but were highlighted in Racine County due to the close election. Director Kennedy committed G.A.B. staff and resources to assist the City of Racine in preparing for the fall elections with the goal of improving the consistency of its training for inspectors and its polling place procedures, and for inspectors and polling place procedures through the State. Board staff conducted several teleconferences with the Racine County Clerk, Racine City Clerk, and Mayor of Racine to discuss challenges in recruiting a sufficient number of election inspectors, training curriculum, and conduct of election observers. Ross Hein, Allison Coakley, and David Buerger attended the City's training session for election inspectors and provided input and clarification, and also met with the Racine Police Chief to discuss law enforcement's role in preparing for elections.

In addition, Director Kennedy and four other staff members travelled to the City of Racine and several surrounding municipalities for the Partisan Primary election on August 14th to observe polling place procedures. While the Partisan Primary in Racine County was uneventful, it was evident that the City of Racine had made improvements in training its election inspectors and emphasizing areas that had been deficient at the June recall election.

Board staff has also incorporated lessons learned from the Racine recount and input from observers at City of Racine polling places and around the State into its "Back to Basics" planning initiative for the August and November elections. Issues such as residency qualifications for voters, proper proof of residence, signing the poll lists, and observer conduct are points of emphasis in the Board's training and communications to clerks this fall.

Rules relating to election observers warrant specific mention. Reports from Racine and other locations in recent elections demonstrate that some election observers have become increasingly aggressive and sometimes disruptive in their behavior. At some locations certain election observers have interacted with and even harassed voters, intimidated inspectors, and effectively taken control of the polling place. The Board has issued guidance to organizations sponsoring observers as well as to municipal clerks to remind them of the regulations governing observers and to request their assistance in ensuring an orderly process at the polling place.

Board staff will continue working with local election officials in Racine and throughout the state in preparing for the General Election and seeking continued improvements in the administration of future elections. No Board action is requested at this time.

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JUDGE DAVID G. DEININGER
Chair

KEVIN J. KENNEDY
Director and General Counsel

Delivered by email only

August 10, 2012

Dear Election Observer Organization:

Your organization has been identified as one which has encouraged and sponsored individuals to act as election observers at Wisconsin polling places during previous elections. The Government Accountability Board (G.A.B.) encourages citizens to observe the election process because such activity promotes fair and transparent elections, and assists in detecting issues which require attention at an early stage in the process. In recent elections, the G.A.B. has received an increasing number of reports describing aggressive or disruptive behavior by a minority of observers. This correspondence serves as a reminder of the code of conduct that applies to election observers, and seeks your assistance in ensuring that observers comply with Wisconsin Statutes governing their conduct.

In 2008, the G.A.B. initiated emergency administrative rules governing the conduct of election observers which have been credited with establishing consistent treatment of observers throughout the State and preserving order at the polls during recent elections. These emergency rules were revised and reinstated in 2010. The recreated Chapter GAB 4, Wis. Adm. Code, implemented the provisions of Sections 5.35(5), 7.37(2) and 7.41 of the Wisconsin Statutes and effectively balanced the rights and responsibilities of observers, election officials, and voters. While those emergency administrative rules have subsequently expired, the G.A.B. intends to promulgate identical provisions as permanent administrative rules in the future. In the meantime, the G.A.B. has directed local election officials to continue applying the terms of the emergency rules from 2010 as the G.A.B.'s interpretation of the relevant Wisconsin Statutes.

Attached to this correspondence is a copy of the observer regulations which the G.A.B. has advised clerks to continue to apply and enforce, which may also be located on our website at <http://gab.wi.gov/publications/rules/gab004>. Key provisions of these rules include the following:

1. Election observers must notify the chief inspector upon arriving at the polling place, and must sign in with their full name, address, and the name of the organization or candidate the observer represents, if any.
2. The chief inspector may reasonably limit the number of observers representing a particular organization or candidate if necessary to ensure the orderly conduct of the election and equal participation amongst the organizations represented.
3. Observers shall remain in the area designated as the observation area by the chief inspector. The observation area must be situated to enable observers to observe all public aspects of the voting process. When physically feasible, the observation area shall be from six to twelve

feet from the table at which electors announce their name and address. Election inspectors shall repeat the voter's name and address if observers are unable to hear the voter.

4. All of the observers' questions and challenges shall be directed to the chief election inspector. **Observers shall not have direct contact with electors in the polling area, unless requested by a voter to assist with casting a ballot.**
5. Observers shall comply with lawful commands of the chief inspector or shall be subject to removal from the polling place. Observers shall not engage in loud, boisterous or disruptive behavior, or interfere with voting or the conduct of the election. The chief inspector shall warn any offending observer, and if the conduct continues, law enforcement may be summoned to remove the observer. In that case the individual will not be permitted to act as an observer at the same or another polling place for the duration of the election.
6. Observer conversations shall be kept to a minimum. Observers shall not engage in electioneering and shall not use cell phones to make voice calls. Observers also may not use any video or still cameras inside the polling place while polls are open, but may do so after the polls close provided that such use is not disruptive or interferes with the administration of the election. Observers shall not handle an original version of any election document, including ballots and poll books.

The G.A.B. encourages the responsible exercise of the right to observe the election process. If an observer believes an issue or irregularity has occurred, and is not satisfied with the response of the chief inspector or the municipal clerk, your organization or the individual observer is welcome to contact our staff to determine whether it is appropriate for the G.A.B to intervene. However, behavior that is disruptive, including conversing with or intimidating voters, or questioning election inspectors other than the chief inspector, will not be tolerated.

We appreciate your organization reminding your observers of the code of conduct which they are required to follow at upcoming elections. For questions regarding this correspondence, please contact the G.A.B. Help Desk at (608) 261-2028, or gabhhelpdesk@wi.gov, or Staff Counsel Michael Haas, who may be reached at (608) 266-0136 or michael.haas@wi.gov.

Best wishes and kind regards,



NATHANIEL E. ROBINSON
Elections Division Administrator
Government Accountability Board

SCOPE OF REGULATION

“POLITICAL PURPOSE”

This Guideline is provided as an information resource only. For authoritative advice, contact the Wisconsin Government Accountability Board.

Under Chapter 11, Wisconsin Statutes, every person, including an individual or organization, who makes disbursements for “a political purpose” is subject to various registration and reporting requirements. The Government Accountability Board has adopted GAB Admin Rule 1.28 (3) to help clarify the meaning of “political purpose.” The following version of GAB 1.28 (3) is now in effect:

GAB 1.28 (3) A communication is for a "political purpose" if either of the following applies:

(a) The communication contains terms such as the following or their functional equivalents with reference to a clearly identified candidate and unambiguously relates to the campaign of that candidate:

1. "Vote for;"
2. "Elect;"
3. "Support;"
4. "Cast your ballot for;"
5. "Smith for Assembly;"
6. "Vote against;"
7. "Defeat;" or
8. "Reject."

(b) The communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

Whether a communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate must be determined on a case-by-case basis. The Board will consider the following factors in determining whether a communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate:

If a communication includes a reference to or depiction of a clearly identified candidate, is made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election, or is made during the period beginning on the 30th day preceding a primary election and ending on the date of that election and the communication --

1. Refers to the personal qualities, character, or fitness of that candidate;
2. Supports or condemns that candidate's position or stance on issues; or
3. Supports or condemns that candidate's public record.

Other factors may also be relevant and the existence of the above factors is not necessarily determinative.

A communication that does not mention an election, candidacy, candidate, political party, or voting by the general public; does not take a position on a candidate's or officeholder's character, record, qualifications, or fitness for office; or focuses on a legislative or executive

matter or issue and urges a candidate to take a particular position or action with respect to the matter or issue or urges the public to contact a candidate with respect to the matter or issue is not a communication for a political purpose subject to regulation.

For authoritative advice, consult the Board directly.

Legal references: §§11.01, *Wisconsin Statutes*; GAB 1.28, *Wis. Adm. Code* (as modified by legal stipulation regarding enforcement—*Wisconsin Club for Growth, Inc., et al. v. Gordon Myse, et al.*, Case No. 10-CV-427 – U.S. District Court for the Western District of Wisconsin).

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JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 28, 2012 Board Meeting

TO: Members, Government Accountability Board

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

Prepared and Presented by:
Michael Haas, Staff Counsel

SUBJECT: Electronic Proof of Residence Documents

Summary

Attached are requests submitted to the Government Accountability Board by Attorney Ann Jacobs on behalf of the Wisconsin Election Protection Legal Coordinating Committee, and Attorney Rebecca Mason on behalf of the Institute for One Wisconsin, which encourage the Board to approve electronic documents as a sufficient form of proof of residence for voters required to present such proof as part of the registration process. Board staff has considered this issue over the past several months in several contexts, and is reluctant to permit the use of electronic documents without action by the Board and/or the Legislature. This memorandum outlines the Board staff's current interpretation of the relevant statutes governing proof of residence documents, and staff's recommendation that the use of such electronic documents not be permitted prior to receiving further feedback from local election officials and the public.

Background

Wis. Stat. §6.34 requires that certain individuals provide proof of their current residence as part of the voter registration process. Proof of residency documents must be presented by electors who register by mail if they have not yet voted in Wisconsin, and by electors who register during the late registration period or on Election Day. *Wis. Stat. §6.34(2)*. The relevant statutory language is as follows:

Upon completion of a registration form prescribed under s. 6.33, each eligible elector who is required to register under s. 6.27, who is not a military elector or an overseas elector, and who registers after the close of registration under s. 6.29 or 6.86 (3) (a) 2., shall provide **an identifying document** that establishes proof of residence under sub. (3). Each eligible elector who is required to register under s. 6.27, who is not a military elector or an overseas elector, who registers by mail, and who has not voted in an election in this state shall, if voting in person, provide **an identifying document** that establishes proof of residence under sub. (3) or, if

voting by absentee ballot, provide **a copy of an identifying document** that establishes proof of residence under sub. (3). If the elector registered by mail, the identifying document may not be a residential lease. (*emphasis added*).

With the increasing use of electronic documents to communicate and complete transactions generally in today's society, Board staff has responded to a number of inquiries regarding whether electronic versions of documents are acceptable to satisfy the proof of residence requirement. Some voters and clerks assert that voters ought to be able to show an election inspector a bank statement or utility bill on a laptop at the polling place, or on a smartphone. Proof of residence documents are reviewed and noted by election inspectors but the paper documents are not retained. Staff has been reluctant to expand the permissible forms of documents to include electronic records without the Board's approval of such an interpretation. Staff believes it is also important to obtain and evaluate feedback from municipal clerks regarding the feasibility of accepting electronic proof of residence documents and accurately recording the type of document presented. The practicality of implementing such a change shortly before the General Election poses some significant challenges.

Staff has not located a statute which specifies whether a document includes a copy or only an original of a record. Webster's Dictionary defines "document" as "proof, evidence," or "an original or official paper relied on as the basis, proof, or support of something," or "a writing conveying information." These definitions may support an interpretation that a proof of residence document must be a paper document.

Other statutory provisions recognize and support the broader use of electronic documents as equivalent to paper documents. Chapter 137 regulates and seeks to facilitate broader use of electronic transactions in the conduct of business, commercial, and governmental affairs. Wis. Stat. §13.11(7) defines "electronic record" as "a record that is created, generated, sent, communicated, received, or stored by electronic means." Wis. Stat. §137.15 provides that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form, and that an electronic record satisfies a legal requirement that a record be in writing. Wis. Stat. §137.25 also states that "Unless otherwise provided by law, with the consent of a governmental unit of this state that is to receive a record, any record that is required by law to be submitted in writing to that governmental unit and that requires a written signature may be submitted as an electronic record, and if submitted as an electronic record may incorporate an electronic signature." The Department of Administration is responsible for promulgating rules concerning the use of electronic records, to promote consistency regarding the use of electronic records and electronic signatures by governmental agencies.

Although accepting electronic documents to establish proof of residence makes sense from a policy standpoint given the trends of modern commerce and daily life, Board staff believes that it needs to further research whether the Board may permit the use of such electronic documents under current law, and whether it should do so as a policy matter. These decisions require consultation with the Department of Administration and obtaining feedback from our municipal clerk partners and the public, which will not be possible to complete before the Board's August meeting. Unless the Board holds a special meeting, the only other meeting prior to the November 6th General Election will be October 23, 2012, which is too close to the election to make such a significant change in the Board's current interpretation of the statutes pertaining to proof of residence documents.

Board staff recommends that the Board decline the request of organizations supporting the use of electronic documents to establish proof of residency at this time, and that the staff should return to the Board with a more permanent recommendation after completing additional research, including consultation with the Department of Administration and local election officials.

Recommended Motion: Board staff shall continue to interpret Wis. Stat. §6.34 to require paper documents to establish proof of residency for purposes of voter registration. Staff is directed to continue researching regulations regarding the use of electronic documents and present additional recommendations at a subsequent Board meeting.

"All the damages" in sub. (8) incorporates the American rule of damages that attorney fees are not recoverable by a prevailing party unless certain exceptions apply. *Bank One, Wisconsin v. Koeh*, 2002 WI App 176, 256 Wis. 2d 618, 649 N.W.2d 339, 01–2174.

SUBCHAPTER II

ELECTRONIC TRANSACTIONS AND RECORDS;
ELECTRONIC NOTARIZATION AND
ACKNOWLEDGEMENT**137.11 Definitions.** In this subchapter:

(1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or by the use of electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this subchapter and other applicable law.

(5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(7) "Electronic record" means a record that is created, generated, sent, communicated, received, or stored by electronic means.

(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(9) "Governmental unit" means:

(a) An agency, department, board, commission, office, authority, institution, or instrumentality of the federal government or of a state or of a political subdivision of a state or special purpose district within a state, regardless of the branch or branches of government in which it is located.

(b) A political subdivision of a state or special purpose district within a state.

(c) An association or society to which appropriations are made by law.

(d) Any body within one or more of the entities specified in pars. (a) to (c) that is created or authorized to be created by the constitution, by law, or by action of one or more of the entities specified in pars. (a) to (c).

(e) Any combination of any of the entities specified in pars. (a) to (d).

(10) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(11) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback, or other acknowledgment procedures.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(15) "Transaction" means an action or set of actions occurring between 2 or more persons relating to the conduct of business, commercial, or governmental affairs.

History: 2003 a. 294.

137.12 Application. (1) Except as otherwise provided in sub. (2) and except in ss. 137.25 and 137.26, this subchapter applies to electronic records and electronic signatures relating to a transaction.

(2) Except as otherwise provided in sub. (3), this subchapter does not apply to a transaction to the extent it is governed by:

(a) Any law governing the execution of wills or the creation of testamentary trusts;

(b) Chapters 401 and 403 to 410, other than s. 401.306.

(2m) This subchapter does not apply to any of the following records or any transaction evidenced by any of the following records:

(a) Records governed by any law relating to adoption, divorce, or other matters of family law.

(b) Notices provided by a court.

(c) Court orders.

(d) Official court documents, including briefs, pleadings, and other writings, required to be executed in connection with court proceedings.

(2p) This subchapter applies to a transaction governed by the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001, et seq., but this subchapter is not intended to limit, modify, or supersede 15 USC 7001 (c).

(2r) To the extent that it is excluded from the scope of 15 USC 7003, this subchapter does not apply to a notice to the extent that it is governed by a law requiring the furnishing of any notice of:

(a) The cancellation or termination of utility services, including water, heat, and power service.

(b) Default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by or a rental agreement for a primary residence of an individual;

(c) The cancellation or termination of health insurance or benefits or life insurance benefits, excluding annuities;

(d) Recall of a product, or material failure of a product, that risks endangering health or safety; or

(e) A law requiring a document to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

(3) This subchapter applies to an electronic record or electronic signature otherwise excluded from the application of this subchapter under subs. (2), (2m), and (2r) to the extent it is governed by a law other than those specified in subs. (2), (2m), and (2r).

(4) A transaction subject to this subchapter is also subject to other applicable substantive law.

(5) This subchapter applies to the state of Wisconsin, unless otherwise expressly provided.

(6) To the extent there is a conflict between this subchapter and ch. 407, ch. 407 governs.

History: 2003 a. 294; 2009 a. 320, 322.

Legal Effects of Electronic Transactions. Serum. Wis. Law. Feb. 2005.

137.13 Use of electronic records and electronic signatures; variation by agreement. (1) This subchapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(2) This subchapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(3) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(4) Except as otherwise provided in this subchapter, the effect of any provision of this subchapter may be varied by agreement. Use of the words "unless otherwise agreed," or words of similar import, in this subchapter shall not be interpreted to preclude other provisions of this subchapter from being varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by this subchapter and other applicable law.

