

State of Wisconsin\Government Accountability Board

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JUDGE DAVID G. DEININGER
Chair

KEVIN J. KENNEDY
Director and General Counsel

Date: For the March 12, 2012 Meeting

To: Government Accountability Board Members

From: Kevin J. Kennedy, Director and General Counsel

Subject: Request for Extension of Time to Determine Sufficiency of Recall Petitions

The Government Accountability Board staff believes the Board should request an additional two-week extension to complete its review of the sufficiency of the recall petitions filed with the agency. A request for extension requires establishing good cause. Wis Stats. §9.10 (3)(b). Staff believes there are two bases for establishing good cause to grant the extension. The first is the staff needs additional time to complete its careful examination of the recall petitions. The second is the need to schedule all 6 possible elections on the same timetable while avoiding conflicts with other election events and official holidays. The Department of Justice has arranged for a hearing on a possible motion for an extension on Wednesday, March 14, 2012.

Workload

The staff has completed first and second review of the four Senate recall petitions. Staff has entered all of the review information into a data base along with the challenges filed on behalf of the officeholders. In addition, data entry of all petition signer names has been completed by Data Shop and duplicate checks have been completed. The staff has presented a series of recommendations to the Board for consideration at the March 12, 2012 meeting which may enable the Board to determine sufficiency of the recall petitions.

If the Board accepts the staff recommendations, it can find the recall petitions sufficient and direct staff to order recall elections for each of the four Senators. If the Board directs further review of the challenges submitted on behalf of the officeholders, the agency will need additional time to complete that review. It is not clear how much additional time will be required.

The staff has completed first and second review of the Governor's recall petition. Staff has entered all of the review information into a data base. In addition, data entry of all petition signer names has been completed by Data Shop and duplicate checks have been started. We expect to have made significant progress on completing the duplicate checks by the time of the March 12, 2012 Board Meeting. The staff has presented a series of recommendations to the Board for consideration at the March 12, 2012 meeting. Staff does not anticipate the Board will be in a position to determine sufficiency of the Governor's recall petition at this meeting.

The staff has completed first and second review of the Lt. Governor's recall petition. Staff has entered all of the review information into a data base. In addition data entry of all petition

signer names has been about 75% completed by Data Shop and agency staff. Duplicate checks have not been started. We expect to complete data entry of the names of petition signers and the duplicate checks by the time of the March 30, 2012 Board Meeting. The staff will present a series of recommendations to the Board for consideration at a future meeting which may enable the Board to determine sufficiency of the Lt. Governor's recall petition.

In order to complete our review of the full set of petitions we need to complete the data entry of all petition signer names for the Lt. Governor's recall petition and conduct our check for possible duplicates. This cannot be finished by March 19, 2012 as required in the court order. We have reallocated staff resources and expect to finish by the time of the March 30, 2012 meeting. However, it is possible that we would need additional time.

The need to complete our careful examination of the petitions is the primary justification for the request for an additional extension. Unlike the officeholders' request for additional time we can point to actual steps in our review process and benchmarks necessary to complete the statutory requirement of a careful examination of the petitions.

Election Timing

When we filed our petition in Dane County Circuit Court for an extension of time to review the recall petitions, we advised the court we believed it was essential to hold all recall elections on the same timetable if multiple petitions were found sufficient. As we approach what appears to be a certification of sufficiency on all six petitions we need to carefully evaluate the timing of recall elections. Unlike in 2011, there were no other scheduled election events that needed to be accommodated when ordering the nine senate recall elections. In addition because the recalls were in nine different areas of the state, there was very little overlap among counties.

In this case we have two possible statewide recall elections and four possible Senate recall elections. A preliminary survey conducted by staff last November indicates that a single statewide recall event will cost counties and municipalities at least \$9 million. If there is a primary in one of the statewide recalls that will cost an additional \$9 million. A recall event in one of the Senate districts will cost approximately \$1 million. The Senate recall costs can be significantly reduced if held in conjunction with a statewide recall event.

When developing a proposed recall election schedule it is important to recognize that we have no control over the impact of any litigation challenging our determination of sufficiency. The court hearing the challenge may choose to stay the effect of our order while considering the sufficiency issue. Wis. Stats. §9.10 (3)(bm).

In addition to the significant cost issues that merit a consolidated set of recall election events, there are timing issues that need to be considered. Because our action is close to the completion of the April 3rd Spring Election and Presidential Preference Vote, county and municipal clerks need time to wrap up the Spring Election before they can begin preparing for a recall election. A description of required post-election activity is set forth below.

Post-Election Duties

While votes are cast and tabulated on Election Day, absentee ballots received up to 4 pm on the Friday following the election must be included in the final tally. In addition any voter issued a

provisional ballot has until 4 pm on the Friday following the election to submit the information required to enable the provisional ballot to be counted. Wis. Stats. §§6.97 (3)(b); 7.515 (3).

Municipal and county clerks need to conduct a canvass of the April 3rd election. The municipal canvass may not be held until after all outstanding absentee ballots have been received, provisional ballots remedied or 4 pm on the Friday following the election whichever is later. Wis. Stats. §§7.53(1)(a), (2)(d). The county canvass cannot be completed until all municipal returns are received or the Tuesday following the election whichever is later. Wis. Stats. §7.60(3).

There may be a recount of any of the several hundred state, county, municipal and school district offices that will appear on the April 3rd ballot. The last day for a municipal canvass would not be until April 9th, a losing candidate would have until April 12th to petition for a recount. A recount would start by April 13th at 9 a.m. for municipal offices. This will delay the final canvass in those jurisdictions.

