

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

DATE: March 9, 2011

TO: The Honorable Scott Walker, Governor
(Attention: Brian Hagedorn, Chief Legal Counsel)

The Honorable Michael Ellis, Senate President
The Honorable Scott Fitzgerald, Senate Majority Leader
The Honorable Mark Miller, Senate Minority Leader
The Honorable Jeff Fitzgerald, Speaker of the Assembly
The Honorable Scott Suder, Assembly Majority Leader
The Honorable Peter Barca, Assembly Minority Leader
The Honorable Mary Lazich, Chair, Senate Transportation and Elections Committee
The Honorable Gary Tauchen, Chair, Assembly Election and Campaign Reform Committee

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

SUBJECT: Change in Wisconsin's Partisan Primary Date --
Options for Consideration

I am writing to seek your preliminary feedback on the most viable dates for changing the State's September Partisan Primary. A date change for the September Partisan Primary is needed in order to comply with the requirements of the federal 2009 Military and Overseas Voter Empowerment Act.

Issue: To which date should the Wisconsin September Partisan Primary be moved in order to comply with requirements of the federal 2009 Military and Overseas Voter Empowerment Act?

Background: The Military and Overseas Voter Empowerment (MOVE) Act requires all states to distribute an official ballot that contains federal offices, i.e., President, Vice-President, U. S. Senate and U.S. House of Representatives, to military and overseas voters no less than 45 calendar days prior to the election, if the voter has submitted an absentee ballot request. Wisconsin's September Partisan Primary is scheduled the second Tuesday in September which, combined with current statutory ballot deadlines, makes it impossible to meet the MOVE Act's 45-day requirement. Simply stated, the Wisconsin September Partisan Primary must be moved.

The Government Accountability Board's staff has met and will continue to meet with local election officials (municipal and county clerks) and with concerned and interested constituents, customers, and stakeholders to gather broad input on viable recommendations for consideration by the Governor and Legislature on possible new Partisan Primary dates.

For the 2010 Fall Election Cycle, we requested a waiver from the 45-day transit provision of the MOVE Act, because Wisconsin has a long-demonstrated history of providing ballots to military and overseas voters in a timely manner; though, less than 45 days. Due to the fact that Wisconsin's 2010 election calendar fell short of the federal 45-day minimum transit time as required by the MOVE Act, our State was sued by the U. S. Department of Justice. That lawsuit resulted in a consent decree which

ensured that Wisconsin's military and overseas voters would have sufficient time to cast ballots for the November 2, 2010 General Election. Moving forward, however, we have been advised by the U. S. Justice Department that a permanent structural change to Wisconsin's Election Calendar needs to be effectuated for the 2012 election cycle and beyond. In order to comply with the MOVE Act, a statutory change in the State's September Partisan Primary date and possible other election dates as well, is required.

Request: As part of our information-gathering on the preference and impact of the various choices, in consultation and collaboration with our local election officials, partners and customers, we have identified some viable options for changing the September Partisan Primary. In continuing that process, we want to solicit your initial thoughts on which options you feel best fit with the Legislative calendar and business of the Legislature, and other public policy considerations. We request that you provide your feedback by the close of business on Monday, March 21, 2011.

For your information and consideration, attached is the Government Accountability Board's staff's initial review of potential Partisan Primary dates. This review includes several examples of new Partisan Primary dates, some important election events they affect, and pros and cons for each example. In addition to changing the Partisan Primary date, adjustments must also be considered for the special election cycle and the Presidential Preference Election, which are not addressed in this report.

A report, including your feedback, additional input from our local election officials and other interested customers, and additional analysis, will be submitted to the Governor and Legislature after members of the Government Accountability Board consider this matter during its March 22-23, 2011, regular meeting.

My staff and I are available to answer your questions and discuss the attached review. I may be contacted at Kevin.Kennedy@wi.gov, or at (608) 261-8683. Thank you in advance for reviewing this matter and for your feedback.

Attachment

cc: Members, Government Accountability Board

Nathaniel E. Robinson
Elections Division Administrator
Government Accountability Board

Ryan Murray
Office of Governor Walker

Members, Senate Committee on Transportation and Elections
Members, Assembly Committee on Election and Campaign Reform

Robert Marchant
Wisconsin Senate Chief Clerk

Patrick Fuller
Wisconsin Assembly Chief Clerk