History: 2003 a. 294.

137.14 Construction. This subchapter shall be construed and applied:

(1) To facilitate electronic transactions consistent with other applicable law;

(2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) To effectuate its general purpose to make uniform the law with respect to the subject of this subchapter among states enacting laws substantially similar to the Uniform Electronic Transactions Act as approved and recommended by the National Conference of Commissioners on Uniform State Laws in 1999.

History: 2003 a. 294.

137.15 Legal recognition of electronic records, electronic signatures, and electronic contracts. (1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) If a law requires a record to be in writing, an electronic record satisfies that requirement in that law.

(4) If a law requires a signature, an electronic signature satisfies that requirement in that law.

History: 2003 a. 294.

137.16 Provision of information in writing; presentation of records. (1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, a party may satisfy the requirement with respect to that transaction if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(2) If a law other than this subchapter requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, then:

(a) The record shall be posted or displayed in the manner specified in the other law.

(b) Except as otherwise provided in sub. (4) (b), the record shall be sent, communicated, or transmitted by the method specified in the other law.

(c) The record shall contain the information formatted in the manner specified in the other law.

(3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(4) The requirements of this section may not be varied by agreement, but:

(a) To the extent a law other than this subchapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under sub. (1) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) A requirement under a law other than this subchapter to send, communicate, or transmit a record by 1st-class or regular mail or with postage prepaid may be varied by agreement to the extent permitted by the other law.

History: 2003 a. 294.

137.17 Attribution and effect of electronic records and electronic signatures. (1) An electronic record or electronic signature is attributable to a person if the electronic record or electronic signature was created by the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(2) The effect of an electronic record or electronic signature that is attributed to a person under sub. (1) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

History: 2003 a. 294.

137.18 Effect of change or error. (1) If a change or error in an electronic record occurs in a transmission between parties to a transaction, then:

(a) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(b) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

1. Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

2. Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

3. Has not used or received any benefit or value from the consideration, if any, received from the other person.

(2) If neither sub. (1) (a) nor (b) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(3) Subsections (1) (b) and (2) may not be varied by agreement.

History: 2003 a. 294.

137.19 Notarization and acknowledgement. If a law requires a signature or record to be notarized, acknowledged, veri-

fied, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to administer the oath or to make the notarization, acknowledgment, or verification, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

History: 2003 a. 294.

137.20 Retention of electronic records; originals.

(1) Except as provided in sub. (6), if a law requires that a record be retained, the requirement is satisfied by retaining the information set forth in the record as an electronic record which:

(a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(b) Remains accessible for later reference.

(2) A requirement to retain a record in accordance with sub. (1) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(3) A person may comply with sub. (1) by using the services of another person if the requirements of that subsection are satisfied.

(4) Except as provided in sub. (6), if a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, a person may comply with that law by using an electronic record that is retained in accordance with sub. (1).

(5) Except as provided in sub. (6), if a law requires retention of a check, that requirement is satisfied by retention of an electronic record containing the information on the front and back of the check in accordance with sub. (1).

(6) (a) Except as provided in sub. (6), a record retained as an electronic record in accordance with sub. (1) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after May 5, 2004 specifically prohibits the use of an electronic record for the specified purpose.

(b) A governmental unit that has custody of a record is also further subject to the retention requirements for public records of state agencies, and the records of the University of Wisconsin Hospitals and Clinics Authority established under ss. 16.61, and 16.611 and the retention requirements for documents of local governmental units established under s. 16.612.

(7) The public records board may promulgate rules prescribing standards consistent with this subchapter for retention of records by state agencies, the University of Wisconsin Hospitals and Clinics Authority and local governmental units.

(8) This section does not preclude a governmental unit of this state from specifying additional requirements for the retention of any record subject to the jurisdiction of that governmental unit.

History: 2003 a. 294.

137.21 Admissibility in evidence. In a proceeding, a record or signature may not be excluded as evidence solely because it is in electronic form.

History: 2003 a. 294.

137.22 Automated transactions. In an automated transaction:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agent's actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of a contract under sub. (1) or (2) are governed by the substantive law applicable to the contract.

History: 2003 a. 294.

137.23 Time and place of sending and receipt.

(1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(a) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(b) Is in a form capable of being processed by that system; and

(c) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(a) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(b) It is in a form capable of being processed by that system.

(3) Subsection (2) applies even if the place where the information processing system is located is different from the place where the electronic record is deemed to be received under sub. (4).

(4) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection:

(a) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(5) An electronic record is received under sub. (2) even if no individual is aware of its receipt.

(6) Receipt of an electronic acknowledgment from an information processing system described in sub. (2) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(7) If a person is aware that an electronic record purportedly sent under sub. (1), or purportedly received under sub. (2), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

History: 2003 a. 294.

137.24 Transferable records. (1) In this section, "transferable record" means an electronic record that is a note under ch. 403 or a record under ch. 407.

(1m) An electronic record qualifies as a transferable record under this section only if the issuer of the electronic record expressly has agreed that the electronic record is a transferable record.

(2) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(3) A system satisfies the requirements of sub. (2), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(a) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in pars. (d) to (f), unalterable;

(b) The authoritative copy identifies the person asserting control as the person to which the transferable record was issued or, if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(c) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(4) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in s. 401.201 (2) (km), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under chs. 401 to 411, including, if the applicable statutory requirements under s. 403.302 (1), 407.501, or 409.330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable record of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

(5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under chs. 401 to 411.

(6) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the trans-

ferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

History: 2003 a. 294; 2009 a. 320, 322.

137.25 Submission of written documents. (1) Unless otherwise prohibited by law, with the consent of a governmental unit of this state that is to receive a record, any record that is required by law to be submitted in writing to that governmental unit and that requires a written signature may be submitted as an electronic record, and if submitted as an electronic record may incorporate an electronic signature.

(2) The department of administration shall promulgate rules concerning the use of electronic records and electronic signatures by governmental units, which shall govern the use of electronic records or signatures by governmental units, unless otherwise provided by law. The rules shall include standards regarding the receipt of electronic records or electronic signatures that promote consistency and interoperability with other standards adopted by other governmental units of this state and other states and the federal government and nongovernmental persons interacting with governmental units of this state. The standards may include alternative provisions if warranted to meet particular applications.

History: 1997 a. 306; 2003 a. 294 ss. 10t, 11, 13m.

137.26 Interoperability. If a governmental unit of this state adopts standards regarding its receipt of electronic records or electronic signatures under s. 137.25, the governmental unit shall promote consistency and interoperability with similar standards adopted by other governmental units of this state and other states and the federal government and nongovernmental persons interacting with governmental units of this state. Any standards so adopted may include alternative provisions if warranted to meet particular applications.

History: 2003 a. 294.



TO: Kevin Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

FROM: Rebecca Mason
Counsel for Institute for One Wisconsin

DATE: August 17, 2012

RE: Voter Registration Issues

The Institute for One Wisconsin respectfully requests the Government Accountability Board take action to allow the use of electronic documents as proof of an elector's residence under section 6.34 of the Wisconsin Statutes.

The issue arises out of the June 5, 2012 recall elections. Qualified electors were disenfranchised during the June elections due to the electors' lack of ability to prove their residence under the current interpretation of Wisconsin's voter registration laws.

To be sure, recent changes to Wisconsin's voter registration laws significantly restrict many electors' ability to vote in Wisconsin. In particular, the legislature eliminated the ability of a qualified elector to corroborate the residence of another qualified elector who lacked proof of residence. Wis. Stat. § 6.55(2)(b), 2009-10.

In addition to the elimination of the corroboration option, however, an informal interpretation by the Government Accountability Board and/or its staff (referred to collectively as the "G.A.B.") further limits the number of qualified electors who have the means to prove their residence: The G.A.B. has decided that documents proving an elector's residence must be in paper format and that election officials may no longer accept electronic versions of these documents.

The problem is exacerbated because many qualified electors will be required to re-register for the November elections. Wisconsin electors must re-register if their registration has been placed on inactive status due to the state's purge of presidential-only voters.¹ As a result, there will be a large number of qualified electors – qualified electors who have resided in the same house, who were once properly registered to vote, and who have voted at their address in the past – who will be required to re-register for the November elections. If any of these electors lacks proper proof of residence, they will no longer be able to vote in Wisconsin, despite having voted legally from that residence for, in some cases, decades.

Accepting Electronic Documents Will Facilitate Voting For Qualified Electors

The current policy forces electors who have electronic proof of residence to leave the polling location without voting, return home (if they are fortunate enough to have a printer and the capability to print from their smartphone) or find a commercial printing facility, print a paper version of their documentary proof of residence,

¹ Individuals who have not voted since the 2008 presidential election have been purged from Wisconsin's poll lists. (This purge was required by law, despite the fact that typically, 15 to 35 percent of Wisconsin electors vote only in presidential elections.)



return to the poll (if they have time and are not precluded from doing so because they have to return to work or retrieve their children from child care, etc.), and wait in line (again) to register to vote.

The G.A.B.'s current position on electronic documents makes no practical sense and will only continue to disenfranchise eligible electors. Eligible electors armed with their smartphones or tablet computers at the polls have ready access to secure electronic documentation proving their residence. Many individuals, especially those in younger generations, conduct their financial transactions almost exclusively using electronic means, and typically using their mobile devices. On-line banking and invoicing options are now readily available, quite literally, in the palm of one's hand – nearly any time and in nearly any location – using smartphones and tablet computers.

Electronic documents are beginning to displace traditional paper documents. There has been and will continue to be an increase in the number of individuals who conduct their financial business electronically. There are cost incentives to do so. Many banks and credit unions allow customers to have free access to their accounts on line, but will charge fees if the customer wishes to have their statements sent to them. Similarly, utility providers frequently encourage customers to receive their invoices in electronic form.

As it stands, the current policy presents a significant and unnecessary impediment to voting. Accepting electronic documents as proof of residence will help alleviate unnecessary voter disenfranchisement.

Wisconsin Law Does Not Prohibit The Use Of Electronic Documents

The G.A.B. has decided that election officials may no longer accept electronic versions of documents, apparently because the statute does not explicitly allow it, and because there are concerns about the authenticity of electronic documents. The Institute for One Wisconsin strongly encourages the Government Accountability Board to take an official vote, overturn its current policy, and allow the use of electronic documents to prove an eligible elector's residence.

Importantly, Wisconsin's voter registration laws do not preclude use of electronic documents. Section 6.34 of the Wisconsin statutes requires Wisconsin electors to produce, as proof of residence, an "identifying document." Wis. Stat. § 6.34(3)(a), 2011-12. The statute enumerates eleven types of documents that can be used to satisfy this requirement. No provision of the statute requires use of a paper document, and no provision disallows the use of an electronic document.

Other state statutes and policies recognize the validity of, and encourage agencies and individuals to use, electronic versions of documents. For example, a statute addressing the conveyance of real property explicitly recognizes the validity of electronic documents for purposes of recording the sale of real property: "If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this section." Wis. Stat. § 706.25(2). Reflecting a similar recognition of the validity of electronic documents, litigants and court officials in civil proceedings may execute documents electronically filed using an electronic signature. Wis. Stat. § 801.17. From a public policy perspective, agencies are frequently encouraging the use of electronic documents to reduce costs and increase productivity. The Department of Financial Institutions is authorized to charge a larger fee "for filing documents... in paper format." See, e.g., Wis. Stat. Ch. 178, 180, 181, 183, 185, and 193. Indeed, *this* Board encourages – and in some cases, requires – candidates and other political committees to conduct their official business, including filing campaign finance reports, electronically



The United States government also conducts much of its official business using electronic means. By way of example, the Internal Revenue Service encourages individuals and corporations to file their tax documents electronically.

Electronic Documents Are At Least As Reliable As Paper Documents

There is no reason to question wholesale the validity of a document meeting the requirements of Section 6.34 that is presented electronically simply because it is in electronic format. Concerns about the security of an electronic document are less founded than concerns about the security of a paper document. That is, in many cases the electronic documents are less susceptible to tampering. To access most bank account statements or utility invoices, electors will literally sign in to their account – using the website of a federally-chartered bank or a corporation such as AT&T, Time Warner, Sprint, etc. – in the presence of the election official. Even in cases where the elector is not signing in to a secure website, the document presented as proof of residence will likely be a .pdf version of the document. It is no easier and no more difficult to alter a .pdf document as compared to a paper document. (And, in both cases, presenting a forged document, whether paper or electronic, would be illegal.)

Conclusion

The G.A.B.'s current position is not supported by the statute, makes no practical sense, and will only continue result in fewer eligible electors being allowed to cast their ballot on Election Day. Eligible electors who present electronic documentation proving their residence should not be turned away.

The Institute strongly encourages the board to take an official vote and overturn the current G.A.B. policy, thereby allowing the use of electronic documents to prove an eligible elector's residence.

ELECTION PROTECTION **YOU HAVE THE RIGHT TO VOTE**

To: Wisconsin Government Accountability Board

From: Atty. Ann S. Jacobs
Wisconsin Election Protection
Legal Coordinating Committee

Date: August 15, 2012

Re: Electronic Proof of Residence

Wisconsin Election Protection strongly supports the adoption of a rule which would permit a voter to display an electronic version of a proof of residence document for purposes of voter registration.

Currently, the rules as interpreted by the GAB require that a voter show a registrar a printout of an applicable proof of residence document. This requirement fails to account for the changing realities of modern life. Fewer and fewer entities – from the government to banks to schools – are mailing documents to their customers. Instead, those entities are e-mailing or encouraging log-ins by those customers to access their accounts. Accordingly, fewer and fewer persons have the traditional “bank statements” long-seen in the voter registration arena. Furthermore, where entities permit “hard copies” to be provided to their customers, there is frequently a fee for doing so.

As examples of this changing landscape, consider the following:

- Banks including U.S. Bank (\$2), Citizens Bank (\$5), PNC Bank (\$3), Bank of America (up to \$8.95) and many others charge to receive a paper copy of a depositor’s bank statement.¹
- The State of Wisconsin itself is moving to a web-based interface with citizens – for example, the Department of Transportation recently stopped mailing car-accident related forms for persons who are injured in an accident, instead directing people to their website.²

¹ <http://www.depositaccounts.com/blog/2011/09/higher-atm-fees-paper-statement-fees-at-pnc-us-bank-citizens-bank-.html> (Last Viewed 8/15/12)

² <http://www.dot.wisconsin.gov/drivers/forms/t342.pdf> (Last Viewed 8/15/12)

- Changes of address for drivers licenses or ID's has moved to an on-line model.³
- The Milwaukee County Circuit Court just implemented e-filing for court cases.⁴
- Even the GAB itself has gone from an in-person training model with handouts to webinars with electronic materials for clerk training.

WEP's recent experience in the June 2012 Recall Election demonstrated that younger voters rely on electronic versions of the documentation of every-day life. They register for classes online⁵, they apply for apartments online⁶, they bank online – the documents that comply with proof of registration requirements are all found online. Indeed, in recognition of this reality, one enterprising poll worker in Madison, discovering so many students only had electronic documents, provided a laptop and printer so that students arriving with electronic proof of residence documents could print them out.

There are other important issues that should be considered in making this determination. First, as we as a society move to electronic documents and charge for paper documents, demanding such paper documents essentially results in a “poll tax” for those who are in tune to our changing ways of handling documents.

Second, with the advent of smart phones and the like, a poll worker can just as easily look on a screen to get the necessary proof of residency information such as the institution and account number. There is nothing magical about printing out precisely that information that is visible on screen. Indeed, as the poll worker never retains the proof of residency document, merely writing down the information, printing it out adds an unnecessary step.

It is our understanding that some have argued that, in fact, an “original” of all proofs of residence must be used to register. This position ignores reality. If a person is on a lease with several others and receives a photocopy of that lease for her records, is that document improper for registration purposes? Certainly not, and the GAB has never taken the position that it would be nor does any statute related to voting so dictate. Furthermore, if that were the position adopted, there is no guidance in determining what constituted an “original.” We cannot expect poll workers to become certified document examiners. Photocopies have routinely been used for verification of proof of residence with no issues for many years. There is no intellectual difference between a photocopy and a printout.⁷ And if we accept that the requirement of a document is to access the appropriate information (name, address, account number/document #) that a registrar must confirm, the document should be able to be an electronic one.

