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Wisconsin Government Accountability Board  
212 East Washington Avenue, Third Floor  
P.O. Box 7984  
Madison, Wisconsin 53707-7984

Dear Judges Barland, Froehlich, Brennan, Lamelas, Nichol, and Vocke:

At the March 19 Board meeting, we were impressed with your interest in prudent and responsible management of computer technology. As you know, our group is not opposed to electronic elections technology and, like you, we value prudent management appropriate to its risks and benefits. I'm writing specifically in response to a question from Judge Lamelas about different types of post-election audits, which I was not prepared to answer at the meeting. I will also take this opportunity to clarify other information.

This letter will make two points:

1. While §7.08(6), Wis. Stats. requires GAB to direct municipalities to conduct voting-machine audits for one specific purpose after general elections, statutes are silent regarding measures that local officials might use more routinely or randomly to verify the accuracy of the computers' reports before certifying them as our final election results. ***Interpreting this silence to prohibit verification is imprudent and unreasonable.*** This letter repeats our request that the GAB discontinue any statements that assert or infer that local officials are prohibited from taking reasonable steps to verify computer-tabulated election outcomes before certification.
2. Allowing local officials to perform post-election verification of computer-tabulated results on their own initiative after every election would provide Wisconsin with ***a significant increase in election security at a very low cost.*** In response to Judge Lamelas' question, our volunteer citizens' group will in this letter provide an overview of how voting machines' accuracy could efficiently be verified.

Unfortunately, our relatively young citizens group lacks the resources and access to information that would enable us to produce a more complete, well-documented report regarding the options, costs, and benefits of more routine verification of election results by local elected officials. Therefore, this letter cannot be as complete and credible as a review by GAB staff might be. If the Board has remaining questions, we will try to respond but will also encourage the Board to direct staff to do a more

comprehensive study of the costs, benefits, and various cost-efficient methods of post-election auditing or verification beyond those audits required by §7.08(6).

**1. Pre-certification verification of computer-calculated election results is not prohibited by statute.**

For clarity's sake in this letter, we will distinguish between the post-election audits required by §7.08(6), Wis. Stats. and other types of post-election audits, by calling other types of audits 'verification.'

**§7.08(6) ENFORCEMENT OF FEDERAL VOTING SYSTEM STANDARDS.**

Following each general election, audit the performance of each voting system used in this state to determine the error rate of the system in counting ballots that are validly cast by electors. If the error rate exceeds the rate permitted under standards of the federal election commission in effect on October 29, 2002, the board shall take remedial action and order remedial action to be taken by affected counties and municipalities to ensure compliance with the standards. Each county and municipality shall comply with any order received under this subsection.

It is not difficult to discern legislative intent regarding the purpose of the audits required by §7.08(6), Wis. Stats. The purpose is to determine whether each system was able to count votes accurately in general elections, with 'accurately' operationalized as an error rate no greater than 0.0002%. This specific purpose dictates specific audit methods. For example, GAB staff selects precincts based on the type of voting machine rather than on, say, suspicious anomalies. A full hand count of all votes on all ballots in the audited contests is also necessary.

The §7.08(6) audits clearly do *not* serve other purposes. GAB's policy that the audits can occur only after the computer's tabulations are certified as final rules out the purpose of *preventing certification of erroneous election results*. The response prescribed if a miscount is discovered is only to order the county and municipalities to fix the machines, rather than to initiate independent investigation for possible referral to justice authorities. This indicates the intended purpose is not *detection or deterrence of electronic election fraud*. (We would certainly hope that no local official would overlook fraud if it was accidentally discovered during a §7.08(6) audit, but the statute contains no indication the

process was intended for that purpose.)

So who, one might ask, has the responsibility to determine whether our voting machines produced accurate counts or to make even a superficial effort to detect possible electronic fraud before the identified winners are sworn into office? We encourage GAB members, if you have not already done so, to look for any statutory charge to any official to verify our voting machines' Election-Day accuracy before their computations are certified, or to attempt to detect whether any malicious activity or unexpected malfunction affected election results. There is none.

When statutes are silent, those charged with administering the law are expected to make reasonable interpretations. It is common, as you know, to presume the Legislature did not intend to regulate the

activity, or the Legislature did not consider this activity when enacting the law. It is much less common to interpret silence to be a prohibition. We do not believe it reasonable to interpret statutory silence on this matter to prohibit local officials, who have a clear responsibility and, we believe, desire to produce true election results, from verifying the accuracy of computer-generated outcomes before they certify them as final election results, or to prohibit them from taking reasonable steps to detect mischief or malfunction that might have affected our election results.

