



The Kloppenburg for Justice Committee  
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May 31, 2011

Mr. Kevin Kennedy  
Executive Director and General Counsel  
Government Accountability Board  
212 East Washington Avenue, Third Floor  
Madison, WI 53707  
**BY HAND**

Dear Mr. Kennedy:

I have decided not to seek judicial review of the recount results. The facts and the evidence contained in the record of the recount, do not in my judgment establish a sound legal basis on which to proceed with a suit, based on Wisconsin law.

However, the record of the recount does stand as a strong testament to the need for significant improvements in the elections processes in Wisconsin. Wisconsin's clerks, along with the elections professionals at the Government Accountability Board (GAB) have worked tirelessly during the recount and deserve the thanks of the people you serve. What they have uncovered establishes how important it is that the recount took place.

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. They may. 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. And we've seen that when that happens, the election results don't achieve the level of assurance that voters in a democracy deserve.

My campaign has reviewed the thousands of pages of minutes generated by the recount. Attached to this letter is a chart that summarizes the nature and the scope of some of the irregularities, anomalies and mistakes that the recount process uncovered and the minutes reveal. To the extent that in some counties the minutes do not address the kinds of irregularities identified in this table, or that in other counties observers were not able to see the ballots being counted by machine, this table reflects the very minimum occurrence of issues that compromise the integrity of the way in which votes are counted across the state.

It is important to note that in the minutes there is scant evidence of voter fraud, namely individuals trying to fraudulently cast a vote. However, there is ample evidence of the opportunity for malfeasance or mistakes in tabulating or reporting the election results, due to the lack of consistency and compliance with elections processes.

The issues identified by the recount and displayed in the chart give rise to five recommendations for improving Wisconsin's elections process.

1. Immediately address the matter of ballot security. Self-sealing tamperproof bags and envelopes would eliminate the pitfalls inherent in the current cumbersome ballot bagging and sealing process— a process that virtually invites human error or worse.
2. Institute a higher and more uniform level of training both for clerks and for those dedicated community members who staff our polling places. The recount minutes abound in misconceptions, misinformation and mistakes when it comes to absentee ballot procedures, re-made ballots, poll books reconciliation and other critically important election procedures.
3. Take steps to ensure greater transparency when it comes to reporting election results on election night. County Clerks should be mandated to report election results by municipality and they should all use the same software to tally results.
4. The office of County Clerk should be non-partisan. Maintaining voter confidence in the integrity of our election system requires providing assurance that everyone's vote will be duly counted. Having partisans oversee the election process, can, unfairly or not, create the appearance that politics, rather than fair play, determines election outcomes.
5. Wisconsin law should require Clerks to account for the number of ballots printed and delivered to each polling location, and the number of ballots unused on election night at each polling location. Current law does not require an accounting of the unused ballots and they are not audited as part of a recount.

In addition to the issues quantified in the chart, the recount shed light on several other significant problems:

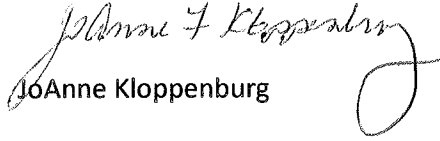
- Touchscreen machines, most often used to provide people with disabilities the ability to vote privately and independently, often malfunctioned or were improperly used. The minutes are replete with instances of the paper tapes that record the votes on these machines being loaded incorrectly, resulting in jams and missing votes, or in tapes coming out of the machine absolutely blank.
- Machine counts on optical scan machines are often inaccurate. This was revealed particularly in counties where a hand recount was conducted so that the discrepancy between the votes counted by the machine versus the votes counted by a human being was identified. The reasons for the discrepancies include a voter's mark being too light or in the wrong color, or the machine accepting a ballot and then not recording a vote from it.
- Absentee ballot procedures are often improperly administered by election officials and misunderstood by voters. Many absentee ballots were deemed defective and were not counted. The newly enacted Photo ID law raises substantial new barriers to voting by absentee ballot that will almost certainly result in many more voters – including voters with disabilities, elderly voters, and military voters – being disenfranchised.

We understand that many of the recommendations and issues discussed in this letter would require legislative action. Nevertheless, we urge the GAB to take action within its authority to improve compliance with the long-standing state laws that are designed to preserve the integrity of our state elections. A statewide recount, and with it the opportunity to shine a strong light on our state's election procedures, rarely occurs. The GAB should take full advantage of this opportunity to examine

and rectify the numerous deviations from state election procedures that came to light, and restore our citizens' confidence in the election system.

This election has underscored the truth of the maxim that every vote counts. The recount has established that steps must be taken to ensure that every vote is properly and accurately counted. The people of Wisconsin expect and deserve no less.

Sincerely,

A handwritten signature in cursive script that reads "JoAnne Kloppenburg". The signature is written in black ink and is positioned above the printed name.

JoAnne Kloppenburg

<b>Problem</b>	<b>No. Reporting Units- Waukesha County</b>	<b>No. Reporting Units- Dane County</b>	<b>No. Reporting Units- Milwaukee County</b>	<b>No. Reporting Units- Rest of State</b>
<b>Ballot Bag Integrity</b>				
Compromised Bags or Unbagged Ballots (large holes, tears, slits, openings, with wings or flaps, improperly sealed, or loose ballots)	48+ (over 90 bags)	4 (2 bags, 2 sets of loose ballots)	5+ (2 bags, over 3 sets of loose ballots)	35 (about 50 bags)
Seal and Inspector Number Errors (unmatched or missing seal numbers or signatures)	34+	15	No information provided	125
<b>Ballot Integrity</b>				
Unsealed Ballot Envelopes, Fewer Absentee Ballots than Voters, No Remade Ballot Notations	70+	7	No information provided	41
Ballots Without Two Inspector Initials	61+	109	3	115
<b>Drawdowns</b>				
Defective Absentee Ballots	5	0	34	93
More Ballots than Voters	6	1	8	51
<b>Predated Machine Tape</b>	1	0	1 undated	0
<b>Changed Vote Totals</b>	79	98	182	701