³ <https://trust.dot.state.wi.us/dmvac/dmvacervlet?whoami=search> (Last Viewed 8/15/12)

⁴ <http://www.wicourts.gov/news/view.jsp?id=357> (Last Viewed 8/15/12)

⁵ <http://madisoncollege.edu/registration-process> (Last Viewed 8/15/12)

⁶ https://www.stevebrownapts.com/application_form.php (Last Viewed 8/15/12)

⁷ Indeed, as technology advances, how would one characterize a cell-phone photograph of a document which is subsequently printed out? Is it a photo? A printout? Such distinctions are becoming largely irrelevant in as technology changes.

If an argument is made that, somehow, a screen can be forged more expertly than a printed document (a contention that is dubious in the first instance), consider that the Federal Transportation Safety Administration permits the display of an electronic boarding pass via a cell-phone or other electronic device.⁸ Surely if the safety of airline passengers is sufficiently protected through the use of a cell-phone display, we can just as safely rely upon that display for voter registration purposes.

For these reasons, Wisconsin Election Protection urges the GAB to adopt electronic documents, as viewed on a screen, as sufficient proof of residence for voter registration purposes in Wisconsin.

⁸ http://www.tsa.gov/approach/tech/paperless_boarding_pass_expansion.shtm (Last Viewed 8/15/12)

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KEVIN J. KENNEDY
Director and General Counsel

DATE: For the August 28, 2012 Meeting

TO: Government Accountability Board Members

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Proposed 2013 Government Accountability Board Meeting Dates

The attached schedule lists, in bold underscored type, proposed meeting dates for the Government Accountability Board in 2013. The proposed meeting dates are presented to enable Board Members to coordinate the Board meetings with Members' 2013 travel and work plans.

I have set out a list of proposed meeting dates beginning in January, 2013. There are 6 suggested meeting events including one teleconference meeting in January and one two-day meeting in March. I have placed them in the context of other events on the agency calendar.

I generally defaulted to Tuesdays because of our experiences this year. In the past, Monday meetings presented preparation challenges for staff and Board Members expressed a satisfaction with Tuesday meetings. Note the proposed January teleconference meeting is scheduled for a Monday to accommodate the ballot access filing and challenge deadlines. This year the Spring Election filing deadline is Wednesday, January 2, 2013 because the first Tuesday in January is a holiday, January 1st.

The proposed meeting schedule is designed to fit in with other agency tasks, including election events and filing deadlines. There is flexibility to schedule special meetings if required. I have proposed meeting for two days in March based on the anticipated workload with no meetings other than a short teleconference meeting between mid- December and mid-March. In general Board Members are more likely to have travel plans during that time as well.

In some cases, depending on the number and/or complexity of the issues, the Board may consider holding short teleconference calls between in-person meetings. Also, the Board may wish to consider holding some of its 2013 meetings in venues other than Madison.

Proposed Motion: The Government Accountability Board adopt the proposed 2013 meeting schedule (as modified by Board discussion.)

Government Accountability Board Proposed 2013 Meeting Dates

Six (6) Proposed Meeting Dates
1 Two-Day Meeting, 1 Teleconference Meeting

Monday, January 14, 2013 (Teleconference)
Tuesday, March 26 and Wednesday, March 27, 2013
Tuesday, May 21, 2013
Tuesday, August 20, 2013
Tuesday, October 22, 2013
Tuesday, December 17, 2013

January

Wednesday, January 2, 2013 – Nomination Paper Filing Deadline for Spring Election

Monday, January 7, 2013 – Deadline for Filing Statements of Economic Interests and Ballot Access Challenges for Spring Elections

**Monday, January 14, 2013 - Proposed Government Accountability Board
Teleconference Meeting**

Thursday, January 31, 2013 - Deadline for Filing Semi-Annual Continuing Campaign Finance Reports

Thursday, January 31, 2013 - Deadline for Filing Semi-Annual Lobby Reports

February

No Meeting Proposed

Monday, February 13, 2013 - Deadline for Filing Pre-Primary Campaign Finance Reports

Tuesday, February 19, 2013 – Spring Primary Election

March

**Tuesday, March 19 and Wednesday, March 20, 2013 - Proposed Government
Accountability Board Meeting**

Monday, March 25, 2013 - Deadline for Filing Pre-Election Campaign Finance Reports

April

No Meeting Proposed

Tuesday, April 2, 2013 – Spring Election

Tuesday, April 30, 2013 – Deadline for Filing Statements of Economic Interests

May

Wednesday, May 15, 2013 – Deadline for Certifying Spring Election Results

Tuesday, May 21, 2013 - Proposed Government Accountability Board Meeting

June

No Meeting Proposed

July

No Meeting Proposed

Monday, July 22, 2013 - Deadline for Filing Semi-Annual Continuing Campaign Finance Reports

Wednesday, July 31, 2013 - Deadline for Filing Semi-Annual Lobby Reports

August

Tuesday, August 20, 2013 - Proposed Government Accountability Board Meeting

September

No Meeting Proposed

October

Tuesday, October 22, 2013 - Proposed Government Accountability Board Meeting

November

No Meeting Proposed

December

Sunday, December 1, 2013 –First Day to Circulate Nomination Papers for Spring Elections

Tuesday, December 17, 2013 Proposed Government Accountability Board Meeting

State of Wisconsin \ Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

DATE: For the August 28, 2012 Meeting

TO: Government Accountability Board Members

FROM: Kevin J. Kennedy
Director and General Counsel

Prepared by Sharrie Hauge, Chief Administrative Officer

SUBJECT: Government Accountability Board's Draft 2013-2015 Biennial Budget

This report summarizes the proposed approach for developing and submitting the agency budget for the next biennium covering July 2013 through June 2015. The budget submission is due to the State Budget Office and the Legislative Fiscal Bureau on September 17, 2012. Staff recommends the Board approve and adopt the approach developed by the agency Management Team.

On Tuesday, August 14, 2012, staff received the *Major Budget Policies and Budget Instructions* document from the State budget office setting out the requirements for preparing the agency's 2013-2015 biennial budget request. Most agencies, including the G.A.B. are required to hold their overall GPR budgets to fiscal year 2011-13 levels.

The GPR base budget for 2013 is \$2,664,700. In addition to zero growth for the 2013-2015 biennium agencies are required to permanently lapse the amounts that were required in the 2011-13 biennium. G.A.B. is required to lapse \$386,600 in the biennium. Annually, G.A.B. will be required to lapse \$193,300. This lapse amount is unfairly inflated because of the \$1.8 million provided in 2011-12 to implement the provisions of 2011 Act 23, requiring voter identification in order to vote. This was one-time funding in FY-12, but is not a part of our FY-13 base.

If required to reduce the Board's base budget by \$386,600 in the next biennium, we will be faced with hard decisions. It is premature to be able to say where or how we will make required cuts, but in a small agency like ours the impact will most certainly adversely affect our operations and our ability to serve our customers. Such cuts will hamper the Board's ability to move forward with any proposed legislative initiatives or programs for better serving the public or maintain our current level of support for local election officials. We will strive to make cuts that least affect the provision of core services.

The 2013-2015 agency budget request is designed to maintain the agency general program revenue (GPR) funded operations. The agency's management team has met on several occasions to strategize and determine the programmatic needs for the agency in the next biennium. We have determined we need to address two critical operational needs; information technology (IT) and non-federal Elections Division staffing. The federal spending authority is usually approved by the State Budget office separately.

The agency base budget consists of 14.0 FTE (full time equivalent employees), 5.0 Project FTE through June 2013 funded from GPR, plus fringe benefits, LTE costs/Board member per diems, supplies and

services and permanent property for a total of \$2,664,700. The base budget also funds 3.75 positions with lobbying program revenue (PR) which consists of \$495,600 for salaries, fringe benefits and supplies and services. A table summarizing the agency's expenditure history by its three main funding sources (GPR, PR and Federal funding) is attached. The agency has 26 federally funded project positions which will expire in the FY13-15 biennium.

The proposed budget contains two decision items. A decision item is a discrete change to the base budget which must be accepted by the Governor and incorporated into the budget by the Legislature. These two decision items do not increase the amount of funds currently spent on agency operations. However, the decision items shift the funding of a significant portion of the agency's IT operations and election administration personnel to GPR based funding. There is no actual increase in the amount of resources supporting the proposed agency budget. The decision items are described below.

Decision Item 3001 – Build IT Infrastructure Capacity to Support Campaign Finance, Contract Sunshine, Elections, Ethics and Lobbying Programs

The agency Director and General Counsel recommends that the Board request GPR funds to create an information technology resource pool within the Government Accountability Board infrastructure that supports the agency's oversight of the State's campaign finance, contract sunshine, elections, ethics and lobbying laws. G.A.B. is heavily reliant on technology and management of data; collecting, analyzing and disseminating data for public disclosure. G.A.B.'s primary focus this biennium will be to use technology to improve efficiencies in our business practices. G.A.B. is a data driven environment collecting and disseminating campaign finance data, election statistics, lobbying activity, voter participation data, validating voter data and maintaining voter records. This request focuses on the core of the agency mission because the G.A.B. is an information and data driven enterprise. An appropriately funded, skilled and knowledgeable IT component is necessary and critical to ensuring a reliable infrastructure for carrying out basic statutory functions and requirements.

In order to efficiently manage the election administration statutory requirements delegated to G.A.B. by the Legislature, the Legislature needs to invest in a cost-effective IT solution at a reduced cost to taxpayers, which ensures reliability and dependability. An integrated IT solution is crucial for supporting and maintaining the infrastructure that is necessary to ensure customer service to Wisconsin 1,923 local election officials (of whom 62% are part-time, and the annual turnover rate is between 20-25%), and the thousands of election inspectors, as well as the State's 3.5 million active voters.

The agency's campaign finance, ethics and lobby responsibilities hinge on having reliable IT resources available to ensure the collection and dissemination of information necessary for citizens to monitor and understand the actions of their government. The development and maintenance of these crucial activities has been on an ad hoc basis.

We have found using an in-house IT team to build the Wisconsin Election Data Collection Systems (WEDCs), Canvass Reports System (CRS), Polling Place Accessibility Audit tablet application and new elections mobile applications has been very successful. We have found that going out into the market and purchasing software solutions has not been as successful and has cost more money (CFIS, SVRS).

Based on our experience with other IT options, we believe the investment in an in-house IT model is the best available strategic solution that meets these criteria, i.e., significantly increased customer reliability and at a reduced cost to taxpayers.

The Proposed Solution:

- 1-FTE state position (IT Director)
- 7-IT staff whose specialty functions will be fulfilled by outside contract resources.

The G.A.B. IT Support Team will be responsible for all the agency business process automation needs which include:

- Software architecture/development
- Technology vendor management and procurement
- Project management for technical initiatives
- Infrastructure management
- Technology training

This Team will closely consult and collaborate with the Department of Administration including but not limited to training, complying with standard software development, and technology procurement methods and policies. In collaboration with the Department of Administration, this team will leverage market pricing to manage overall technology costs in infrastructure and resources.

The estimated cost to create and implement a research, business automation and data management Bureau is approximately \$2 million annually. This includes funding 1-FTE Bureau Director (state position), the 7 core technology team staffed by outside contract resources and the IT infrastructure for the agency (hardware, software and servers). The agency already expends this amount primarily from federal funding as well as one-time allocations for application development and support.

This decision item will not result in the Board spending more money. Rather, it reflects a reprioritization of existing spending and a shifting of funds from reliance on federal dollars, soon to disappear, to GPR funding. The IT initiative will result in a shift from funding individual initiatives on a project-by-project basis to institutionalizing a pool of resources that will make the Board more agile and efficient in meeting its ever-growing IT needs and enable us to do more with GPR funds that are likely to remain static rather than federal funds which will shrink in future years.

Decision Item 3002 – Convert 14 Federal Project Positions to Permanent GPR Positions

The agency Director and General Counsel recommends that the Board request GPR funds to create 14 Permanent GPR FTE positions to replace a little more than half of the federally funded project positions within the agency that will expire on June 30, 2015. The agency currently has 26 authorized federally-funded project positions. Project positions may be authorized for appointments of up to 4 years and are therefore temporary. All of the authorized project positions expire in the next biennium.

In addition to the temporary project positions, the Elections Division has 4 permanent GPR funded staff including the Elections Division Administrator. In order to meet current administrative responsibilities, the agency has also hired several temporary services staff; however, that need fluctuates. These short-term employees provide key support for local election officials, candidates and members of the public.

As Federal and State laws governing elections administration continue to grow in number and complexity, Wisconsin's local election officials have come to rely on Board staff to provide ongoing election administration education, training and technical support that ranges from assisting with interpreting and applying election laws, to classroom training, to onsite individual technical assistance regarding how to access and work the functionalities of the State's election management tools used by all

of Wisconsin's local election officials and their staff to conduct elections – the Statewide Voter Registration System (SVRS).

The election management system in SVRS is used to print poll lists, issue and track absentee ballots, generate election results, compile and calculate election statistics including voter participation data and costs of elections, and provide an array of other management information for agency staff, members of the Government Accountability Board, local election officials, the Legislature, voters and the general public.

Election Administration is a complex area that requires a dedicated staff that is knowledgeable, proficient and technically skilled in Federal and State election laws, both basic and complex computer software applications and systems, and who are knowledgeable about translating statutory and administrative code provisions into efficient and effective administration of elections. The vast array of changes proposed and implemented following the 2000 election have placed a significant new set of responsibilities on state and local election officials.

When the Help America Vote Act of 2002 (HAVA) was enacted into law, a plan for implementing the new election administration infrastructure requirements was developed, but it was clear that the State would eventually have to pick up the ongoing costs to operate and maintain the Statewide Voter Registration System (SVRS) as well as related election administration responsibilities created by several additional State law changes along with state HAVA conforming requirements, including the following legislation:

- 2003 Wisconsin Act 265;
- 2003 Wisconsin Act 266;
- 2005 Wisconsin Act 92;
- 2005 Wisconsin Act 333;
- 2005 Wisconsin Act 451;
- 2007 Wisconsin Act 1 (which created the Government Accountability Board. Most of those costs were personnel – not operations); and,
- Chapters 5-12 of Wisconsin State Statutes.

In addition to the above-referenced Wisconsin Acts, and Chapter 5-12 Statutes, the following eight (8) new major Wisconsin Acts were enacted during the 2011-12 Legislative Session that affect election administration and require administration by the Government Accountability Board:

1. 2011 Wisconsin Act 23: Changes to Election Laws (Voter Photo ID)
2. 2011 Wisconsin Act 39: Redistricting
3. 2011 Wisconsin Act 43: Legislative Redistricting
4. 2011 Wisconsin Act 44: Congressional Redistricting
5. 2011 Wisconsin Act 45: The Presidential Preference Primary (and certain other election occurrences).
6. 2011 Wisconsin Act 75: Dates of the September Primary, Absentee Voting, Electronic Communication System, Polling Places, Special Elections, Duplicate Identification Cards (and other Election Occurrence; MOVE Act Changes).
7. 2011 Wisconsin Act 115: County and Municipal Canvassing Procedures, Delivery of Election Materials, Posting of Provisional Ballot Information, Town Meeting and Town Officer Term Date Changes and Election Deadlines.
8. 2011 Wisconsin Act 227: Absentee Ballots and Voting In-Person, and by Absentee Ballot in the Same Election.

Significant funds and time are invested in developing seasoned and knowledgeable Election Specialists. Each election has its own uniqueness in terms of the scope and level of intensity, demands, and expectations in meeting the needs of the public, our voter customers, and our local election partners. For new staff to serve at a full performance level, staff must experience the full-range of at least a four-year election process. Staff must participate in both a Gubernatorial and a Presidential election cycle to become fully proficient in their duties.

Seldom is it ever an ideal time to ask for additional staff. The agency's initial plan developed when federal funding first became available was to begin transitioning federally-funded staff and related support costs (fringe, office space, work station, training and travel) to state-funded positions beginning with the last two budgets (2009-2011, 2011-2013). However, given the significant budget problems faced by the State during the development of those budgets, it was problematic to request an increase in GPR funding, particularly when the agency still had sufficient federal funds and project position authority to carry the positions into the 2011-2013 biennium.

While we estimate that we have sufficient federal funding to carry all 26 positions until the next biennium, we need to make the case for converting 14 of the Elections Division project positions to GPR permanent positions, to establish the base staffing level needed to maintain our current operations and start transitioning these federally funded positions to permanent GPR positions.

The base funding cost for 14 FTE positions is \$559,900 in salaries and fringe benefits in FY-14 and \$746,500 in FY-15.

This decision item will not result in the Board spending more money. Rather, it will reflect a reprioritization of existing spending and a shifting of funds from reliance on federal dollars, soon to disappear, to GPR funding. The elections positions initiative will begin to create permanent positions funded by a more stable funding source rather than from federal funding that is rapidly depleting and will not be replenished in future.

