



DEVIN LEMAHIEU

STATE SENATOR

Assembly Committee on Campaigns and Elections Testimony on Assembly Bill 153 April 18, 2017

Chairperson Bernier and Members,

Thank you for hearing my testimony today on Assembly Bill 153, the Recount Reform Bill. This bill makes a number of changes to Wisconsin's recount laws to improve the recount process, prevent unnecessary recounts, and protect taxpayers from frivolous recount costs.

While county clerks and local election officials performed admirably under stressful circumstances this past fall, the recount prevented clerks from doing their normal jobs of preparing property tax bills and helping local candidates get ready for spring elections.

The Recount Reform Bill preserves the right to request a recount but limits them to the margin of error. Under the bill only "aggrieved parties" can petition for a recount. An aggrieved party is defined as a candidate that is within 1% of the winning candidate in an election with over 4,000 votes, or within 40 votes in a race under 4,000 votes.

Prior recount history, both in Wisconsin and across the nation, backs up the 1% limit. Since 1979 there have been only 3 instances in Wisconsin where the results of a statewide election have changed via recount. The largest difference where the outcome changed was 0.12%.¹ Nationwide from 2000 to 2015 there were 4,687 statewide general elections leading to 27 recounts. Of those 27, only 3 were successful and all original vote margins were under 0.15%.²

Several other states also limit recounts to the margin of error. At least seven states (DE, MA, MT, NC, RI, UT, VA) have laws limiting recounts to only candidates that lose by 1% or less, with the lowest margin being 0.25%.³ Taking that a step further seven other states don't allow candidates or citizens to petition for a recount at all (AZ, CT, FL, HI, MS, SC, TN).

¹ GAB Testimony on 2013 AB 418 (2/4/2014)

² NCSL Data from FairVote

³ NCSL Table "Recount Provisions--Close Vote Margin Required States"

AB 153 also improves the recount process to ensure taxpayers are not on the hook for any unnecessary recount costs. Some people have asked why this bill is necessary if candidates pay for recounts. Unfortunately, the presidential recount did cost taxpayers money. Multiple counties lost money during the recount process. For example, Brown County alone lost \$3,380. SB 102 fixes this issue by giving counties more time to tabulate recount costs.

Furthermore, the Wisconsin Elections Commission, the agency that is tasked with overseeing and coordinating all recounts, is not able to recoup recount costs. While the Stein campaign was able to fundraise millions off their recount effort, the Elections Commission lost money by fulfilling their recount duties. Elections Commission staff worked 727 hours facilitating the recount this fall, costing state taxpayers over \$23,000. That figure doesn't include time worked by agency management and attorney fees.

We also worked with county clerks to improve the recount process timeline. AB 153 gives the county board of canvassers one more day of flexibility to begin their recount. The bill also shortens the recount petition deadline by two days to protect Wisconsin's Electoral College votes. After getting additional feedback during the Senate public hearing, we will be introducing an amendment so that the recount petition deadline is only shortened for presidential elections.

This bill has received the support from the Towns Association and several county clerks, people that understand the time and effort that goes into completing a recount. Thanks again for listening to my testimony today. I encourage you to support Assembly Bill 153 and I'm happy to answer any questions you may have about the bill.



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

**Testimony Before the
Assembly Committee on Campaigns and Elections
on
Assembly Bill 153
April 18, 2017**

Madam Chairwoman and members of the committee, thank you for the opportunity for a public hearing on Assembly Bill 153. This bill concerns voting, one of the most sacred traditions we have in our country. While this past presidential election was contentious, the peaceful transition of power and respect for the will of the voters is a hallmark of our national Constitutional system.

Marginal Limit

This past November, for the first time in the history of our state, a candidate requested a recount of the votes cast for President. A fourth-place candidate requested a recount, trailing the leading candidate by 1,372,994 votes, down 46%, receiving 1% of the state's popular vote. She received a recount, causing our hardworking county clerks, boards of canvassers, and hundreds of volunteers around the state to work provide it. Their diligent and dedicated work was wasted, as the fourth-place candidate had no chance of success.

