

**Prepared Remarks by JoAnne Kloppenburg  
May 31, 2011**

Good Morning.

Over the past five weeks, clerks and volunteers in Wisconsin's 72 counties have worked hard and long on a recount of the vote in the April 5 election.

Over the course of their work, votes were found to be miscounted in every county in the State. Over 150 ballot bags containing tens of thousands of votes were found open, unsealed or torn. Waukesha County had twice as many torn, open or unsealed bags as every other county in the state combined. In many cases, municipal clerks in Waukesha testified the bags weren't torn when they left cities, towns and villages so the security breaches occurred sometime when the bags were in Waukesha County's custody. Most every county and most every reporting unit statewide had discrepancies in reconciling poll books in which the number of voters and the number of absentee voters is recorded. In several counties, including Dane, Milwaukee, Marquette and Jackson, missing or uncounted ballots were found in unexpected places during the recount, such as a clerk's office or left in machines.

This recount should serve as a wake-up call to improve Wisconsin's election processes.

Wisconsin clerks are hardworking public servants who have a big responsibility for a high-profile and important public function: elections. In the thousands of pages of minutes from this recount – which I and my team have analyzed – there is scant evidence of individuals trying to vote fraudulently. There is however, ample evidence that the election processes by which ballots are supposed to be handled, recorded, secured and counted are not followed, because those rules are either misunderstood or ignored. As a result, thousands of votes were not counted, were counted incorrectly, or have been called into question.

Some may argue that the fact that the final vote totals changed by about 300 votes from the initial canvass to the certified recount totals, is evidence that Wisconsin elections processes reach an accurate result and this recount was unnecessary. But in the course of the recount we have seen that election procedures are not always followed or well understood. We discovered that compliance with statutory responsibilities is uneven. There are unacceptable gaps in ballot security which, if allowed to continue, threaten the integrity of Wisconsin elections and undermine the confidence Wisconsin residents deserve to have in the results of those elections.

The recount was always about much more than the small difference in votes between the two candidates. Widespread irregularities, unintentional as they may be, around the state, along with the cascade of irregularities in Waukesha, make it clear that we must do more to ensure the electoral process in Wisconsin is beyond reproach.

However, Wisconsin law makes it clear that even on such a record as has been developed by this recount, the threshold for a Court to overturn an election on appeal is, appropriately, very high.

David Prosser has won this election, and I congratulate him.

I will not be requesting judicial review of the results.

**(more)**

Wis. Stat. §5.01(1) provides that the state election laws “shall be construed so as to give effect to the will of the electors, if that can be ascertained, notwithstanding informality or failure to comply with some of its provisions.” It is questionable whether even the statewide extent of noncompliance uncovered by this recount would cross the bar raised by this statutory language. Moreover, Wisconsin courts have held that absent connivance, fraud or undue influence, substantial compliance with the statutory voting procedures is sufficient.

Which brings me to Waukesha and the question of whether-- or if -- there was manipulation of some ballots, given the fact that so many bags were unsealed to the point of being wide open. Here again, evidence of opportunity to manipulate or alter ballots is not enough. There would have to be compelling proof that the integrity of the ballots has been compromised. The numerous glaring anomalies in Waukesha certainly warrant further, independent investigation. However, the defects or irregularities in the sealing and securing of the ballot bags, as documented in the recount minutes, would not be sufficient to meet the threshold set by law.

As an attorney, as an officer of the court and as someone who understands both the power and the limits of the law, it is my obligation to evaluate and recognize the legal grounds on which I can and cannot act. I have reviewed the record, the evidence and the law. It would serve no purpose to bring a suit with insufficient legal basis. That is not the kind of lawyer I am.

Mark Twain once advised “Do the right thing. It will gratify some people and astonish the rest.”

We did the right thing in asking for a recount in this very, very close election. The recount shed light on significant and widespread issues with elections in Wisconsin. The magnitude of those issues surprised clerks, election volunteers, and observers from both campaigns. The problems and gaps ought to be addressed as quickly as possible. And they ought to be fixed.

That is why my campaign is submitting a letter to the Government Accountability Board which summarizes the anomalies, irregularities and in some cases the unexplained mysteries uncovered in this recount. I call on the GAB to take action, along with local clerks, to improve the security, accountability and transparency of the election process in Wisconsin, and to ensure that every vote counts and is counted accurately. The GAB must improve compliance with basic election procedures.

We are also doing the right thing by declining to pursue legal action. Based on the record established in this recount and based on Wisconsin law, the will of the electors has been determined. It is time to learn from this recount, fix the problems it uncovered and ensure that future elections are different.

The campaign I ran – respectful, honest and fair -- allowed me to share my ideas about what a Supreme Court Justice ought to be: independent and impartial. And the campaign reaffirmed my respect for and love of the law and my conviction that we can – and must – have Courts that embody the best of who we are and which are true to the ideal of equal justice under the law. In the end, I hope my supporters share that perspective: The work of this campaign may be ended, but our commitment to doing our part to make Wisconsin’s future -- and our Courts – stronger and better isn’t done. Together, we have more to do.

Thank you.