

Government Accountability Board

State of Wisconsin

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Late Clerks Subject Wisconsin to Federal Consent Decree for Military and Overseas Voters

MADISON, WI – The Wisconsin Government Accountability Board today entered into a federal consent decree to extend deadlines and ensure that military and overseas voters' ballots will be counted for the April 3, 2012 Presidential Preference Primary.

“The State of Wisconsin has already changed its election laws to comply with the new federal Military and Overseas Voter Empowerment (MOVE) Act and ensure that these voters have enough time to get their ballots back home to be counted,” said Kevin J. Kennedy, Wisconsin’s chief election official. “But because of delays in sending ballots by some local election officials, the U.S. Department of Justice sought a federal consent decree, which will be effective through the Fall 2012 elections.”

The U.S. DOJ believes that the failure to transmit absentee ballots to military and overseas voters who requested them by February 18, 2012, the 45th day before the April 3, 2012 Presidential Preference Primary Election, constitutes a violation of the MOVE Act. Rather than go to court, the U.S. DOJ and the G.A.B. have agreed to a consent decree to address the failure of a few local election officials to transmit ballots in a timely manner.

In March, the G.A.B. surveyed the state’s 1,851 municipal clerks, who are responsible for sending out absentee ballots, about how many military and overseas absentee ballot requests they had received, and when those ballots were sent. Sixty-five municipalities missed the Feb. 18 deadline, with delays ranging from two days to more than three weeks. At least 227 absentee ballots were sent late.

Under the consent decree, military and overseas voters from those 65 municipalities will have additional time for their ballots to be counted – the number of days late the ballot was sent. Also, 347 municipalities have not responded to multiple requests to complete the survey, which was due March 8, and their ballot counting deadlines will be extended if they were late in transmitting ballots to military and overseas voters.

Absentee ballots cast by military and overseas voters must still be postmarked by Election Day, April 3, 2012. The normal deadline for their return is 4 p.m. on the Friday after the election. Absentee ballots from all military and overseas voters in late-transmittal municipalities that are cast and postmarked by April 3, 2012, and received by the close of business on the date of the applicable extended receipt deadline, will be accepted and tabulated in the final presidential preference primary election results.

In 2010, the G.A.B. and the U.S. Department of Justice also agreed to a consent decree to give military and overseas voters more time to have their ballots counted because the traditional September partisan primary schedule did not allow enough time. Last year, Wisconsin lawmakers took steps to bring the state into compliance, moving the partisan primary from the second Tuesday in September to the second Tuesday in August, which give those voters 47 days to receive and return their ballots.

Under the consent decree, the state agrees to:

- Extend the deadlines for ballots from late municipalities by the number of days they were sent late.
- Take all steps necessary to contact any affected voters by email to notify them that if they have not yet received their ballots, they may choose to receive their ballots by FAX or email, instead of by postal mail.
- Establish a procedure providing which ballot shall be counted if both a mail and email ballot are returned, and notify all affected voters of these rules.
- Communicate to military and overseas voters that the deadline for returning absentee ballots has been extended by sending a news release to international publications and websites explaining the new deadline.
- Provide reports to the federal government by May 18 regarding the numbers of absentee ballots received and counted both before and after the April 3 election.
- Continue to survey local election officials about compliance with the MOVE Act prior to the remaining 2012 federal elections.

According to an independent study of states' military and overseas absentee voting practices conducted before passage of the MOVE Act, the PEW Center on the States found that it took Wisconsin's overseas voters only 26 days to complete our absentee process from start to finish, making Wisconsin one of the top 10 states in this category.

“This agreement will place some additional burdens on the G.A.B., as well some of our local election partners,” said Nathaniel E. Robinson, elections division administrator. “The vast majority of the 1,851 municipal clerks do a great job. But we have that small number of clerks who are consistently noncompliant with requests and noncompliant with the statutory requirements for reporting. We spend a great deal of staff time pleading with and cajoling them just to comply with the statutory requirements for reporting.”

More information about the settlement and Wisconsin's compliance with the MOVE Act is available on the Board's website: <http://gab.wi.gov/elections-voting/voters/military-overseas>.

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The Government Accountability Board (G.A.B.) is responsible for administration and enforcement of campaign finance, elections, ethics and lobbying laws in Wisconsin. The G.A.B. is made up of six non-partisan, former judges and is supported by an agency of non-partisan staff members.