This bill will protect our electoral system from unnecessary strain, expense and embarrassment from frivolous recounts. The bill amends the law in a few simple ways.

First, it limits candidates that may request a recount in an election to candidates within 1% of the leading candidate or within forty votes in an election under 4000 votes cast. These limits are based on historical data.

There have been three statewide recounts where the results flipped since 1979, according to Government Accountability Board testimony. In all three elections, the difference in margin was less than 0.12%. That is eight times less than 1%.

According to the National Conference of State Legislatures since 2000, there have been twenty-seven recounts in 4,687 statewide elections in other states. Three recounts flipped the

election results. In all three elections, the difference in margin was less than 0.15%. That is six times less than 1%.

Further, we would not be the first state to put a limit on the requesting candidate's margin. At least seven other states, Delaware, Massachusetts, Montana, Rhode Island, Utah, and Virginia, both Republican and Democrat states, have a maximum threshold of 1% or less. The smallest margin is 0.25%.

In the 2004 Washington's gubernatorial election the margin of victory was 0.05% (129 votes). The shifted the election to 0.014%.

In the 2006 Vermont State Auditor's race, the margin of victory was 0.0062% (137 votes). The recount shifted the margin by 0.11% (239 votes).

In the 2008 Minnesota U.S. Senate Race flipped the result of a recount. Al Franken trailed by 0.009% (215 votes). The recount shifted the margin by 0.02% (440 votes).

Our historical data and common sense shows that recounts may flip an election when fractions of a percentage point are the difference. Last November, the petitioning candidate was lightyears from winning the election, even after the second-place finisher graciously conceded the race.

Finally, this bill should not be political. It will apply to all parties equally. Further, any candidate may find herself/himself on the wrong side of any percentage used. For example, had Wisconsin's 2016 presidential election second-place finisher sought a recount under this proposed bill, she was well-within 1%. **She was 0.6% behind the winning candidate.** Passing this measure reflects equally well on all members of our state government as it is common sense and good prudent governance.

Measures to Decrease Unnecessary Pressure And Costs

Also, this bill provides a few small measures to improve the system. First, the requesting candidate shall reimburse the Wisconsin Elections Commission for its expenses. That Commission expended twenty-three thousand dollars in the recent recount that was not reimbursed because the statute did not require it.

Second, local governments shall receive fifteen additional days to correctly tabulate their costs. This is an increase from thirty days to forty-five days.

Third, the requesting candidate shall have two less days to determine whether to demand a recount.

Finally, the board of canvassers shall have one more day to organize a recount before it begins.

Conclusion

As we have seen in our state and across the nations, there are very few recounts that are successful, and even then the margins are so razor thin, it is a testament to the good works our county clerks and other election officials do every election.

This bill is common sense. It recognizes the reality of our already-thorough election results, will ensure Wisconsin is not disenfranchised in future Presidential elections, gives our elections officials the time they need to conduct recounts properly, and ensures that the taxpayers are not left holding the bill.

Thank you for your time. I am open to answer any questions the committee may have.

**Testimony of Michael Haas
Interim Administrator
Wisconsin Elections Commission**

**Assembly Committee on Campaigns and Elections
April 18, 2017**

**Room 300 Northeast, State Capitol
Public Hearing**

Assembly Bill 153

Chairperson LeMahieu and Committee Members:

Thank you for the opportunity to provide testimony on Assembly Bill 153. As you know, this bill would make several changes to the rules related to recount petitions. The Wisconsin Elections Commission has not taken a position on this bill and I am testifying for information purposes only in my capacity as the Commission's Interim Administrator.

A significant change proposed in the bill redefines candidates who qualify as an aggrieved party who may request a recount, so that candidates who are not within close striking distance of the initial winner would be prohibited from requesting a recount. This is a policy decision for the Legislature, and I would like to focus on implementation and administrative considerations related to other provisions of the bill.