Recommendation: The agency Director and General Counsel requests that the Government Accountability Board approve decision items 3001-3002 and authorize the Director and General Counsel to submit the agency's proposed 2013-2015 budget to the Department of Administration for inclusion in the executive budget.

Attachments: Agency Expenditure History by Funding Source

G.A.B. Expenditure History Per Fiscal Year

Funding Source	Expenditure Types	FY-10 (July 2009- June 2010)	FY-11 (July 2010- June 2011)	FY-12 (July 2011- June 2012)	FY-13* (July 2012- June 2013)
GPR	Salaries	798,945	890,959	1,017,011	905,700
	LTE's & Per Diems	41,918	34,354	47,250	39,700
	Fringe	353,966	412,416	353,041	368,300
	Supplies & Services	906,300	1,186,664	1,962,505	1,344,600
	Fixed Assets	0		0	6,400
	Local Assistance	37,683	96,288		0
TOTAL GPR		2,138,812	2,620,681	3,379,807	2,664,700
PR					
PR	Salaries	155,593	179,221	171,604	211,100
	LTE's	0	237	0	1,000
	Fringe	62,538	83,255	70,309	86,100
	Supplies & Services	244,225	221,974	181,280	197,400
	Fixed Assets	0	0	0	0
	Local Assistance	0	0	0	0
TOTAL PR		462,356	484,687	423,193	495,600
Fed					
Fed	Salaries	806,212	621,936	675,825	
	LTE's	438,223	207,215	2,210	
	Fringe	447,772	343,693	303,763	
	Supplies & Services	1,422,563	1,382,034	1,588,163	1,452,000
	Fixed Assets	0	0	0	0
	Local Assistance	91,291	11,663	9,365	0
TOTAL Fed		3,206,061	2,566,541	2,579,326	1,452,000

* FY-13 based on agency's base budget and estimate of expenditures

State of Wisconsin \ Government Accountability Board

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JUDGE DAVID G. DEININGER
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: August 28, 2012

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, Nate Judnic, Adam Harvell, and Molly Sessler,
Campaign Finance Auditors
Tracey Porter, Ethics and Accountability Specialist

July Continuing Reports

Materials for the July Continuing finance report filing were sent to all registrants. This report covers campaign finance activity from January 1 or the date of the last report, through June 30, 2012 and was due on or before July 20, 2012. Filing statistics are as follows:

587 of the 646 registered candidates filed reports; of that total, 378 used the CFIS application system, 92 emailed an excel format report for data conversion; and 117 filed paper reports for data conversion. 59 candidates failed to file a report.

570 of the 654 registered non-candidate committees filed reports; of that total, 419 used the CFIS application system, 24 emailed an excel format report for data conversion, and 127 filed paper reports for data conversion. 84 non-candidate committees failed to file a report.

171 of the 190 registered sponsoring organizations filed reports; of that total, 106 used the CFIS application system, and 64 filed paper reports for data conversion. 19 sponsoring organizations failed to file a report.

175 of the 185 registered conduits filed reports; of that total, 134 used the CFIS application system and 40 filed reports paper reports for data conversion. One requested termination. 10 conduits failed to file a report.

Staff has followed up with the non-filers and will continue to do so until all reports are received. An update will be provided at the next meeting.

Fall Pre-Primary and Pre-Election Reports

Materials for the Fall Pre-Primary filing were sent to candidates participating in the Fall Primary election and to all non-candidate committees. This report covers campaign finance activity from July 1 through July 30, 2012 and was due on or before August 6, 2012. 578 pre-primary reports were filed

with the G.A.B., 347 of those reports were filed by candidates. 27 candidates required to file a Fall Pre-Primary report have not filed. Staff has followed up with the non-filers and will continue to do so until all required Fall Pre-Primary reports are received. An update will be provided at the next meeting.

Materials for the Fall Pre-Election filing will be sent on October 1, 2012. This report will cover campaign finance activity from July 31 through October 22, 2012 and is due on or before October 29, 2012.

Lobbying Update

Tracey Porter, Ethics and Accountability Specialist

Statement of Lobbying Activities and Expenditures Reports

Chapter 13.68, *Wisconsin Statutes*, requires all registered lobbying organizations to complete a 6 month Statement of Lobbying Activities and Expenditures (SLAE) report that contains information related to the organizations' lobbying effort between January 1 and June 30, 2012. The SLAE report was due on or before July 31, 2012. As a part of the SLAE report, those lobbyists who are authorized to lobby for the organization are required to complete a time report that identifies those hours spent communicating or working on other lobbying related matters for the organization. This report is also due on or before July 31, 2012. One lobbying principal has failed to file a report and staff is working with the principal to obtain a report as soon as possible.

Lobbying Registration and Reporting Information

Government Accountability Board staff continues to process 2011-2012 lobbying registrations, licenses and authorizations. Processing performance and revenue statistics related to this session's registration is provided in the table below. The six month Statement of Lobbying Activities and Expenditure summary report has been generated and is ready for public release.

2011-2012 Legislative Session: Lobbying Registration by the Numbers			
(Data Current as of August 21, 2012)			
	Number	Cost	Revenue Generated
Organizations Registered	758	\$375	\$284,250
Lobbyists Licenses Issued (Single)	659	\$350	\$230,650
Lobbyists Licenses Issued (Multiple)	135	\$650	\$87,750
Lobbyists Authorizations Issued	1733	\$125	\$216,625

Lobbying Website Project Update

A significant amount of time has been allocated to develop the new lobbying application. Staff continues to work with assigned staff from the Department of Administration to finish work on the remaining undeveloped areas of the lobbying application. Staff plans to continue to test the Production site and make improvements where necessary. Release of the new lobbying application is scheduled for October 1, 2012.

Financial Disclosure Update

Cindy Kreckow, Ethics and Lobbying Support Specialist

Statements of Economic Interests – Annual Filing

Ethics and Accountability staff mailed more than 2,000 pre-printed Statements of Economic Interests to state public officials required to file a statement with the Board under Chapter 19, *Wisconsin Statutes*. This includes incumbent state judges who were up for re-election in the spring of 2012 as well as reserve judges who are required to file a statement within 21 days of taking a case. Those officials not up for re-election in the spring

had their statements mailed to them over the course of eight weeks, beginning January 23, 2012. Statements were due on or before April 30th. All but three (3) 2012 annual statements have been filed to date. Data entry and processing into the online index continues to occur by LTE staff. Higher profile statements including Legislators, Supreme Court Justices, Court of Appeals Judges, and District Attorneys have all been entered and scanned for easier processing of requests to examine them.

Governor Appointments

New appointments slowed significantly due to the recall election, but are now picking up again and being processed on an ongoing basis, to include securing statements of economic interests from all appointees and referring copies of their statements to the Senate for future confirmation hearings.

6 Month Legislative Liaison Reports

Government Accountability Board staff worked to follow up and process legislative liaison reports that were sent to 101 state agencies and boards required to file such a report with the G.A.B. under Chapter 13, *Wisconsin Statutes*. As of August 14th, all reports have been filed and processed by staff. These reports cover activity from January 1 through June 30, 2012 and were due on or before July 31, 2012. All state agencies are required to file a liaison report that identifies those agency officials who make lobbying communications with state officials, the percentage of their overall work time spent making such communications, and the official's annual salary.

State of Wisconsin Investment Board Quarterly Transaction Reports

Staff also received and processed 48 quarterly financial disclosure reports from State Investment Board members and employees that were due on or before July 31, 2012. Copies of the reports were delivered to the Legislative Audit Bureau for their review and analysis.

**State of Wisconsin
Government Accountability Board**

Total Lobbying Expenditures
2011-2012 Legislative Session
through June 30, 2012

Total Lobbying Expenditures: [page 1](#)

Biggest Spenders (by dollars): [page 2](#)

Biggest Spenders (by hours): [page 5](#)

Most Lobbied Bills: [page 7](#)

Most Lobbied Budget Bill Subjects [page 10](#)

Topics, Minor Effort and No Lobbying Communication: [page 12](#)

This report provides a measure of the lobbying activity directed toward specific proposals that were before Wisconsin's legislature during the 2011-2012 legislative session. Each of the 754 organizations that employed lobbyists in Wisconsin during the 2011-2012 legislative session has reported to the Government Accountability Board the number of hours and dollars it spent on lobbying-related efforts. Each also provided the Government Accountability Board with its estimate of the portion of its lobbying efforts associated with specific proposals.

The number of hours of lobbying-related activity reported for each proposal is derived from each lobbying organization's estimate of the hours it devoted to lobbying on that proposal during each 6 month reporting period within the 2011-2012 legislative session. True totals may be slightly greater for some proposals because an organization did not have to report time it devoted to a proposal if the time amounted to less than 10% of its total lobbying effort.

Due to the rounding of percentages and the formulas used to generate this report, all totals are accurate within a margin of +/- 1.

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
TOTALS:					
hours	165,520	99,721	99,942	0	365,183
dollars	\$23,877,098	\$14,461,495	\$13,914,503	\$0	\$52,253,096
CONTRACT LOBBYISTS AND THEIR RESEARCH STAFF:					
hours	48,754	34,806	37,354	0	120,914
dollars	\$8,661,531	\$8,072,056	\$7,742,202	\$0	\$24,475,789
IN-HOUSE LOBBYISTS AND THEIR RESEARCH STAFF:					
hours	116,766	64,914	62,588	0	244,269
dollars	\$9,401,729	\$5,772,510	\$5,296,839	\$0	\$20,471,079
ALL OTHER LOBBYING EXPENSES:					
dollars	\$5,813,838	\$616,929	\$875,462	\$0	\$7,306,228

Wisconsin State AFL-CIO

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	2,251	313	442	0	3,006
dollars	\$2,302,171	\$25,123	\$40,054	\$0	\$2,367,348

Wisconsin Education Association Council

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	9,370	1,273	532	0	11,174
dollars	\$2,062,716	\$167,846	\$94,031	\$0	\$2,324,593

AFSCME Council 11

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	3,306	1,652	2,336	0	7,294
dollars	\$1,228,811	\$158,304	\$137,646	\$0	\$1,524,761

Wisconsin Manufacturers & Commerce

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	2,144	2,268	2,118	0	6,530
dollars	\$193,244	\$246,345	\$289,326	\$0	\$728,914

AFSCME International

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	10,631	17	12	0	10,660
dollars	\$694,422	\$1,920	\$1,582	\$0	\$697,924

AT&T Wisconsin

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	4,167	341	360	0	4,869
dollars	\$439,745	\$57,045	\$197,901	\$0	\$694,692

Wisconsin Medical Society

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	1,851	1,773	1,703	0	5,327
dollars	\$253,770	\$207,552	\$224,443	\$0	\$685,764

Wisconsin Hospital Association Inc (WHA)

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	1,868	1,753	1,904	0	5,526
dollars	\$218,334	\$216,536	\$228,972	\$0	\$663,842

Wisconsin Counties Association

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	2,354	1,777	1,786	0	5,917
dollars	\$233,081	\$196,217	\$203,223	\$0	\$632,521

Wisconsin Property Taxpayers Inc

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	3,097	2,845	3,952	0	9,893
dollars	\$152,540	\$151,424	\$265,935	\$0	\$569,898

Wisconsin Automobile & Truck Dealers Association Inc

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	1,470	1,548	661	0	3,679
dollars	\$227,729	\$237,010	\$102,224	\$0	\$566,963

Wisconsin Association of School Boards Inc

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	2,563	2,158	2,170	0	6,891
dollars	\$193,977	\$164,297	\$167,846	\$0	\$526,120

Altria Client Services Inc

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	447	294	163	0	903
dollars	\$191,319	\$186,756	\$93,451	\$0	\$471,526

Wisconsin Energy Corporation

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	614	481	323	0	1,417
dollars	\$219,506	\$116,390	\$106,045	\$0	\$441,941

Wisconsin Transportation Builders Association

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	550	123	154	0	827
dollars	\$189,630	\$93,221	\$68,737	\$0	\$351,588

Wisconsin Education Association Council

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	9,370	1,273	532	0	11,174
dollars	\$2,062,716	\$167,846	\$94,031	\$0	\$2,324,593

AFSCME International

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	10,631	17	12	0	10,660
dollars	\$694,422	\$1,920	\$1,582	\$0	\$697,924

Wisconsin Property Taxpayers Inc

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	3,097	2,845	3,952	0	9,893
dollars	\$152,540	\$151,424	\$265,935	\$0	\$569,898

AFSCME Council 11

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	3,306	1,652	2,336	0	7,294
dollars	\$1,228,811	\$158,304	\$137,646	\$0	\$1,524,761

Wisconsin Independent Businesses Inc

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	2,295	2,331	2,288	0	6,914
dollars	\$56,446	\$59,548	\$60,129	\$0	\$176,123

Wisconsin Association of School Boards Inc

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	2,563	2,158	2,170	0	6,891
dollars	\$193,977	\$164,297	\$167,846	\$0	\$526,120

Wisconsin Manufacturers & Commerce

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	2,144	2,268	2,118	0	6,530
dollars	\$193,244	\$246,345	\$289,326	\$0	\$728,914

Wisconsin Counties Association

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	2,354	1,777	1,786	0	5,917
dollars	\$233,081	\$196,217	\$203,223	\$0	\$632,521

State Bar of Wisconsin

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	2,213	1,727	1,592	0	5,532
dollars	\$117,471	\$106,379	\$83,009	\$0	\$306,860

Wisconsin Hospital Association Inc (WHA)

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	1,868	1,753	1,904	0	5,526
dollars	\$218,334	\$216,536	\$228,972	\$0	\$663,842

Wisconsin Medical Society

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	1,851	1,773	1,703	0	5,327
dollars	\$253,770	\$207,552	\$224,443	\$0	\$685,764

American Heart Association

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	1,692	1,721	1,898	0	5,311
dollars	\$106,361	\$110,468	\$115,103	\$0	\$331,931

Assembly Bill 11 January 2011 Special Session

state finances, collective bargaining for public employees, compensation and fringe benefits of public employees, the Medical Assistance program, sale of certain facilities, granting bonding authority, and making an appropriation.

January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
18,075	0	0	0	18,075
hours				

Assembly Bill 426 2011 Regular Session

regulation of ferrous metallic mining and related activities, making an appropriation, and providing penalties.

January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
0	1,946	6,615	0	8,561
hours				

Senate Bill 11 January 2011 Special Session

state finances, collective bargaining for public employees, compensation and fringe benefits of public employees, the state civil service system, the Medical Assistance program, sale of certain facilities, granting bonding authority, and making an appropriation.

January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
4,236	258	6	0	4,499
hours				

Assembly Bill 132 2011 Regular Session

motor vehicle dealers.

January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
1,283	878	0	0	2,161
hours				

Senate Bill 2 2011 Regular Session

changes to timing of application process under the open enrollment program.

January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
1,043	580	348	0	1,971
hours				

Senate Bill 95 2011 Regular Session

granting high school credit for extracurricular sports; services provided by a special education program; transportation aid paid to school districts; the use of moneys received by a school district from the common school fund; using the results of standardized examinations to evaluate, discharge, suspend, or discipline a teacher or for the nonrenewal of a teacher's contract; the number of teaching days scheduled in the Milwaukee Public Schools; permitting a school district to limit the grades in which to reduce class size under the Student Achievement Guarantee in Education Program; permitting a school board to deny enrollment to a pupil who has been expelled from an out-of-state school or from an independent charter school in this state and permitting an independent charter school to expel a pupil; use of law enforcement records to take disciplinary action against a pupil under a school district's athletic code; and changing the date by which a school district must certify the amount of its property tax levy.

January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
1,041	927	0	0	1,968
hours				

Assembly Bill 14 January 2011 Special Session

regulation of telecommunications utilities and alternative telecommunications utilities; telecommunications provider of last-resort obligations; telecommunications intrastate switched access rates; interconnected voice over Internet protocol service; and use of transmission equipment and property by video service providers.

January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
1,733	76	7	0	1,816
hours				

Senate Bill 22 2011 Regular Session

creating a Charter School Authorizing Board, providing additional charter school authorizers, eliminating the limit on the number of pupils who may attend virtual charter schools, modifying teacher licensure requirements, eliminating the limit on the reduction in general school aid used to fund independent charter schools, covering certain charter school employees under the Group Insurance Board health coverage plan for local government employees, allowing a charter school to elect to participate in the Wisconsin Retirement System, granting rule-making authority, and making an appropriation.

