

# State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

September 12, 2012

Ms. Kathy Nickolaus  
Waukesha County Clerk  
1320 Pewaukee Road Room 120  
Waukesha, WI 53188-3873

Subject: In the Matter of Waukesha County Clerk Kathy Nickolaus  
Case 2011-GAB-04

Dear Ms. Nickolaus:

The Wisconsin Government Accountability Board (G.A.B.) has completed an investigation into a number of complaints filed with our office alleging you violated several laws regulating the conduct of election officials in connection with the April 5, 2011 Spring election. The G.A.B. finds that you failed to comply with the statutory requirement to post all returns on Election Night. Wis. Stats. §7.60 (1). The Board also finds there is no probable cause to believe you violated any criminal provisions of Wisconsin law as alleged in the complaints.

Your failure to post election returns at the reporting unit level on Election Night led candidates for the office of Supreme Court Justice, Wisconsin voters and members of the media at the state and national level to believe the election for State Supreme Court Justice was within 200 votes when in fact unofficial returns would have shown a difference of more than 7,000 votes out of approximately 1.5 million votes cast. This action has significantly undermined public confidence in the conduct of elections in Wisconsin and Waukesha County. As a result state and local election officials, and you in particular, will have to regain the trust of the Wisconsin electorate in the administration of elections in Wisconsin and Waukesha County.

Pursuant to Wis. Stats. §5.06(6), the Board orders you to conform your conduct to law and to take the following steps to ensure you have documented procedures in place for the February 21, 2012 Spring Primary and subsequent elections to ensure accountability and transparency in your actions:

1. Develop written procedures for collecting reporting unit level election results from all Waukesha County municipalities after the polls close on Election Day.
2. Develop written procedures for posting reporting unit level election results for all offices on the ballot so the results are readily available to the public, candidates and the media as soon as practicable after receipt of the returns. These procedures should document a clear chain of responsibility involving more than one member of your staff to ensure election returns posted accurately reflect the returns received from the municipalities.

3. Develop written procedures for entering election returns into the G.A.B.'s Canvass Reporting System (CRS). These procedures should document a clear chain of responsibility involving more than one member of your staff to ensure election returns entered into CRS accurately reflect the returns received from the municipalities.
4. Develop written procedures for documenting the receipt of election returns, polling place records and ballots from municipalities
5. Develop written procedures for the conduct of the Waukesha County Canvass. These procedures should clearly delineate the tasks to be conducted by staff in your office and the members of the Waukesha County Board of Canvassers to ensure that the returns from the municipalities, including poll lists, inspectors' statements, chain of custody documentation, official tally sheets, and all ballots are inspected, reconciled and the official election results are properly documented for certification.
6. This written documentation shall be developed in consultation with the G.A.B. staff and completed no later than December 1, 2011 so the Board may review the documentation at its December 12, 2011 meeting.

The agency's Canvass Reporting System contains features and tools which can facilitate posting unofficial election returns in your office after the polls close. You are not required to use the CRS for this purpose if you develop a procedure that ensures that voters, candidates and the media have access to reporting unit level returns from the municipalities after the polls close. Waukesha County, as well as all other counties in the state, is required to use CRS to transmit the certified election results for state and federal offices and referenda to the G.A.B. pursuant to Wis. Stats. §7.60 (5).

The foundation of our representative form of government is public trust and confidence in the conduct of elections. Wisconsin law entrusts that responsibility to a large number of local election officials under the direction and guidance of the Government Accountability Board. State and local election officials are responsible for ensuring that elections are conducted in a fair and transparent manner. Key elements essential to carry out those duties are open communication with all participants in the electoral process, the exercise of good judgment in making election related decisions, well documented procedures and strict adherence to statutory requirements.

Your actions following the April 5, 2011 Spring election did not conform to the legal requirements imposed on county clerks. When one election official fails to act consistent with those responsibilities, steps must be taken to correct the failure in order to prevent it from reoccurring, and to restore public confidence and trust in the administration of elections.

**Wisconsin Government Accountability Board**



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Thomas H. Barland, Chairperson

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