I would first note that the initial canvass of official election results, as well as any recounts, are conducted by the municipal board of canvassers for any municipal office, and by county boards of canvassers for any county, state, or federal office. The Elections Commission oversees the recount and certifies the recount results for any county, state or federal office.

One general point to keep in mind is that the recount provisions of Wis. Stat. § 9.01 currently emphasize uniformity in the process, regardless of whether the recount relates to a local, county, state or federal office. Changes in the process may have a significantly different impact on candidates and local election officials depending on the office being recounted.

Recount Filing Deadline

For example, the original bill would change the deadline for a candidate to request a recount petition from 5 p.m. on the third day following completion of the canvass board certification to 5 p.m. on the day after canvass board certification. County canvass

boards may complete their initial canvass anywhere from the Monday after an election to 14 days after the election. Candidates for county, state or federal office would still have at least a week and in some cases two weeks after an election to consider whether to petition for a recount, although most of that time only the unofficial results would be available to consider in their decision-making.

On the other hand, under the original bill's proposed deadline, candidates for local office may need to decide by 5 p.m. on the day after the election whether or not to request a recount. This would be the case if a municipality had only one polling place and no outstanding provisional ballots on Election Night. Under those circumstances the election inspectors at the polling place meet as the municipal board of canvassers after the votes are tabulated to certify the official results.

We have heard concerns from some local clerks about accelerating the recount petition deadline for municipal candidates to potentially require a decision and petition to be filed the day after an election. In such close contests, the candidate may benefit from additional time to consider their options and to review and assemble the documents necessary to make a decision and to file a petition.

The Committee may wish to consider whether such a short recount deadline for local offices, which are much more frequent than recounts for other offices, might force the hands of candidates who may not otherwise file a petition if they had additional time to complete further research and weigh their options. In addition, municipal clerks are often busy with other post-election duties on the day after the election which may complicate the filing and processing of a recount petition so soon after the election.

The three-day time limit for a recount petition became a concern during the 2016 recount of the Presidential Election in Wisconsin. Pursuant to the statutory deadline, the recount petition was not filed until November 25th, the Friday after Thanksgiving and 17 days after the election. The WEC issued the recount order on Nov. 29th and it began on Dec. 1st. This created a tight timeframe to complete the recount due to questions regarding the deadline for the State to resolve any election disputes in order to ensure that the State's electoral votes were honored.

While a recount of a contest at a Spring Primary may risk delaying the printing of ballots for the Spring Election, a recount of a Presidential Election creates a unique issue due to the Electoral College process. In weighing these considerations, alternatives which may be considered are 1) retaining the current deadline for a recount petition as three days after the canvass boards have certified official results, 2) changing the deadline for all recounts as proposed in the bill or as a two-day deadline, or 3) establishing different deadlines for different contests.

We understand that an amendment has been introduced to the Senate companion bill which would change the recount filing deadline only for Presidential elections. This would have the benefit of causing the least amount of change for clerks compared to current practice, while also addressing the specific issue which gave rise to the bill. Other options we identified would be to establish the shorter filing deadline any statewide recount, or only to any state or federal contests which are certified by the Elections Commission rather than county or local boards of canvass.

Recount Start Deadline

While the bill would shorten the deadline for a recount petition to be filed, it allows an extra day for county canvassing boards to prepare for a recount after the Elections Commission issues a recount order, which is done in the event of a recount for a state or federal office. The bill requires the recount to begin no later than the third day after the order is issued rather than the second day after the order is issued as under current law.

This would help counties to assemble election materials and organize the recount before the start date. Currently some canvass boards convene simply to meet the deadline for starting the recount and immediately adjourn for a day or two so that the county clerk can assemble the records and workers necessary to conduct the recount.

I would note that there is a potential conflict in the statutes regarding the starting date for recounts which I understand is also being addressed through the amendment to the Senate bill. The bill amends Section 9.01(1)(ar)3. to add another day before canvass boards are required to convene. However, the very next subsection of the Statutes, Section 9.01(1)(b), states that the canvass board must convene no later than 9 a.m. on the day following the deadline for filing the recount petition.

