

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: May 14, 2012

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

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

SUBJECT: Absentee Ballots **May Not be Issued** to Any Voter Prior to Certification of the Results of the Election!

It has come to our attention that several county clerks have provided recall ballot proofs to their municipal clerks even though the recall primary has not been certified. *Upon certification of the primary*, municipal clerks are to send a copy of the ballot proof to each military voter and any other voter who is out of the state or country. Municipal clerks who have already received these “substitute ballots” from their county clerk *may not issue* them to any voter until the primary is certified.

Background

The timing of a recall primary and subsequent recall election is provided in the Wisconsin Constitution, Article XIII, Section 12. There are only four weeks between a recall primary and recall election. This already condensed time frame is exacerbated by recent legislation that allows absentee ballots and provisional ballots to be counted if postmarked by Election Day and received by the Friday after the election. Further, recent legislation provides that the deadline for the County Boards of Canvassers to meet *and certify* the primary results to the G.A.B. is the Tuesday after the election (May 15). The statutory deadline for ballots to be ready for absentee voting is May 15th. As you can see, the constitutional timing of recall elections and statutory deadlines collide making it impossible to have ballots printed by May 15th.

Mitigation

In an effort to diminish the effect on voters, the G.A.B. consulted with a representative group of county clerks to discuss moving the county canvass up from Tuesday to Monday. The county clerks involved in the discussion were agreeable, and on May 7, 2012 a communication was posted to the Recent Clerk Communication page of the G.A.B. website encouraging municipal clerks to convene their MBOC to process and count late-arriving absentee ballots and provisional ballots so that final results could be provided to the county clerk no later than

9:00 a.m. on Monday, May 14th. In the same communication, county clerks were urged to convene their County Boards of Canvassers on Monday afternoon.

Since about 40 percent of the county clerks will not complete their canvasses until May 15th, that puts the conclusion of the period for petitioning for a recount at 5:00 pm on Friday, May 18. Even though the likelihood of a petition being filed is remote, the G.A.B. cannot certify until the recount period has passed without incident. If even one county clerk fails to file their canvass with the G.A.B. by Tuesday, May 15th, certification will be delayed until the following week. The certification will be emailed to all county clerks and posted to the Recent Clerk Communication page.

Stay in Touch

Municipal clerk should continue to monitor the Recent Communications page of the G.A.B. website (<http://gab.wi.gov/clerks/recent-communications>) and continue to be in contact with the county clerk so that they can be ready to mail substitute ballots to military and out-of-state voters as soon as the primary is certified. If absentee ballots are not in the possession of the municipal clerk on Monday, May 21st, all absentee voters who have requested absentee ballots must be sent a substitute ballot. All substitute ballots will either have to be hand counted or remade in order to be counted by the optical scan equipment.

It is our duty as election officials to strive, within the parameters of the law, to enable qualified electors to exercise their right to vote. We thank you for your dedication to the voters in your communities.

If you have questions or comments, please contact the Help Desk at gabhelpdesk@wi.gov or 608-261-2028.

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

Ross D. Hein
Elections Supervisor
Government Accountability Board