

Testimony of Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

Assembly Committee on Campaigns and Elections

October 16, 2013

Room 415 Northwest, State Capitol

Public Hearing

2013 Assembly Bills 418, 419, and 420

Chairperson Bernier and Committee Members:

Thank you for the opportunity to comment on the three bills before you today. I am appearing here for information purposes and to answer any questions you or Committee members may have. The Government Accountability Board is not taking a position for or against any of these bills.

2013 Assembly Bill 418: fees for election recounts

This legislation raises the fee for requesting a recount from \$5 per ward to \$25 per ward. A proposed amendment also lowers the threshold for when a fee is required from one half of one percent (.5%) to one quarter of one percent (.25%).

The number of recounts at any given election is relatively small. There are only a handful of recounts in Fall elections. However, there are usually between 50 and 100 recounts brought to

our attention in a spring election. That is because the number of candidates and election contests is significantly higher for spring elections. In 2013, there were 9,587 candidates competing for 6,768 state and local offices at the April 2nd election.

Despite the relatively low number of recounts, each recount is important to the candidates involved as well as the voters and election officials. For candidates a recount brings closure to a process in which they have put themselves before their fellow citizens and asked to be chosen to lead their community. For voters, a recount brings certainty and finality to the campaign process. For election officials, a recount is an opportunity to evaluate their performance in the conduct of the election and it may be the only means of recognition for a job well done.

The outcome seldom changes in a recount. Here are some numbers drawn from notes taken by our staff. At the state level we have identified only three contests where the outcome changed since 1979. In the 2010 partisan primary Tyler August lost in the original count by 4 votes, however after the recount, he prevailed by 3 votes. In 2013, the incumbent Iron County District Attorney prevailed in the recount by 4 votes (1,630-1,626) after having lost in the original count by 4 votes (1,622-1,626).

At the local level our notes show a reversal of winners after a recount in one race in 2000 and also in 2001, 2003 and 2005. In 2002, we tracked eight contests where the outcome was impacted due to a recount. In five of those contests, the recount resulted in a tie vote and in one a write-in candidate defeated the incumbent whose name appeared on the ballot. In 2004 two contests involved tie votes. In one the original count was a tie and in the second a write-in candidate won after the recount determined a tie vote and the tie was broken as provided by law. In the Village of Cottage Grove in 2010, the recount resulted in a tie vote which was broken by the toss of a coin.

2013 Assembly Bill 419: counting votes for write-in candidates

Few election administration issues are as controversial as counting write-in votes. Wisconsin law requires poll workers to tally all write-in votes on Election Night. This includes votes for nonsense candidates such as Mickey Mouse or pro athletes who are not competing for office. The Board of Canvassers may choose to list write-in votes as scattering in the official canvass if a write-in candidate receives a small number of votes. However, the initial Election Night tally

must list all candidates for whom votes are cast along with the number of votes counted for those candidates.

Approximately 95 percent of all votes cast are on paper ballots including 90 percent of which are counted electronically on optical scan tabulators. On Election Night, poll workers have to hand-sort all of the ballots to identify any write-in votes cast, record the name of the candidate and the number of votes cast for write-in candidates. While the optical scan equipment will sort out write-in votes where the voter completed the arrow or filled in the oval next to the write-in line on the ballot, many voters do not complete this.

The U.S. Supreme Court has held that there is no right to be a write-in candidate. Hawaii, for example, does not permit write-in votes.

This legislation streamlines the Election Night process for poll workers. Write-in votes will only be counted for registered write-in candidates with two exceptions. A registered write-in candidate is a candidate who completes a campaign registration statement and files it with the appropriate filing officer. Wisconsin law requires all candidates who are seeking office, including write-in candidates, to file a campaign registration statement. If there are registered write-in candidates, the municipal clerk will advise the poll workers who the candidates are and for what contest they are running. This simplifies the task of searching for write-ins and limits the tallying of votes for non-registered write-ins, including the fictional candidate.

The two exceptions to only counting votes for registered write-in candidates address some reoccurring issues. In the case a candidate dies or publicly withdraws, the legislation requires counting write-in votes for all candidates for that particular office. The second exception is where no candidates qualify to appear on the ballot for a particular office. This is not an unusual situation in small municipalities. In these cases, the legislation recognizes that a serious candidate may not be able to file a registration statement before Election Day. The two exceptions were crafted based on situations encountered by local election officials and G.A.B. staff.

2013 Assembly Bill 420: providing a printed name for signers of nomination papers and petitions

This bill requires electors who sign nomination papers or election-related petitions to legibly print their name in order for the signature to be counted. This should help resolve some issues about a signer's eligibility since many signatures are difficult to read. It remains to be seen what the impact of this requirement will be in practice. It could slow down the review process and it may lead to more petitions failing to qualify.

Conclusion

Thank you for the opportunity to share my thoughts with you. I hope this testimony will help inform the Legislature's consideration of these bills. As always, we are available to answer questions and work with you in developing proposed legislation.

Respectfully submitted,

A handwritten signature in black ink that reads "Kevin J. Kennedy". The signature is written in a cursive, flowing style.

Kevin J. Kennedy

Director and General Counsel

Wisconsin Government Accountability Board

608-266-8005

608-267-0500 (Fax)

Kevin.Kennedy@wi.gov