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	1,118	441	222	0	1,781

Senate Bill 93 2011 Regular Session

going armed with weapons, possessing or transporting a firearm, bow, or crossbow under certain circumstances, disorderly conduct limitations, and electric weapons.

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	1,210	460	0	0	1,670

Assembly Bill 145 2011 Regular Session

authorizing the Public Service Commission to approve temporary electric rates to promote economic development.

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	972	484	83	0	1,539

Assembly Bill 146 2011 Regular Session

use of renewable resource credits to comply with renewable portfolio standards.

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	415	769	336	0	1,520

Assembly Bill 129 2011 Regular Session

creation of the Wisconsin Venture Capital Authority, creation of the badger jobs fund and the jobs now fund certification program, both of which are to be administered by the Wisconsin Venture Capital Authority, making an appropriation, and providing a penalty.

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	739	748	13	0	1,500

Assembly Bill 110 2011 Regular Session

creating the Special Needs Scholarship Program for disabled pupils, granting rule-making authority, and making an appropriation.

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	278	210	962	0	1,450

Assembly Bill 251 2011 Regular Session

fees for dental services.

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	0	623	775	0	1,398

Senate Bill 96 2011 Regular Session

motor vehicle dealers.

	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
hours	340	1,016	0	0	1,356

Assembly Bill 1 January 2011 Special Session

limiting noneconomic damages awarded in actions against long-term care providers; actions against manufacturers, distributors, sellers, and promoters of certain products; confidentiality of health care services reviews; use as evidence of information regarding health care providers; reporting of quality indicators identifying individual hospitals; homicide or injury by negligent handling of a dangerous weapon, explosives, or fire; criminal abuse of individuals at risk; criminal abuse and neglect of patients and residents; evidence of lay and expert witnesses; damages for frivolous claims; and punitive damage awards. (FE)

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	1,216	25	2	0	1,243

Senate Bill 174 2011 Regular Session

closing the parental choice program for eligible school districts to additional school districts.

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	0	309	913	0	1,222

Assembly Bill 8 January 2011 Special Session

the authority of a state agency to promulgate rules interpreting the provisions of a statute enforced or administered by the agency and to implement or enforce any standard, requirement, or threshold as a term or condition of a license issued by the state agency; gubernatorial approval of proposed administrative rules; economic impact analyses of proposed rules and emergency rules; and venue in a declaratory judgment action seeking judicial review of the validity of an administrative rule and in an action in which the sole defendant is the state.

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	1,209	0	0	0	1,209

Senate Bill 13 January 2011 Special Session

regulation of telecommunications utilities and alternative telecommunications utilities; telecommunications provider of last-resort obligations; telecommunications intrastate switched access rates; interconnected voice over Internet protocol service; and use of transmission equipment and property by video service providers.

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	1,143	0	0	0	1,143

Assembly Bill 151 2011 Regular Session

copayments, deductibles, or coinsurance for oral chemotherapy and injected or intravenous chemotherapy.

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	417	360	303	0	1,080

Health Services: Medical Assistance and Related Programs

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	6,914	730	770	0	8,414

Public Instruction: General School Aids and Revenue Limits

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	4,155	44	50	0	4,249

University of Wisconsin System

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	3,637	237	124	0	3,997

Public Instruction: Choice and Charter

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	2,723	17	0	0	2,740

Shared Revenue and Tax Relief

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	1,926	439	61	0	2,426

Revenue

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	1,842	106	67	0	2,015

Workforce Development

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	1,537	2	48	0	1,588

Financial Institutions

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	1,484	67	32	0	1,583

Higher Educational Aids Board

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	1,530	4	29	0	1,563

Agriculture, Trade and Consumer Protection

hours	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
	1,163	198	147	0	1,509

Natural Resources: Water Quality

hours	1,218	43	7	0	1,268
	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date

General Fund Taxes

hours	1,184	26	35	0	1,245
	January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date

TOPICS OF LOBBYING COMMUNICATION (not assigned a bill or clearinghouse rule number)

January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
30,702	31,090	23,973	0	85,765
hours				

MINOR LOBBYING EFFORT (effort that accounted for less than 10% of an organization's total lobbying time)

January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
22,567	22,854	22,676	0	68,097
hours				

NO LOBBYING COMMUNICATION

January-June 2011	July-December 2011	January-June 2012	July-December 2012	Session-to-date
7,616	7,196	8,250	0	23,063
hours				

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JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 28, 2012 Meeting

TO: Members, Wisconsin Government Accountability Board

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

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

SUBJECT: Elections Division Update

Election Administration Update

Introduction

The memo for the May 15, 2012 meeting neglected to mention that the Spring Election and Presidential Preference Primary canvasses were signed by Judge David Deininger on May 15, 2012.

1. Recall Primary for the Offices of Governor, Lieutenant Governor and State Senator – May 8, 2012

The recall primary for the offices of Governor, Lieutenant Governor and State Senator in Districts 13, 21, 23 and 29 was conducted on May 8, 2012. A primary was required in both the Republican and Democratic Parties for the office of Governor. Democratic primaries were required for the offices of Lieutenant Governor and the four State Senate Districts. All county canvasses were received by the G.A.B. by the deadline of May 15, 2012, and the primary canvass was signed by Judge Gerald Nichol on May 18, 2012. County clerks immediately began preparing ballots for the June 5th recall election.

2. Recall Election Offices of Governor, Lieutenant Governor and State Senator – June 5, 2012

The recall election for the offices of Governor, Lieutenant Governor and State Senator in Districts 13, 21, 23 and 29 was conducted on June 5, 2012. County clerks were required to submit county canvasses to the G.A.B. no later than June 15, 2012. All canvasses were received by June 14, 2012.

On June 14, 2012, Senator Van Wanggaard, Republican incumbent candidate in Senate District 21, filed a petition for recount. The recount, which commenced on June 20, 2012 was completed and the canvass delivered to the G.A.B. on July 2, 2012. The recount yielded the same winner, Democratic challenger John Lehmann. The original results and recount results were as follows:

<u>Candidate</u>	<u>Original Results</u>	<u>Recount Results</u>
Van H. Wanggaard	35,517	35,539
John Lehmann	36,351	36,358
Scattering	56	58

Of the six officeholders standing for recall at this historic election, four retained their positions for the remainder of the term for which they were elected: Governor Scott Walker, Lieutenant Governor Rebecca Kleefisch, Senator Scott Fitzgerald (Senate District 13) and Senator Terry Moulton (Senate District 23).

Senator Van Wanggaard (Senate 21) lost his seat to his Democratic challenger, former Representative to the Assembly John Lehman. Senator Pam Galloway (Senate 29) resigned. Republican candidate Jerry Petrowski was elected to complete the remainder of the term.

Judge Gerald C. Nichol signed the canvass for Senate Districts 13 and 29 on June 20, 2012; Governor, Lieutenant Governor, and Senate District 23 on June 27, 2012; and Senate District 21 on July 11, 2012.

3. Preparation for 2012 August 14 Partisan Primary and the November 6 General and Presidential Election

484 candidates registered for the November 6, 2012 General Election.

Party	U.S. Senator	Congress	State Senate	Assembly	D.A.	Total
REP	7	11	18	108	48	192
DEM	5	11	24	164	40	244
CON	1	0	0	0	0	1
AME	0	0	0	0	0	0
IND	6	5	2	30	4	47
Total	19	27	44	302	92	484

Circulation of nomination papers began on April 15, 2012 and were due in the G.A.B. office no later than 5:00 p.m. on Friday, June 1, 2012.

Although 484 candidates registered for the November 6, 2012 General Election, 426 candidates actually submitted nomination papers. 165 sets were received in the six weeks prior to the final week of May 28, 2012. Monday, May 28, 2012 was Memorial Day, and the office was closed. In the four remaining days, 45 were submitted on Tuesday, May 29. 47 were submitted on Wednesday, May 30; 107 were submitted on Thursday, May 31; and 62 were submitted on deadline day, Friday, June 1, 2012.

393 candidates qualified for the August 14, 2012 Partisan Primary:

Party	U.S. Senator	Congress	State Senate	Assembly	D.A.	Total
REP	4	9	15	114	45	187
DEM	1	11	19	135	40	206
CON	0	0	0	0	0	0
AME	0	0	0	0	0	0
Total	5	20	34	249	85	393

4. Independent Candidates for State Office

Twenty four independent state candidates qualified for the November 6, 2012 General Election.

U.S. Senator	Congress	State Senate	Assembly	D.A.	Total
2	2	2	14	4	24

5. Notifications of Noncandidacy

Forty six incumbents filed Notifications of Noncandidacy for the offices they currently hold. Three incumbents failed to file Notifications of Noncandidacy and failed to file ballot access documents, resulting in a 3-day extension of the filing deadline in those offices. The filing deadline was extended to 5 p.m. on Monday, June 4, 2012 for the offices of Representative to the Assembly, Districts 13, 77 and 81. No additional candidates filed.

6. Independent Candidates for President and Vice President

A separate report is being provided to the Board on the Independent Candidates for President and Vice President of the United States.

7. Extended Operating Hours to Support Clerk Partners and Voter Customers Before, During and After the August 14, 2012 Recall Primary:

The Government Accountability Board (G.A.B.) regular business hours are 7:45 a.m. to 4:30 p.m. The Board staff extended hours of operation starting Wednesday, August 8, 2012 through Friday, August 17, 2012 in order to provide assistance to our local elections partners and the general public regarding the August 14 Partisan Primary. The extended office hours schedule included:

Week Leading up to the August 14 Partisan Election

- Wednesday, August 8: 4:30 - 6:00 p.m.
- Thursday, August 9: 4:30 - 6:00 p.m.
- Friday, August 10: 4:30 - 6:00 p.m.

Week During the August 14 Partisan Election

- Monday, August 13: 4:30 - 8:00 p.m.
- **Tuesday, August 14 (Election Day) 6:00 a.m. - 11:00 p.m.**
- Wednesday, August 15: (No Extended Hours)
- Thursday, August 16: (No Extended Hours)
- Friday, August 17: 4:30 - 6:00 p.m.

8. Appointment of a 2012 Fall Election Strategic Planning Team

The Elections Division Administrator appointed a 2012 Fall Election Strategic Planning Team to identify areas of greatest need as well as identify tasks that need to be addressed with our clerk partners to ensure a successful Partisan Primary and General Election. The Team commenced its work shortly after the June 5 Recall Election.

The team reviewed G.A.B. contacts with the public and local election officials during previous 2012 elections, as well as media accounts and reports from citizen observers and observer groups regarding the administration of these elections. It became clear during this review that a confluence of legislative changes, the exhaustion and loss of experienced clerks and poll workers, and a lack of voter education created confusion and frustration in some parts of the State during recent elections

– most notably the June 5 Recall Election. In response to its findings, the Team created a “Back to Basics” initiative that focuses on the fundamentals of election administration to ensure all of our partners – clerks, election inspectors, and electors – are prepared to conduct problem free elections in August and November 2012.

The five-point “Back to Basics” plan focuses on the following areas:

- Clerk and Poll Worker Basic Election Administration Training
- Voter Education: Rights and Responsibilities
- Use of Technology to Expand Outreach to Voters
- Conduct of Accessibility and Electronic Voting Equipment Security Audits
- Targeted assistance to municipalities with unique needs.

G.A.B. staff completed more than a dozen action tasks for the Partisan Primary, with additional ones in the works as staff prepare for the November General and Presidential Election. The list of projects includes:

- A webinar for local election officials on counting votes, proof of residence, and polling place issues
- Revised the Election Administration and Election Day Manuals
- Provided extra assistance and direction to municipalities with recalls or referendums
- Assisted with poll worker training in Racine
- Conducted audits of polling places in Milwaukee
- Conducted baseline training for chief inspectors
- Conducted core training for municipal clerks
- Provided additional SVRS data quality support and reports
- Revised SVRS Training Manual
- Conducted SVRS training for clerks and staff
- Created and distributed a Voters Rights and Responsibilities document
- Provided additional instructions to observer groups about observer regulations in the polling place
- Conducted Student Residency Teleconference with University of Wisconsin schools and municipalities
- Released a student residency memo and guide
- Created additional Facebook and Twitter posts about the election and related issues
- Launched Click and Mail
- Launched Vote WI smart phone application.

Provision of Targeted Assistance to Municipalities with Unique Needs

➤ City of Racine/Racine Municipal Clerk

Staff assisted the Racine City Clerk with training election inspectors to address issues raised during the June 5 Recall Election. On August 9, a three-person election administration staff team assisted the City of Racine Municipal Clerk and her staff with training of election inspectors.

Two two-person staff teams led by the agency Director and General Counsel visited polling places in the greater Racine area during the August 14 Partisan Primary to observe the election process. A summary of the teams’ observations is included in **Attachment #1**.

➤ Waukesha County Clerk/Waukesha Municipal Clerks

Staff continued to assist the Waukesha County Clerk and the Waukesha County Municipal

Electronic GAB-106 Report. An electronic GAB-106 Report process was developed in response to complaints after the April 3, 2012 Presidential Preference and Spring Election, and was first used for the May 8, 2012 Recall Primary. A new election night reporting version of the GAB-106 report was created for Waukesha County by G.A.B. staff, and the report was used for the first time in the August 14, Partisan Primary by Waukesha County. The report contains a section that shows the percentage of reporting units that have completed entering their results into the G.A.B. Canvass Reporting System (CRS). The new feature allowed Waukesha to post election night results to their website as the results came in from the individual municipalities. Staff will market this tool to other counties to use CRS to report election night results as they become available.

➤ City of Milwaukee/Milwaukee Election Commission

G.A.B. staff have continued to serve in an advisory role to the Milwaukee Election Commission as they develop a required compliance plan to meet the minority language requirements of their designation under Section 203 of the 1965 Voting Rights Act. On July 12, 2012, Director and General Counsel Kevin J. Kennedy hosted a meeting with representatives from the Mayor's Office, Milwaukee Election Commission, and the Milwaukee City Attorney's Office to discuss the status of Milwaukee's compliance of Section 203. Staff have also been working with the agency's IT Development Team to create a surname analysis tool to assist the Milwaukee Election Commission in determining their need for bilingual election inspectors. Staff members visited polling places in Milwaukee during the August 14 Partisan Primary to observe the election process.

➤ Collaborating with the University of Wisconsin System-Madison

At the invitation of Matt Lind, Associate Legal Counsel for the UW System, GAB staff participated in a teleconference on student residency on August 3, 2012. The purpose of the teleconference meeting was to bring together UW staff, municipal and county clerks, and the GAB staff to clarify when a student can establish residency, proof of residency documents provided by UW schools, and different scenarios students face in establishing residency for voting. Representatives from public universities and municipalities in Madison, Oshkosh, Milwaukee, Green Bay, Stevens Point, Eau Claire and La Crosse attended. Before the teleconference, GAB staff also distributed an updated student residency document and a new student residency guide to get the participants' feedback and suggestions. Overall, UW staff and municipal clerks reported the teleconference was useful, and the documents on student residency will help students when they register to vote this fall.

The 2012 Fall Election Strategic Planning Team recognizes the importance of swiftly addressing issues and problems which arise in the administration of elections, and to ensure election procedures are implemented uniformly throughout Wisconsin. Implementing the "Back to Basics" initiative will continue to enhance and advance Wisconsin's proud tradition of ensuring open and fair elections.

8. G.A.B. Election Voting and Registration Statistics Report (GAB-190 Form and Elections Cost Tracking)

At the time this report was prepared on Thursday, August 16, for the May 8 Recall Primary statistical report, the City of Milwaukee was missing one reporting unit and the cost data. For the June 5 Recall Election, the Village of Brown Deer and the City of Milwaukee need to complete

both the reporting unit and the cost data parts. The City of Milwaukee and the Village of Brown Deer have committed to completing their respective data sets within the next several days.

9. MOVE Act: Status of Wisconsin's Compliance with the Military and Overseas Voter Empowerment (MOVE) Act

Board staff has worked with municipal and county clerks to complete the first four reporting requirements of the 2012 Consent Decree. The first reporting requirement asked municipal clerks to report on their municipality's capability to email and fax absentee ballots to military and overseas voters for the August 14 Partisan Primary. After follow up from Board staff, all municipalities responded to reporting requirement and indicated they could email and fax absentee ballots, or would be able to work with another jurisdiction to email or fax ballots.

The second reporting requirement was verification from county clerks that they had their ballot prepared on June 27, 2012; 48 days before the Partisan Primary. Board staff received information from all 72 counties that their ballots were prepared and ready for municipalities on or before June 27, 2012. State law requires county clerks to have ballots prepared for municipal clerks no later than 48 days before the August Partisan Primary and November General Election. Municipal clerks are required to transmit absentee ballots to military and overseas voters no later than 47 days before the Partisan Primary and November General Election according to state law. However, the 2012 Consent Decree requirements focused on the 45 day ballot transit deadline required by the MOVE Act.