The reasons for verification are so obvious it feels almost disrespectful to list them for you, so please do not take offense as we remind you of things we are confident you already know:

- Our local jurisdictions' information-technology security practices are not harder or more rigorous than those used by Target and the Federal Reserve Bank of New York (to name only two well-protected IT systems that have been hacked.) Even if they were, our elections software is sometimes under the control of others, such as the voting machine vendors.
- People with the motive and the skill to manipulate Wisconsin's election results exist. Providing them with certainty that Wisconsin election officials will not check the computers' accuracy is, at best, imprudent.
- No automated system is immune from inadvertent human error, such as that which was discovered to have disenfranchised hundreds of Medford, Wisconsin voters in 2004, or from simple mechanical malfunction such as the overheating that disenfranchised thousands in New York City in 2010. In addition, the diagnosis and correction of past malfunctions provides no immunity from future unanticipated malfunctions.
- The fact that there has been no evidence presented beyond the Medford incident that voting equipment in Wisconsin has failed to accurately tabulate results is not evidence that our voting machines have been 100% accurate, when no one in Wisconsin has routinely been monitoring their on-the-job accuracy, and when mishaps have been discovered in other states using the same equipment. Nor can it be taken as certainty that our voting machines will be immune from other malfunctions in the future.
- National election-administration authorities universally recommend routine post-election verification of electronically calculated election results before they are certified as final, most recently the Presidential Commission on Election Administration.

Prohibiting local officials from verifying voting-machine accuracy on their own initiative is, in effect, requiring them routinely to certify unchecked computer calculations as correct. ***This practice of using the unverified product of a single operation of a single computer as the sole basis for consequential decisions exists nowhere else in either business or government.*** It is patently unreasonable to infer our legislators intended to require such unique and irresponsible management practices for Wisconsin's electronic elections technology.

As we noted in our testimony at the March 19 meeting, neither the State nor local jurisdictions would incur any costs from a revised GAB policy establishing that local officials are permitted, on their own initiative and whenever they choose, to verify the accuracy of their computer-tabulated election results. However, it would have immediate deterrence value by terminating the assurance current practices

provide to would-be election thieves that their efforts will be undetected. We are aware that you are cognizant, as we are, of the likelihood that this November's elections will be particularly contentious and bitter, and urge you before then to take steps necessary to allow local election officials to protect themselves from suspicions or allegations of miscounting machines, with all the headaches and costs such suspicions will entail.

**2. Verifications using methods other than those used for §7.08(6) audits could enable local officials to improve election security at very low cost.**

The §7.08(6) audits are conducted much like a recount under §9.01, Wis. Stats. However, it is possible to verify the accuracy of election outcomes much more efficiently.

- ***Verification needs in most cases to confirm only the outcome, not the exact vote total.***

While recounts must produce an exact vote total for each of the candidates or choices in a contest (e.g., Wilson got 4,567 votes, Jackson 4,559, and Jones 590), verification needs to check only the outcome (e.g., Wilson won the race) to serve the purposes of deterrence and detection. With proper statistical and sampling methods, counting a small percentage of total votes can confirm with a high degree of confidence that a full hand count would identify the same winner as the electronic tabulation. This is known as a 'risk-limiting audit.' (For more information, see page 9 and its footnotes in the attached report from July 2013, or page 66 in the January 2014 *Report of the Presidential Commission on Election Administration.* )

- ***Verifying results from a single precinct takes only a few hours.***

Even with recount-like audit methods, few of the single-precinct 2012 audits we observed took even a full working day, excluding the time clerks spent retrieving election records before the audits. Several took less than four hours.

As noted, verification does not need to include all ballots in all precincts. In addition, of course, it need not check the outcomes of uncontested races or of contests for which a recount has been requested. Verifying only a sample of the remaining contests can deter electronic fraud while assessing the machines' performance on Election Day. Jurisdictions that adopt policies before an election (to avoid the appearance of partisan motives) could specify objective criteria that would focus verification efforts on precincts that reported anomalous results, such as a high rate of undervotes, very late reporting without reasonable explanation, or unexpectedly lopsided results.