Municipal clerks need to enter the voter registration information of individuals who registered at the polling place on Election Day into the Statewide Voter Registration System (SVRS) so the voters will appear on a poll list for any election held following the Spring Election. Local election officials have 30 days to complete this work. Wis. Stats. §6.33 (5)(a), 7.15 (4).

Clerks are also required to provide certain notices to specified absentee voters who did not return a ballot. Wis. Stats. §6.86 (2)(b), (2m)(a). The notice affects whether the voter would receive a ballot in a subsequent election.

Local election officials may not clear the memory devices on electronic voting equipment until 21 days following an election. Wis. Stats. §7.23 (1)(g). If there is a recount the information must be preserved until after the deadline for any appeal of the recount to court and exhaustion of any litigation. Clerks may not begin programming for the next election until the devices are cleared.

All of these duties may overlap with election preparation requirements for a recall election. A description of those duties is set out below.

Recall Election Preparation Duties

If a recall election is ordered by the G.A.B., candidates have until the second Tuesday following the order to qualify for the ballot. The G.A.B. must certify the list of candidates qualifying for the ballot to county clerks no later than the Tuesday of the third week following its order setting the election.

Once county clerks receive the certification of recall candidates from the G.A.B., they need to immediately prepare ballots for absentee voting and arrange for programming of voting equipment. Absentee ballots must be in the hands of municipal clerks 22 days before the election.

Any recall election schedule has to be set with an eye to these post-election requirements and recall election preparation duties. Recall elections must be scheduled on a Tuesday, unless that

day is a holiday. Wis. Stats. §9.10 (3)(b). This creates a possible conflict with the Memorial Day holiday on May 28, 2012.

Memorial Day Issues

If a recall election event is scheduled for Tuesday, May 29, 2012, municipal clerks will have almost insurmountable difficulties setting up polling places, recruiting poll workers and preparing for the election event. Municipal staff may not be available over the holiday weekend due to personal commitments. Municipal employees may have to be paid overtime or premium pay for work on a holiday weekend. Buildings where polling places are located may not be accessible, even if municipal staff are available to work over the holiday weekend.

Many municipal clerks are printing poll lists, sorting absentee ballots, stocking supply boxes, organizing signs and posters and arranging for the delivery and set up of voting equipment on the weekend and the day before the election. This makes conducting an election on the day following Memorial Day a logistical nightmare, a financial boondoggle and a practical impossibility. We need to avoid this possibility.

Dates for Possible Recall Events

If a recall election or elections were ordered on March 19, 2012, the recall election would be held on the Tuesday of the 6th week following certification. Wis. Stats. §9.10 (3)(b). That date is May 1, 2012. If a recall primary is required, May 1, 2012 would be the date of the primary and the election would be held four weeks later. That date is May 29, 2012, the day following Memorial Day. Wis. Stats. §9.10 (3)(f).

If a recall election or elections were ordered the week of March 26, 2012, the recall election would be held on May 8, 2012. The Board has tentatively set a meeting date of March 30, 2012 to address a final determination of sufficiency. If a recall primary is required, May 8, 2012 would be the date of the primary and the election would be held four weeks later. That date is June 5, 2012.

If a recall election or elections were ordered the week of April 2, 2012, the recall election would be held on May 15, 2012. The Board has tentatively set a meeting date of April 3, 2012 to address a final determination of sufficiency. If a recall primary is required, May 15, 2012 would be the date of the primary and the election would be held four weeks later. That date is June 12, 2012.

If a recall election or elections were ordered the week of April 9, 2012, the recall election would be held on May 22, 2012. The Board has not set a meeting date for this time period to address a final determination of sufficiency. If a recall primary is required, May 22, 2012 would be the date of the primary and the election would be held four weeks later. That date is June 19, 2012. Because of the statutory schedule for conducting a canvass of the election results, the canvass could not be held until the day following Memorial Day, May 29, 2012.

If a recall election or elections were ordered the week of April 16, 2012, the recall election would be held on May 29, 2012, the day following Memorial Day. The Board has not set a meeting date for this time period to address a final determination of sufficiency. If a recall

primary is required, May 29, 2012, the day following Memorial Day, would be the date of the primary and the election would be held four weeks later. That date is June 26, 2012.

Under the current timetable established by the court, G.A.B. needs to make a final determination of sufficiency no later than March 19, 2012. The agency cannot meet this deadline. As described in the Workload section of this memorandum, the staff cannot complete their work until at least March 30, 2012. The workload described is based on what is required by statute and the order of Judge Davis issued on January 5, 2012.

Given the cost issues related to conducting as many two statewide recalls and four Senate recalls, the Board needs to advocate for all recall events to be scheduled on the same date. Given the possible conflicts with an election event occurring near Memorial Day, the Board needs to advocate for a deadline to complete its work no later than April 6, 2012.

Looking at the logistics described above, the only feasible times for certifying recall elections are the weeks of March 26 and April 2, 2012. In discussions with county clerks on March 6, 2012 at their conference, the overwhelming majority preferred an election schedule of May 15/June 12. This provided the most flexibility for addressing post Spring Election requirements without the issues related to an election event too close to Memorial Day. We have solicited feedback from municipal clerks as well. The responses were not available at the time of the preparation of this memorandum.

The staff is putting in extraordinary hours to complete its work by March 30, 2012. We will be able to provide a more accurate estimate of our remaining workload at the March 12, 2012 meeting.

Proposed Motion:

The Government Accountability Board directs its staff to work with the Department of Justice to file a motion requesting an extension to complete its careful examination of the recall petitions to determine sufficiency and order any required recall election from March 19, 2012 to April 6, 2012.