The next reporting requirement was a survey to municipal clerks requesting the number of absentee ballot requests from military and overseas on file for the August Partisan Primary as of June 30, 2012, how each elector requested their ballot be transmitted, when the August Partisan Primary ballot was transmitted, and if all absentee ballots were transmitted to military and overseas voters by the 45 day MOVE Act deadline. Board staff had to make hundreds of phone calls and contact with municipal clerks in order to get 100% compliance with this reporting requirement. The final report revealed the 19 municipalities transmitted their absentee ballot to military and overseas voters after the 45 day transmit time required by the MOVE Act. Those municipalities are listed in **Attachment #2**.

Municipal clerks were then required to report on the number of absentee ballot requests they received for the August 14 Partisan Primary from military and overseas voters between July 1, 2012 and July 15, 2012. This reporting requirement had the shortest deadline for municipal clerks; the information was due to the USDOJ on July 17, 2012. Again, Board and temporary staff made hundreds of phone calls and spent well over 200 hours following up with municipal clerks to acquire 100% compliance with this reporting requirement. An estimated 600 total staff hours have been spent on gathering responses to all four of the surveys.

Board staff is now preparing for the same number and type of reporting requirements for the November 6 General and Presidential Election. Clerks were provided with a schedule of each of the reporting requirements on June 1, 2012 and again on July 12, 2012. However, Board Staff anticipates the need to follow-up with municipal clerks as several municipalities are not responding to the reporting requirements by the appropriate deadlines.

Federal Voting Assistance Program (FVAP) Grant: The Government Accountability Board received \$1.9 million in March of 2012 to create an online computer application where military and overseas voters can access their absentee ballots as soon as ballots are available. The development of the grant is moving along as scheduled with testing scheduled to begin in mid-August. The technology development team has created a user-friendly and intuitive web-based site for all voters to access voting information and for military and overseas voters to request and access an absentee ballot. The military and overseas voters must still return their voted absentee ballot by mail.

Board staff will be providing education, training and technical assistance to municipal clerks on how to use the new system and provide feedback during this development phase. Military and overseas voters will be asked to participate in testing the system to ensure it meets the needs of military and overseas voters.

Currently, Board Staff is working on a solution to some legal hurdles preventing the system from issuing an absentee ballot to military and overseas voters as described in the grant application.

10. The AccessElections! Wisconsin Accessibility Compliance Program
(Elections and Voting Accessibility)

Number of Polling Places in Wisconsin: For the April 3, 2012 Spring Election, there were 2,678 polling places available to Wisconsin voters. This number fluctuates depending the type and scope of the election and expected turnout. For expected low turnout rates, polling locations may be consolidated.

To date (2012), the following number* of Accessibility Audits have been completed:

▪ For the February 21, 2012 Spring Primary:	105
▪ For the April 3, 2012 Spring Election and Presidential Preference Vote:	095
▪ For the May 8, 2012 Recall Primary:	192
▪ For the June 5, 2012 Recall Election:	162
▪ For the August 14, 2012 Partisan Primary:	<u>128</u>
Total:	682

* Note that the numbers reported for the February, April, and May 2012 Elections differ slightly than what was reported in the May 15 Update to the Board.

Board staff have analyzed Audit results from the February and April Election and reported findings to the municipalities, including clerks and executive officers. Seventy-five (75) plans of action addressing Audit findings have already been received from audited municipalities. In addition, Board staff currently are analyzing Audit results and preparing to report findings from the May and June Elections.

Staff continue to coordinate with municipal clerks to ensure that Accessibility problems uncovered during previous Onsite AccessElections! Accessibility Compliance Audits are resolved as quickly and cost-effectively as possible. In addition, staff are arranging the distribution of grant-funded Accessibility supplies to municipalities in response to documented needs. At the same time, staff are monitoring the use and effectiveness of previous Accessibility grant funding by municipalities. Staff are also working with the agency IT Development Team to streamline the AccessElections! Compliance Audit administrative process.

➤ June 5, 2012 Recall Election (Accessibility Compliance Audits Conducted)

One hundred sixty-two (162) Audits were completed in one hundred thirteen (113) Municipalities.

Twelve (12) temporary workers were hired and trained to conduct Onsite Accessibility Compliance Audits in seven (7) counties: Calumet, Door, Kewaunee, Manitowoc, Milwaukee, Outagamie, and Winnebago Counties during the June 5, 2012 Recall Election. Please refer to **Attachment #3** for details.

➤ August 14, 2012 Partisan Primary (Accessibility Compliance Audits Conducted)

One hundred twenty-eight (128) Audits were completed in the City and County of Milwaukee

Eight (8) temporary workers were hired and trained to conduct Onsite Accessibility Compliance Audits in Milwaukee County during the August 14, 2012 Partisan Primary, in seven (7) Municipalities. Please refer to Attachment #3 for details.

➤ Emerging Top Ten Accessibility Compliance Issues

- Insufficient signage for accessible parking spaces and accessible entrances.
- Doors that require more than 8 lbs. of force to open.
- Doors that do not have lever door handles or an electronic feature such as an automatic opener, power-assist or bell/buzzer.
- Insufficient clearance around voting equipment and tables for a person to maneuver in a wheelchair.
- Lack of privacy for voters using accessible voting equipment.
- Required election notices are not always posted and those posted are not printed in 18-point font.
- Municipalities that received G.A.B. Accessibility improvement grant funds or supplies to assist respective polling places to achieve compliance could not show or demonstrate items that the funds were intended to purchase, or the supplies that were received.
- Gaps and uneven pavement in the pathway from the parking area to the accessible entrance.
- Thresholds that are greater than ½-inch high and would require the addition of a threshold ramp.
- Gravel parking surfaces for marked accessible parking spaces.

11. National Accolades Bestowed on Wisconsin's Government Accountability Board/Elections Division

➤ Election Preparedness/Election Integrity -

The Wisconsin Government Accountability Board ranked among the top five states in a study that determined, "how prepared each state is to ensure that every eligible voter can vote and every vote is counted." The study, titled *Counting Votes 2012: A State by State Look at Voting Technology Preparedness*, was conducted by three agencies: The Common Cause Educational Fund, The Verified Voting Foundation, and The Rutgers Law School. The study ranks states from best to worst in five areas of evaluation including ballot reconciliation, election contingency plans, and post-election audits. The full report can be viewed at: <http://countingvotes.org/sites/default/files/CountingVotes2012.pdf>

➤ 2012 Election Administration Best Practices Award -

The G.A.B. has also been awarded the 2012 *Election Administration Best Practices Award* by The Election Center. The award recognizes the G.A.B. professional paper titled, "Elections at Your Fingertips: App-ortunities to Connect with Wisconsin Voters." On Friday, August 17, 2012, the agency's Director and General Counsel (and Wisconsin's Chief Election Official), will accepted the award during an annual summer meeting of the National

Association of State Election Directors (NASSED), held in Boston. The award winning paper outlines the G.A.B.'s new mobile elections smartphone application, "Vote WI." The functionality of the new app includes: polling place look-up with GPS directions, voter record look-up, clerk information look-up with GPS directions, and much more. "Vote WI," is expected to be available to the general public in September 2012 for the Android platform and October 2012 for the iPhone.

Wisconsin is known as a laboratory for developing technology to effectively support best practices in election administration. The new mobile elections app and the national award-winning recognition is a prime example of the Elections Division's creative innovative initiatives.

Education/Training/Outreach/Technical Assistance

Please refer to **Attachment #4**, titled "Training Summary," for a summary of information on core and special election administration training conducted by staff.

Other Noteworthy Initiatives

1. Voter Data Interface

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) felon information and Department of Health Services (DHS) death data, as part of on-going HAVA compliance.

Clerks process HAVA Checks and confirm matches on a continuous basis during the course of their daily election administration tasks. This process has been followed since the Interfaces became functional in SVRS on August 6, 2008. Since the last Board meeting, clerks processed approximately 358,241 HAVA Checks with DOT/SSA on voter applications in SVRS. This number is much higher than the previous Board report (71,071 HAVA Checks) due to increased voter registration activity related to the 2012 Recall elections.

2. Retroactive HAVA Checks Status

There has been no update on this project since the last Board Meeting. The G.A.B. Help Desk continues to provide assistance to clerks with HAVA check non-matches using DOT's driver license look-up tool (the PARS system). After the fall elections, Board Technical Staff will resume discussions with DOT on enhancing the HAVA Check to include more information for clerks to assist in resolving non-matches.

3. Voter Registration Statistics

As of Monday, July 30, 2012, there were a total of 3,455,292 active voters in SVRS. There were 1,007,213 inactive voters, and 3311,322 cancelled voters. 7,330 voters have been merged by clerks as duplicates since the last report.

Note: An active voter is one whose name will appear on the poll list. An inactive voter is one who may become active again, e.g. convicted felon or someone who has not voted in four years. A cancelled voter is one who will not become active again, e.g. deceased person.

4. G.A.B. Customer Service Center

The G.A.B. Customer Service Center is supporting over 2,000 active SVRS users, the public and election officials. The Customer Service Center staff assisted with processing the canvass, GAB-190 Form data reporting and testing SVRS improvements. The Customer Service Center is continuing to upgrade and maintain the two training environments that are being utilized in the field. Staff are monitoring state enterprise network changes and statuses, assisting with processing data requests and processing voter verification postcards. Customer Service Center staff assisted clerks with configuring and installing SVRS and WEDCS (GAB-190) on new computers.

Overall, the majority of inquiries the G.A.B. Customer Service Center received from clerks during this period regarded assistance with setting up the June 5 Election and August 14 Primary; reconciling the May 8 Primary and the June 5 Election; running SVRS reports; redistricting; recall issues and Voter ID changes. Customer Service Staff assisted and contacted clerks for completing GAB-190 reports and the mandatory USDOJ Consent Decree reporting surveys. There was a volume of calls from clerks regarding the Military and Overseas Absentee applications. Calls from local officials and election officials during this period were about absentee processing, election procedures, post election reporting and Voter ID requirements.

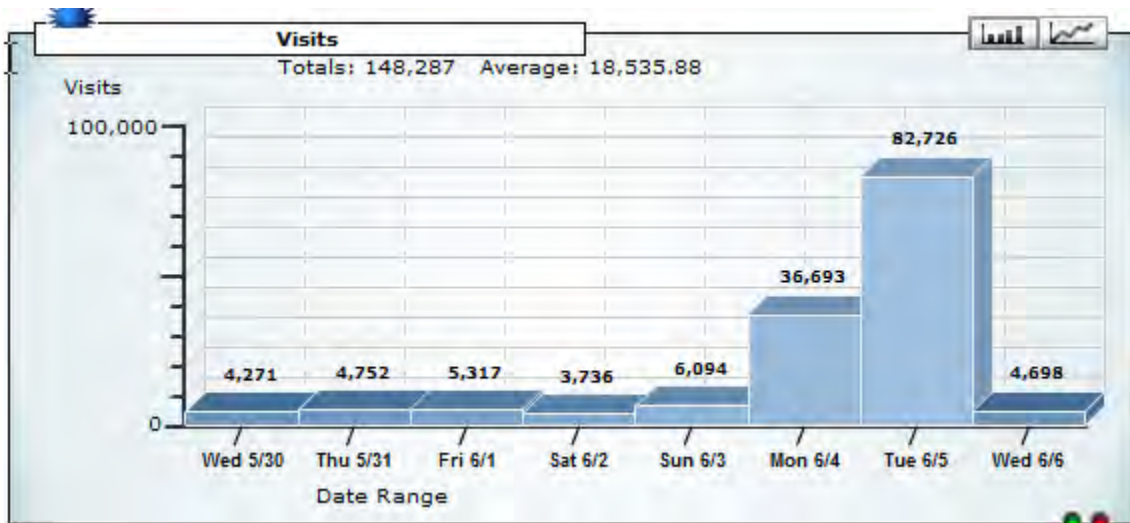
Public and elector inquiries consisted of a number of electors that had moved within the 28 day window and were unsure where or how to register and vote; students and parents with similar questions that included electors with “early voting” (absentee) questions; electors that had been redistricted out of their old districts voicing concerns; and, public voicing concerns about mailings, robo-calls and campaign materials they had received.

Calls for this period also consisted of potential candidates requesting information about ballot access for the August Primary; campaign finance reporting issues, and the Statement of Economic Interest filing. The Ethics Division’s CFIS and Lobbying reporting also generated a measurable amount of call traffic prior to the filing deadlines.

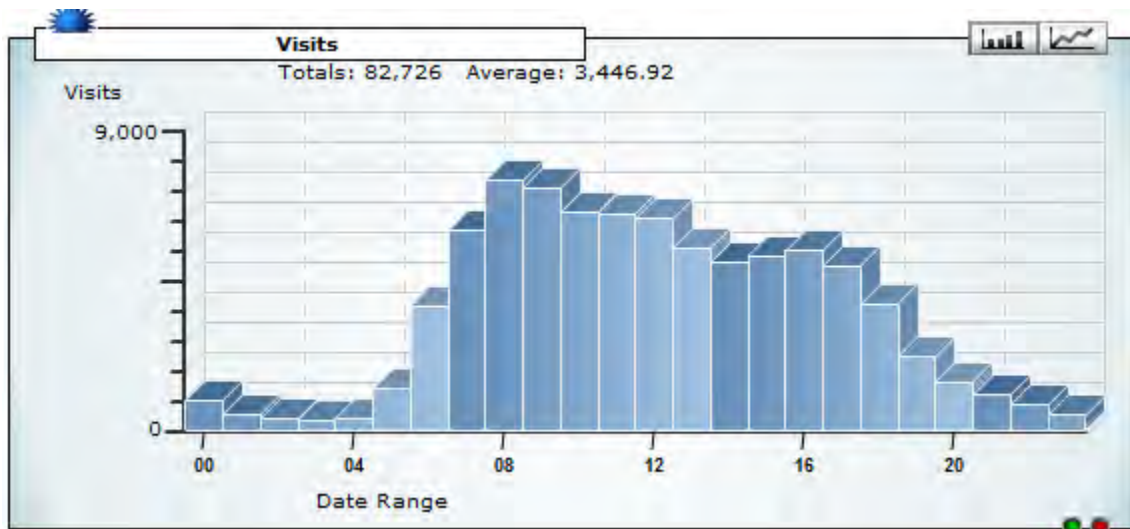
G.A.B. Customer Service Center Call Volume (608-261-2028)

May 2012	3,308
June 2012	2,150
July 2012	1,368
August 2012 (through 08/16/12)	1,534
Total Calls for Reporting Period	8,260

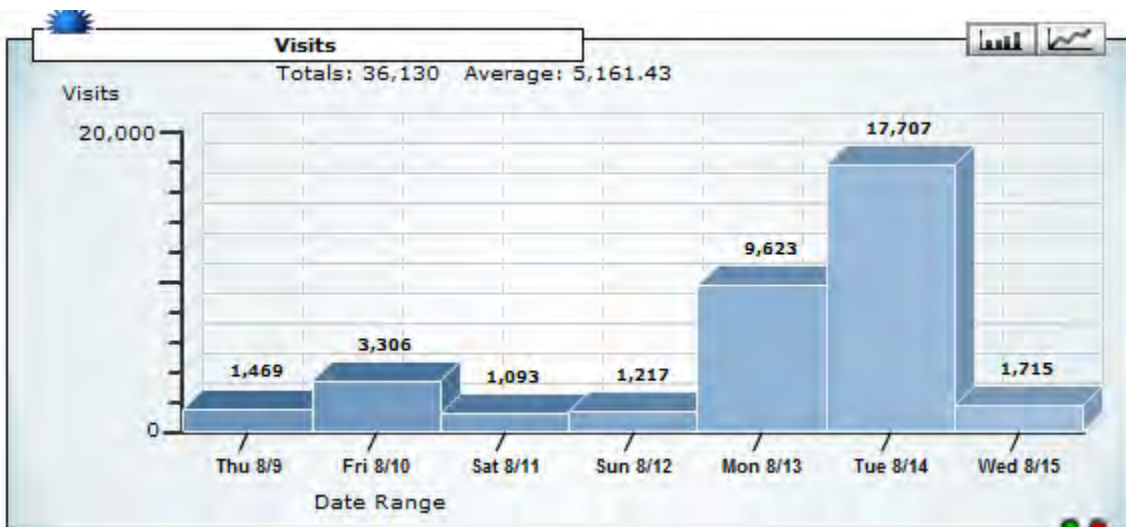
The graph below illustrates unique voter visits accessing the G.A.B. Voter Public Access (VPA) website for the week prior to and including the June 5, 2012 Recall Election. Election Day had 82,726 unique visitors, typically viewing 16.8 pages per visit.