- ***Verification need not—we believe should not—occur on Election Night.***

Moving ballots from the polling place introduces an opportunity for tampering, which causes some experts and activists to recommend Election-Night verification on site. However, most authorities consider that haste unnecessary. The more common recommendation is to wait until the next working day, for the obvious advantages of availability of citizen observers and alert elections inspectors. While chain-of-custody risks increase with time, benefits of postponing verification even for a few days include enabling officials to skip verification in contests for which a recount is promptly requested, and allowing selection of precincts based on anomalous or unexpected

preliminary results, such as might be the case when a Board of Canvass notices a markedly higher rate of undervoting in one precinct than in others.

- ***Verification can—we believe should—be performed outside regular office hours by volunteers and election inspectors.***

Many municipalities selected for §7.08(6) audits in 2012 conducted those audits during regular office hours using municipal employees. This, however, was not necessary. Our July 2013 report recommended that GAB encourage municipalities to schedule such efforts on evenings and weekends (to accommodate confidence-building citizen observation and avoid disruption of regular office business) and to use elections inspectors rather than municipal employees (to take advantage of and build skills used by election workers).

- ***Verification need not disturb sealed ballots.***

Technology now in use in at least one county in Wisconsin (Dane) creates a digital image of each voter's ballot as it is scanned. In other jurisdictions, clerks have created digital copies of marked ballots using normal scanners. These digital images can be used for verification while the actual ballots remain securely sealed, reducing chain-of-custody concerns.

- ***Both §7.08(6) audits and verification are low-cost, high-benefit practices.***

Neither §7.08(6) audits nor verification requires any new technology or expensive equipment. Neither requires contracting with vendors or consultants. In addition to the priceless benefit of verified accurate election results, other benefits include:

- + Reducing the risk of legal and other costs that will be incurred if an undetected voting-machine mishap causes the losing candidate to be sworn in to office;
- + Providing quality-control feedback about every other voting-machine-security measure. Post-election verification efforts that find a well-documented chain of custody and accurate counts will provide evidence that pre-election measures were effective; efforts that find sloppy records or miscounts will provide information useful for improving pre-election efforts in the future.
- + Improving the election-administration skills of local election clerks and inspectors who participate in the audit or verification effort;
- + Reducing the number of recounts demanded as candidates and citizens learn to trust the local officials' ability to produce accurate counts; and
- + Reducing the number of citizen complaints, challenges, and calls for disruptive and hard-to-control citizen-led hand counts.

While we lack the resources and access to information for a more complete, evidence-based analysis of the cost of post-election audits, we are confident that such an analysis would show post-election auditing or verification to be among the most cost-effective elections-security procedures available to Wisconsin election officials.

While we do not doubt that every change in elections-administration guidance will be met by resistance from a few local officials, we also know from our own experience with county and municipal clerks that

the majority feel enormous personal responsibility for accurate election results. If convinced of the value of a certain practice, local elections officials can be counted on to adopt it.

Comments from Humboldt County Clerk Carolyn Crnich are illustrative. Humboldt County, California has since 2006 performed or allowed post-election audits after every election using digital images of marked ballots with satisfactory results. When we wrote to Crnich asking about Humboldt County's experience, she replied "not one official recount has been requested since we began." Crnich further related this incident: A 2012 mayoral race was tied on Election Night. After late-arriving ballots and provisional ballots were counted a few days later, one candidate was ahead by five votes. Crnich wrote:

*The day those results were announced I received a call from a local newspaper reporter that started with "OK, Carolyn, how did you do that?" "Do what?" I asked. Reporter: "Well I just had conversations with each of the candidates... and asked them if they were going to request a recount. "Well, are they?" I asked. Reporter: "In separate conversations, several minutes apart, they each told me "If Crnich counted them, they're good."*

There is no Wisconsin election official, at either the state or local level, who would not like to be able to say the same. Please make it known that our local election officials are allowed to adopt the practices that would allow them to do so.

Sincerely,

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Election Integrity Action Team

cc: Kevin Kennedy, Director, Government Accountability Board  
Kathy Brandt, Chair, Wisconsin County Clerks Association  
Barbara Van Clake, Chair, Wisconsin Municipal Clerks Association  
Sen. Robert Cowles, Co-chair, Joint Legislative Audit Committee  
Rep. Samantha Kerkman, Co-chair, Joint Legislative Audit Committee