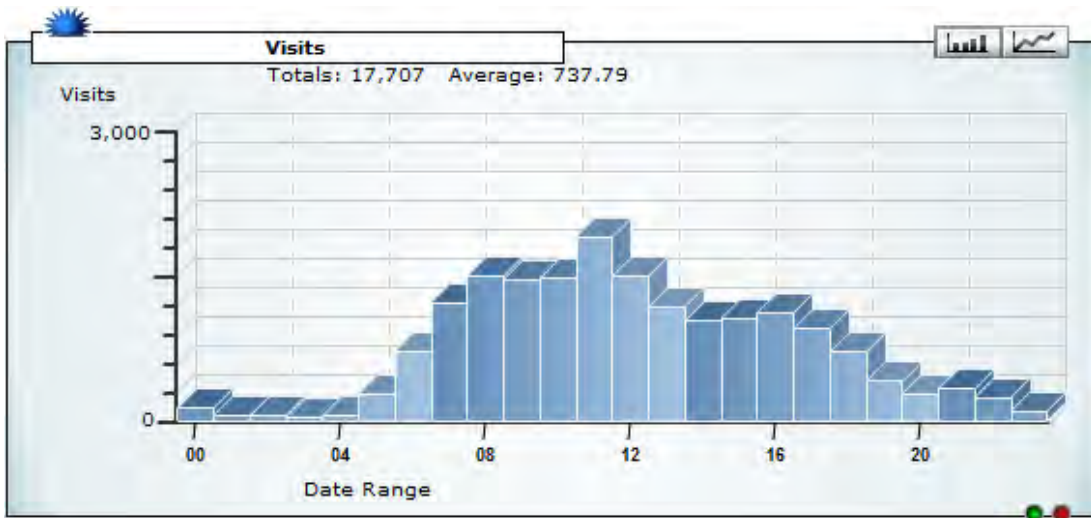
The graph on the next page illustrates traffic by the hour just on June 5, Election Day.



The graph below illustrates unique voter visits accessing the GAB Voter Public Access (VPA) website for the week prior to and including the August 14, 2012 Partisan Primary. Primary Day had 17,707 unique visitors, typically viewing 15.1 pages per visit.



The graph on the next page illustrates traffic by the hour just on August 14, Primary Day.



5. The 2010 SVRS Census Redistricting Project

As previously reported, most of the activity for the 2010 Decennial Redistricting in SVRS is now complete. Redistricting staff at the G.A.B. are now focused on providing on-going support to clerks using the new mapping tools in SVRS. Some of these on-going activities include:

- The SVRS Training Manual is being updated with comprehensive instructions on how to use the new mapping features in SVRS.
- Board Staff are preparing a short 5-7 minute instructional video for clerks giving demonstrations of some of the more complicated mapping functions that are easier to explain by showing.
- Address Boundary exceptions are now being generated on an ongoing basis in SVRS to give clerks a “queue” where they can review new addresses that have been added close to district boundary lines to ensure new registrants are being districted correctly.

- Board staff have added district data quality statistics to the metrics used to ensure clerks are prepared for upcoming elections. Board staff follow up with municipalities who have district data quality issues prior to an election. Some of these metrics include the number of addresses close to the boundary lines that have not yet been reviewed (also known as Address Boundary Exceptions), the number of addresses where SVRS is not confident in the exact location that have not yet been reviewed (also known as Geo Exceptions), and the number of voters who have not been assigned a district combo.
- Board technical staff are reviewing the mapping functions in SVRS and will be making recommendations to make the mapping features easier for clerks to use, and more intuitive, based on feedback we have received from clerks.
- Board staff continues to work with local land use and GIS experts at the municipalities and counties to improve the quality of the maps in SVRS as well as the geographic locations of the voters' addresses.

6. Click and Mail Launched

Board staff are pleased to announce that the new Click and Mail voter registration process became available to voters on Monday, August 6, 2012. As has been reported in previous Elections Division updates and Board memos, Click and Mail is an initiative Board staff have been working on since 2010. To reduce the need for data entry by municipal clerks, the system allows a voter to fill in voter registration information on a website, which then prepares a neatly typed GAB-131 voter registration form for the voter fill out a voter registration application online, print it and mail it or hand deliver it to their local clerk. The data the voter enters into Click and Mail is transferred into SVRS so when the clerk receives the form, they simply process the pending application without having to type any of the data.

Click and Mail gives voters the correct instructions to bring in their form based on the time period that the voter registers. If they register during open registration, they receive instructions to mail the form in. If they register during the late period they are instructed to take it in person to the municipal clerk's office. If they register on election day, they are directed to take their form to their polling place. Proof of residency instructions are also provided in the scenarios where voters need to bring proof of residence along with their form.

Click and Mail is currently in a "soft launch" period. The Register to Vote link is now available on the Voter Public Access website, but Board staff do not plan to widely publicize Click and Mail until after the August election. This approach gives clerks a chance to try out Click and Mail and become familiar with it before it is promoted to the public. Staff predict that Click and Mail will be used heavily leading up to the November Presidential Election. The soft launch period also allows clerks to use Click and Mail for the August election. Several municipal clerks have already reported to the G.A.B. that they plan to have Click and Mail available on computers at their polling places to facilitate Election Day Registrations.

7. Vote WI App Launched

Board staff are also pleased to announce the new mobile elections smartphone application "Vote WI." Vote WI is part of the G.A.B.'s social media initiative which included the launch of Facebook and Twitter. Vote WI will allow voters to access information similar to what is currently housed on the G.A.B.'s Voter Public Access website (vpa.wi.gov). Vote WI will allow voters with smartphones to look up their polling place, their clerk information, their registration status, their voting history, and much more. In addition, Vote WI provides users with instant GPS directions to their polling place and the clerk's office, as well as one-touch calling and e-mailing to clerks and the G.A.B.

Vote WI is currently in the “Beta Test” phase. Internal testing done by IT staff and elections staff was completed in mid-July. On July 27, 2012 correspondence was sent to all municipal and county clerk’s asking them to download and test Vote WI. Through the clerk testing we have received widely positive feedback and have identified one small “bug” which has been remedied. On August 15, 2012 we invited community partner organizations to participate in the testing. Testing will conclude on August 31, 2012. Vote WI will launch to the public the week of September 4, 2012. Vote WI is currently developed and in testing for the Android smartphone platform. Development for the iPhone platform is currently underway and is expected to be available to the public in October 2012.

8. SAVE Database Research

In response to an inquiry from State Senator Mary Lazich, the Elections Division Administrator appointed a team of Board staff to research the Systematic Alien Verification for Entitlements (SAVE) program administered by the Federal Department of Homeland Security. Several states have recently been reported in the news media for using (or investigating use of) the SAVE database to verify citizenship, including Florida, Ohio, Colorado, and Arizona. The Team is charged with gathering information on the SAVE database and preparing reports on findings to be presented to the Board at the Board’s December 2012 meeting.

9. 2012 Recall Senate Districts

As summarized in previous Elections Division Updates, the G.A.B. technical staff successfully loaded the Recall Senate Districts into SVRS for use in the State Senate Recall elections this summer. Detailed analysis was performed to ensure voters were placed in the correct Recall Senate District, and special materials were sent to clerks impacted by the Recall Senate Districts. Very few problems were reported relative to Recall Senate Districts, and the election was administered smoothly in SVRS. Staff were pleased with the successful execution of the Recall Senate Districts in SVRS for this election. The Recall Senate districts will be removed from SVRS after the November General and Presidential Election, as they will no longer be needed.

10. SVRS Core Activities

A. Software Upgrade(s)

Several updates have been made to SVRS applications:

- The SVRS system was updated with new codes that are part of the Military and Overseas voter grant received from the US Department of Defense’s Federal Voting Assistance Program (FVAP). Upgrades were made to improve data quality for mailing addresses and addresses that are located close to district boundaries. A new report was added to assist clerks in reconciling their election voter participation.
- The second phase of the Canvass Reporting System (CRS) was completed. County canvasses can now be run independently from one another. In the past, all counties had to be certified by the G.A.B. before any county could begin recording recount results in the CRS. There are now three types of result sets that can be tracked in CRS: Original, Late arriving Absentee and Provisional, and Recount.
- Two new reports were added. The Canvass Municipal Report, GAB-106 allows municipalities to print a report with reporting unit level results for a single municipality. The Canvass Percentage Completed Report shows the percentage of reporting units with information entered into CRS. The GAB-106 report was updated to include the percentage of reporting units complete for each contest, this update is a feature that can be used by counties that use CRS for election night reporting.

- The WEDCS System was updated to include the revised GAB-190 survey. The election cost survey was added the WEDCS site. Other updates were made to make WEDCS easier for clerks to fill out the survey correctly.
- The Voter Public Access website was updated with the new Click and Mail registration feature. The Click and Mail application is discussed in a separate section of this report.
- The new Provisional Ballot Tracking System and Outstanding Absentee Reporting System were updated to address technical bugs and improve overall usability.

A new version of the SVRS code is planned to be released in mid-September, SVRS 8.2.2. SVRS 8.2.2 will include updates to SVRS needed for implementation of the grant project for Military and Overseas Voters (the FVAP project funded by a grant received from the US Department of Defense). The voter address look-up, address data entry, and address validation processes will be improved. Updated versions of the GAB-190 and other SVRS reports are also planned.

B. System Outages

There were no unscheduled outages of the SVRS system during this reporting period. The G.A.B. was affected by an AT&T voicemail service outage on June 6 that was resolved late in the day. Callers were unable to leave voice messages and staff were unable to retrieve messages.

C. Data Requests

Staff regularly receive requests from customers interested in purchasing electronic voter lists. SVRS has the capability and capacity to generate electronic voter lists statewide, for any county or municipality in the state, or by any election district, from congressional districts to school districts. The voter lists also include all elections that a voter has participated in, going back to 2006 when the system was deployed.

The following statistics demonstrate the activity in this area since the last Elections Division Update through August 16, 2012:

- One hundred fifty (150) inquiries were received requesting information on purchasing electronic voter lists from the SVRS system.
- Seventy-seven (77) electronic voter lists were purchased.
- \$99,350 was collected for SVRS voter data.

30-45-60 Day Forecast

1. Prepare for the November 6, 2012 General and Presidential Election by implementing the 2012 Fall Election Strategic Initiative.
2. Recruit and oversee training of temporary staff to conduct onsite AccessElections! Accessibility Compliance Audits during the November 6, 2012 General and Presidential Election.
3. Continue with implementation of the \$1.9 million dollar grant award received from the US Department of Defense, Federal Voter Assistance Program (FVAP). The purpose of the grant is to create an Online Ballot Delivery System for Military and Overseas Electors that must be launched and activated in time for Wisconsin's military and overseas voters to access and use at least 45 days

before the November 6, 2012 General and Presidential Election. The Grant Period is March 5, 2012 until November 30, 2016.

4. Appoint a Staff Team and lead the effort to draft of a protocol that will be used to dialogue with clerks and other partners that include but not limited to Wisconsin Counties Association, Wisconsin Towns Association, Wisconsin League of Municipalities, leadership in the Legislature and others for the purpose of developing a consensus for an action plan that will address clerks' workload concerns.

Action Items

None.

State of Wisconsin \ Government Accountability Board

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JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

ATTACHMENT #1

DATE: August 18, 2012

TO: Nathaniel E. Robinson
Elections Division Administrator
Government Accountability Board

FROM: GAB Staff Members: Allison Coakley, Brian Bell, Nate Judnic, Adam Harvell

SUBJECT: Observing Elections in Racine and other Municipalities in Racine County
(During the August 14, 2012 Partisan Primary)

Government Accountability Board staff observed elections throughout Racine County for the August 14, 2012 Partisan Primary. Three teams composed of Director Kevin J. Kennedy, Training Officer Allison Coakley, Elections Data Manager Brian Bell, Campaign Finance Auditor Nate Judnic and Campaign Finance Auditor Adam Harvell visited 12 + polling locations between the opening of the polls at 7:00 a.m. and closing at 8:00 p.m.

Overall, staff reported that Election Day activities went smoothly and election inspectors conducted their duties in an efficient and effective manner. Turnout was light only three election observers had signed-in at the polling locations visited. City of Racine Clerk Janice Johnson Martin was in attendance at several locations giving instructions and answering questions.

Staff noted a couple of problems that could be corrected with additional training or direction from the clerk's office and have identified three areas that if addressed could improve the election experience for the voters and election officials in November:

Reconfigure the polling place voting area(s) in locations serving multiple wards. In several polling places serving more than one ward, the voting area was confusing and not configured to maximize efficiency and traffic flow. The way a polling place is set up affects how easy it will be for election inspectors to do their jobs and for voters to cast their ballots. Wards should be easy to identify and separate from each other.

Plan and prepare for election observers. Most chief inspectors had the election observer sign-in process down pat, but in a couple of locations the chief inspector either did not have staff sign in and issue name badges and/or did not have an area set up for election observers. The area(s) reserved for election observers should be taped off or otherwise marked *before* the polls open to make the space easy to identify and clearly demonstrate where an observer may and may not be in the voting area.

Develop and document end of night election inspector duties and processes. Staff observed several problematic closing procedures and a few election inspectors who did not appear to know what to do in several situations. The municipal clerk was observed giving several election inspectors what appeared to be last minute instructions on the tally sheets.

Training in advance of the November General Election will be made available to clerks during which references to the Post-Election Checklist included in the Election Day Manual that details the election inspector's end of night duties, will be emphasized.

ATTACHMENT #2

List of the 19 municipalities that transmitted absentee ballot to military and overseas voters after the 45 day transmit time required by the MOVE Act.

Municipality	County
City of Algoma: 31201	Kewaunee
City of Delafield: 68216	Waukesha
Town of Carson: 50012	Portage
Town of Clyman: 14012	Dodge
Town of Dewhurst: 10008	Clark
Town of Dover: 52006	Racine
Town of Elba: 14014	Dodge
Town of Franklin: 63012	Vernon
Town of Lake Mills: 28018	Jefferson
Town of Liberty: 36016	Manitowoc
Town of Necedah: 29028	Juneau
Town of Newark: 54028	Rock
Town of Prairie Du Chien: 12014	Crawford
Town of Worden: 10064	Clark
Town of Wrightstown: 05040	Brown
Village of Denmark: 05116	Brown
Village of Sister Bay: 15181	Door
Village of Wind Point: 52192	Racine
Town of Ashland: 02004	Ashland

ATTACHMENT #3

AccessElections!

Government Accountability Board's Accessibility Compliance Program
(Elections and Voting Accessibility)

The June 5, 2012 Recall Election

One hundred sixty-two (162) Accessibility Audits completed in the
following one hundred thirteen (113) Municipalities.

County	City	Town	Village
Door	Sturgeon Bay	Baileys Harbor, Brussels, Clay Banks, Egg Harbor, Forestville, Gardner, Gibraltar, Jacksonport, Liberty Grove, Nasewaupsee, Sevastopol, Sturgeon Bay, Union	Egg Harbor, Ephraim, Forestville, Sister Bay
Kewaunee	Algoma, Kewaunee	Ahnapee, Carlton, Casco, Franklin, Lincoln, Luxemburg, Montpelier, Pierce, Red River, West Kewaunee	Luxemburg
Outagamie	Appleton, Kaukauna, New London	Black Creek, Bovina, Buchanan, Center, Dale, Ellington, Freedom, Grand Chute, Greenville, Hortonia, Kaukauna, Liberty, Maple Creek, Oneida, Osborn, Seymour, Vandenbroek	Bear Creek, Combined Locks, Hortonville, Howard, Kimberly, Little Chute, Nichols, Shiocton, Wrightstown
Manitowoc	Kiel, Manitowoc, Two Rivers	Cato, Centerville, Cooperstown, Eaton, Franklin, Gibson, Kossuth, Liberty, Manitowoc, Manitowoc Rapids, Maple Grove, Meeme, Mishicot, Newton, Rockland, Schleswig, Two Creeks, Two Rivers	Cleveland, Francis Creek, Kellnersville, Mishicot, Reedsville, St. Nazianz, Valders, Whitelaw
Calumet	Appleton, Brillion, Chilton, Kiel, Menasha	Brillion, Brothertown, Charlestown, Chilton, Harrison, New Holstein, Rantoul, Stockbridge, Woodville	Hilbert, Potter, Sherwood, Stockbridge
Winnebago	Appleton, Menasha, Neenah	Clayton, Menasha, Neenah	
Milwaukee	Milwaukee		

The August 14, 2012 Partisan Primary

One hundred sixty-two (128) Audits were completed in the
City and County of Milwaukee

County	City	Town	Village
Milwaukee	Brown Deer, Cudahy, Greenfield, Milwaukee, Wauwatosa, West Allis	None	Hales Corners

ATTACHMENT #4

G.A.B. Election Division's Training Initiatives
5/16/2012 – 8/27/2012

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
SVRS "Initial" Application and Election Management	Instruction in core SVRS functions – how to navigate the system, how to add voters, how to set up elections and print poll books.	16 hours	New users of the SVRS application software.	1	17
SVRS "Advanced" Election Management	Instruction for those who have taken "initial" SVRS training and need refresher training or want to work with more advanced features of SVRS.	2 types of classes: Absentee Process; HAVA Interfaces, Reports, Labels & Mailings; 4 hours each	Experienced users of the SVRS application software.	1	17
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.	50
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 webinars conducted by G.A.B. staff; recordings posted to website for use as recertification training.	40

ATTACHMENT #4

G.A.B. Election Division's Training Initiatives
5/16/2012 – 8/27/2012

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
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.	6 classes: 2 webinars conducted by G.A.B. staff; 4 training classes conducted by certified clerk-trainers; recordings posted to website for training.	160
Election Administration Training Webinar Series	Series of 8 - 12 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	45 – 90 minute webinar conference, hosted and conducted by Elections Division staff.	Clerks and chief inspectors; campaign treasurers and candidates.	July 30, 2012: Preparing for the August Partisan Primary *Full schedule in development and will be posted and distributed to clerks mid-August 2012 for the 2012-2013 series.	Possible 500 per broadcast; recordings and materials available for download from website.
WBETS	Web Based Election Training System. Still under development. Reference materials were made available to the clerks in February; voter registration training made available to clerks 3/24/2008.	Varies	County and municipal clerks and their staff.	Phase 1 of eLearning training plan close to completion; Phase 2 under discussion.	Site is available for clerks to train temp workers in data entry; relies are also able to access the site upon request.

ATTACHMENT #4

G.A.B. Election Division's Training Initiatives
5/16/2012 – 8/27/2012

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Other	<ul style="list-style-type: none"> • Board staff gave a 2-day election administration and SVRS presentations to county clerks at WCCA summer Conference in Sheboygan. • Board staff working on migration of several training programs to online and DVD formats. • Board staff attending WMCA August conference in Middleton. 				

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 28, 2012 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, Chief Administrative Officer
Reid Magney, Public Information Officer

SUBJECT: Administrative Activities

Agency Operations

Introduction

The primary administrative focus for this reporting period has been preparing for the agency's fiscal year close-out, preparing the FY-13 operating budget, preparing for the 2013-15 biennial budget request, procuring goods and services, recruiting staff, communicating with agency customers, and developing legislative and media presentations.

Noteworthy Activities

1. Fiscal Year 12 Close-Out Activities and FY-13 Operating Budget Preparations

The financial services section has been extremely busy the last six weeks preparing numerous financial transactions in preparation for the end of the state fiscal year (June 30, 2012) and setting up our FY-13 operating budget. See chart below for FY-12 expenditures.

FY-12 Expenditures	GPR	PR (Lobby)	PR (CF & M/S)	SEG-F (HAVA)	PR-Fed (FVAP)	TOTAL
Salaries	1,017,011	171,604		670,392	5,431	1,864,438
LTE/Misc. Salaries	47,250	0		2,210		49,460
Fringe Benefits	353,041	70,309		302,988	776	727,114
Supplies and Services	1,833,777	130,380	50,900	1,429,241	158,923	3,603,221
Aids to municipalities				9,365		9,365
Investigations	46,128					46,128
Clerk Training	82,600					82,600
Total Costs	3,379,807	372,293	50,900	2,414,196	165,130	6,382,326

- Staff attended Form 78 meetings to learn the new electronic format for certifying our fiscal year 2012 revenues, fund expenditures, and cash balances. New SharePoint workflow processing and approval website allows for less paperwork and quicker turnaround time.
- Staff reviewed preliminary Form 78's each week for accuracy and completeness, then reconciled back to internal accounting files. Final Form 78's were timely approved and sent to State Controller's Office on August 6th.

- Staff completed journal entries to surrender two petty cash funds which will be replaced by p-card usage, thereby reducing cash on hand risks and maximizing rebates received from p-card purchases.
- Staff monitored the final expenditure of federal Section 261 funds allotted for the state fiscal year ending 6/30/12, and then coordinated the authorization setup for the new fiscal year 2013 allotment of \$ 201,733 of Section 261 funds within the Federal Cash Management (FCM) system, which allows our agency to begin expending those monies for the accessibility voting program. Assisted DOA-Cash Management staff with a fund coding problem, to allow for receiving the revenues.
- Staff prepared a fiscal year-end 2012 transfer appropriation entry, to re-allocate federal funds from the LTE salary line unit to cover general service billings payable to DOA and voting equipment reimbursements payable to local municipalities. Set up Revenue budgets and Expense budgets in Wismart for new fiscal year processing. Caught coding errors on year-end payroll accruals and on future fiscal year payroll withholdings, then booked correcting entries to assign proper reporting categories.
- Set up new 2013 fiscal year Excel files to account for expenditure and payroll vouchers for all agency appropriations.
- Completed the transfer out of the WI Election Campaign Fund 218 balance from GAB to a State General Fund in accordance with Act 32, Section 9218.

2. 2013-15 Biennial Budget Request

On Tuesday, August 14, 2012, staff received Major Budget Policies and Budget instructions for preparing its 2013-2015 biennial budget request. Most agencies are required to hold their overall fiscal year GPR budgets to fiscal year 2011-13 levels. The GPR base budget for 2013 is \$2,664,700. In addition to zero growth for the 2013-2015 biennium agencies are required to permanently lapse the amounts required in the 2011-13 biennium. G.A.B. is required to lapse \$386,600 in the biennium. Annually, G.A.B. will be required to lapse \$193,300. The budget submission is due to the State Budget Office and the Legislative Fiscal Bureau on September 17, 2012.

3. Procurements

Since the last Board meeting, the procurement section has worked on several high-priority projects. One project has been to hire temporary services workers to call municipal clerks to obtain responses to the MOVE Act survey on July 17, 18, and 19. Temporary services workers were also hired on July 25 and 27 to mark test ballots for the ES&S Voting Equipment test. Another project was to facilitate the process of hiring temporary services workers to conduct polling place accessibility surveys on August 14 and to train them on the reimbursement process for expenses.

The procurement section has also helped to purchase various software and hardware to improve the modernization process of the Statewide Voter Registration System and facilitate the Federal Voting Assistance Program.

The procurement section has also purchased various Apple products to develop and test the Voter Public Access mobile application on the Apple market.

4. Contract Sunshine

Contract Sunshine has had another successful certification period. All 32 agencies that are required to report, plus one optional-reporting agency, have certified their data for the certification period April 2012 through July 2012.

5. Federal Voting Assistance Program's (FVAP) Electronic Absentee Systems for Elections (EASE) Grant

- Staff negotiated minimal proof of payment documentation for FVAP expenditures with U.S. Department of Defense personnel. Prepared and timely filed the first quarterly SF 425 Report for FVAP grant. Claimed reimbursement for May & June expenditures, prepared journal entries to record revenue receipts, coordinated accounting for incoming wire transfers with DOA-Treasury staff, and followed up with federal personnel on why one receipt was not yet approved. Instructed another financial staff person to serve as backup for monthly online claim reimbursement requests. Researched and assisted with the compilation of budget justification for purchasing office partitions and workstations for FVAP staff from rent savings, without having to obtain pre-approval from Department of Defense.
- In mid-August the renovations for the FVAP space were completed at the Central Services location. On August 16, we were notified that all tenants are being forced to vacate the site by the end of the year. Staff is working with the Division of State Facilities to garner a new space for the FVAP team.

6. Other Financial Services Section Activity

- Identified \$ 398,565 of HAVA Section 102 interest earnings, previously recorded as HAVA Section 101 revenues, and booked a correcting journal entry to HAVA Section 251 program, per the latest U.S. EAC directive.
- Calculated and booked the second quarter payroll adjusting entry, to properly allocate salaries and fringe benefits between federal and state programs. Assisted with resolving a payroll per diem problem and initiated a time reporting process to properly allocate temporary staff costs which should be split-funded between federal and state programs.
- Compiled schedule of overtime worked by staff, and then produced voter ID documents & correspondence, both in response to federal discovery request.
- Worked with DOA auditor to reconcile the payroll travel balance sheet accounts and booked the correcting journal entries. Wrote preliminary GAB responses to state audit report findings and developed procedural changes to properly account for federal travel reimbursements to GPR employees. Prepared and booked other journal entries to correct several prior year balance sheet appropriation coding errors.
- Coordinated with DOA-Treasury & U.S. Bank to effect the transition of the new lobbying e-payment services application from user testing to live production, launched on June 19th.
- Researched several HAVA expenditure compliance questions, including the feasibility of GPR usage of SVRS training environment equipment currently being used by federal employees, senate re-districting work in SVRS for recall elections, investigations time worked by federal employees, nomination papers review time worked by federal employees, MOVE consent decree work, potential sub grants payable to the Disability Rights Wisconsin organization for updating

their voter guide, federal IT staff time worked on DOA projects, and voting equipment testing costs billable to ES&S manufacturer.

- Evaluating QuickBooks accounting and budgeting software, to replace manual & time-intensive Excel files. Attended PeopleSoft demos on Enterprise Resource Planning (ERP) software, including employee time distribution, general ledger, and financial reporting.

7. Staffing

Currently, we are working on a recruitment strategy for hiring 26 new federally funded positions that began on July 1, 2012. To-date, we have filled eight of the 26 positions.

8. Communications Report

Since the May 15, 2012 Board meeting, the Public Information Officer has engaged in the following communications activities in furtherance of the G.A.B.'s mission:

The PIO continued to respond to a high number of media and public inquiries on a variety of subjects, especially June 5 recall elections. The PIO set up interviews with print and electronic journalists for Director Kennedy and also gave multiple interviews when he was not available.

Between May 1 and August 16, the PIO has responded to approximately 624 telephone calls from media and the public requesting information and interviews (333 in May, 253 calls June, 129 calls in July and 109 calls in August). These media contacts do not count the many media and public emails received and responded to.

The PIO has been assisting with several Elections Division projects including coordinating the public demonstration of new electronic voting equipment, serving on the team studying use of the SAVE database, and serving on the team planning for the Fall Election Cycle.

The PIO has also worked on a variety of other projects including responding to concerns from Legislators on a variety of topics, and communicating with our clerk partners.

9. Meetings and Presentations

During the time since the May 15, 2012 Board meeting, Director Kennedy has been participating in a series of meetings and working with agency staff on several projects. The primary focus of the staff meetings has been to address recall election preparation, recount, partisan primary and litigation related issues. Agency activity has also focused on the Federal Voting Assistance Program (FVAP) grant to facilitate delivery of ballots to military and overseas voters, implementation of 2011 Wisconsin Act 227 which significantly changed absentee voting requirements for elections following the April 3, 2012 Spring Election and the launching of new social media initiatives.

The media has made a number of inquiries on legal issues as well as the rules, and costs associated with the recall and partisan primary elections. This has led to extended interviews with print journalists and a number of television and radio appearances.

On May 7 and 8, 2012 Director Kennedy participated in a forum at the Institute for Politics in the Kennedy School of Government at Harvard University. The symposium was co-hosted by the National Association of Secretaries of State. The focus was to bring together key stakeholders in election administration to discuss the future of the U. S. Elections Assistance Commission.

On May 15, 2012, Director Kennedy was interviewed by WTMJ radio on the availability of absentee ballots for the June recall elections. On May 18, 2012, WISC TV in Madison followed up with an interview on student voting in June recall elections.

On May 23, 2012, Director Kennedy made a presentation to municipal officials at the Mid-Moraine Association in Slinger on the Government Accountability Board, its duties and responsibilities.

On May 31, 2012, John Colbert of WIBA radio conducted a lengthy interview of Director Kennedy on the June 5 recall elections. Mr. Colbert routinely conducts these interviews before major election events such as the presidential preference vote and November general elections. WISC TV Channel 3 also interviewed the Director that day. Several news organizations conducted interviews on June 4 and June 6, 2012 immediately preceding and following the recall elections.

As part of the news coverage leading up to the June 5, 2012 recall elections, Director Kennedy also appeared on the Wisconsin Public Television program *Here and Now* on June 1, 2012. The segment, "Fake or protest? GAB's Kevin Kennedy weighs in," can be viewed at this link: <http://wpt.org/NPA/HAN1042.cfm>. Director Kennedy was also interviewed extensively that day by Eric Shawn of Fox News on election fraud. Mr. Shawn devotes extensive coverage to the issue of fraud in U. S. elections, and used a small portion of the interview in this June 3 story: <http://video.foxnews.com/v/1671125706001/voter-fraud-investigation-in-wisconsin-recall>.

On June 5, 2012, the agency hosted a group of visitors from Kenya arranged by former State Senate Chief Clerk Donald Schneider. Director Kennedy, Katie Mueller and Ethics Division Administrator Jon Becker discussed recall activity in Wisconsin. The Kenyan constitution has provisions for recall, so the topic was of particular interest to the group.

Director Kennedy and Sarah Whitt participated in a series of workshops sponsored by the Pew Center on the States and the Humphrey Institute at the University of Minnesota in Minneapolis on June 13 through June 15, 2012. The workshops focused on social media and technology in elections.

On June 25 and 26, 2012 Director Kennedy led a team of staff members including Training Director Allison Coakley, Elections Supervisor Ross Hein, Sarah Whitt, Colleen Adams and Brian Bell to the Annual Symposium of the Wisconsin County Clerks in Sheboygan.

Director Kennedy met with a group of state and local election administrators and academic researchers on July 26, 27, 2012 in Denver, Colorado as part of the Pew Center on the States Performance Index of Elections project. This on-going project is designed to develop methods of measuring election administration performance using data collected by election administrators. Director Kennedy showcased the WEDCS data collection system to this group at an earlier meeting.

On August 8, 2012, Director Kennedy was interviewed by Steve Walters of Wisconsin Eye along with Andrea Kaminski of the League of Women Voters of Wisconsin. The program, Campaign 2012 Newsmakers: Review of the June 5th Recalls, can be viewed at this link: <http://www.wiseye.org/videoplayer/vp.html?sid=8607>.

Director Kennedy and Lead Elections Specialist Diane Lowe attended the annual conference of the Election Center in Boston Massachusetts from August 15 through August 17, 2012. The Election Center is a national organization focused on training state and local election officials. Diane Lowe

also took a professional education course to complete the renewal of her Certified Election and Registration Administrator (CERA) certification.

Director Kennedy also participated in the National Association of State Election Directors (NASED) summer meeting on August 17 through August 19, 2012. At the NASED meeting, Director Kennedy accepted an award from the Election Center on behalf of the agency recognizing the development of a mobile app for access to voting, registration and polling place information as the Best Practice by a State in election administration. The agency's entry was submitted in the form of a paper entitled *Elections at Your Fingertips: App-ortunities to Connect with Wisconsin Voters*. He also made a presentation on current trends in election litigation along with Indiana Co-Director of Elections and NASED President Brad King and Neil Erickson, Nebraska Deputy Secretary of State for Elections.

Looking Ahead

As you will read in the Elections Division report, our staff has been very busy planning for the November General Election. The "Back to Basics" initiative they have developed will provide better voter education, enhanced training, new technology tools and targeted assistance to municipalities. This will help local election officials and the public to be better prepared for Election Day.

Significant work will need to be done to prepare the 2013-15 biennial budget request as well as to develop legislative initiatives for the 2013 session.

The Board's next meeting is Tuesday October 23, 2012 beginning at 9:00 a.m. in agency offices.

I would like the Board Members to consider moving the date of the December 11, 2012 meeting to the following week, Tuesday, December 18, 2012. There is a post-election meeting sponsored by the Pew Center for the States and all state Chief Election Officials have been invited to participate with scholars and other election observers. The meeting will focus on the issues from the 2012 Presidential and General election as well as the anticipated state and federal legislative agendas in 2013.

Action Items

Change the December 11, 2012 meeting date to Tuesday, December 18, 2012.