Because the deadline for reconvening is measured in two different ways in these paragraphs, there may be a conflict in establishing the deadline to reconvene. The Senate amendment reconciles these provisions by clarifying that the deadline for reconvening in state or federal recounts runs from the Commission recount order, and that the deadline runs from the petition filing deadline in all other recounts. This change would remove the need for the Commission to craft individual solutions to the conflicting language on case-by-case basis whenever the State issues a recount order.

Recount Fee

Finally, the bill proposes two changes related to the administration of the fee for a recount involving a state or federal office, when a fee is required because the margin is greater than 0.25% of the total votes for the office. In such cases the Elections Commission is required to provide an estimate of the recount costs to the recount petitioner and to collect the fee prior to the start of the recount.

The bill would change current law which specifically provides that the recount fee may include only costs of local election officials, by requiring the Commission to include its costs in the calculation of the recount fee. During the 2016 Presidential recount, the Commission's program staff tracked its time working on the recount, which included providing guidance to county clerks, canvass boards and candidates; administering a system of collecting daily results from the counties; documenting and resolving conflicts between the original canvass and the recount results; responding to inquiries from the media and public; responding to litigation along with the Department of Justice; and certifying the final recount results.

The total staff time that was tracked was 727 hours and the total documented staff costs were \$23,350. However, those totals do not include the time of agency management (the Elections Supervisor and Administrator) or our staff attorney working on the recount. We did not track that time but if we had I would estimate that the total cost would approach doubling the tracked costs. Of course there were some unique circumstances surrounding this recount, including the issues related to the Electoral College, the intense national media interest, and the amount of litigation involved.

In addition to the Presidential recount, the November 2016 General Election resulted in recounts for the offices of Iron County District Attorney and the 32nd Senate District. While our office issued the recount order and provided assistance to the canvass boards in those cases, our involvement and staff time was much more limited than in the Presidential recount. Except in cases of a statewide recount, the staff costs of the Elections Commission are not likely to be substantial.

The bill also extends the deadline for either collecting the remainder of a recount fee from a candidate if the initial estimate was too low, or for refunding the balance of the fee if the estimate proved to be too high. The bill would change the deadline in either case from 30 days to 45 days from the certification of the recount results.

This change would help the administration of the recount fee for both our office and local clerks in the case of a recount for a state or federal office. During the Presidential recount, we found that it was a challenge for some county and municipal clerks to tally all of their costs so that we could issue reimbursement checks in time to calculate the refund owed to the petitioning candidate within 30 days of the recount certification.

In some cases counties later advised us that they incurred costs that were not included with their initial reimbursement request but we had already issued the recount fee refund. Permitting an additional 15 days will ensure that local officials and our office can be confident that all costs are accounted for before issuing a refund or requesting an additional payment from the candidate.

Thank you for the opportunity to share our thoughts with you. I hope this testimony will help inform the Legislature's consideration of this bill. As always, we would be glad to answer questions and work with you to address any questions or issues related to the bill.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael Haas". The signature is written in a cursive style with a large, prominent "M" and "H".

Michael Haas
Interim Administrator
Wisconsin Elections Commission
608-266-8005
Michael.haas@wi.gov

2016 GAB 01
ELECTIONS – POLL WORKERS

You are a City Attorney. You have asked us whether an elected official of a city may serve as a city poll worker. There are several considerations that must be taken into account in answering this question, but the Board is of the opinion that the answer is "no." The considerations that lead to this answer are as follows:

1. As a general matter, appointment of poll workers is invested in the city council. Wis. Stat. § 66.0501(2) provides "Except as expressly authorized by statute, no member of a town, village or county board, or city council, during the term for which the member is elected, is eligible for any office or position . . . the selection to which is *vested* in, the board or council, but the member is eligible for any elective office." We understand this to mean a member of a city council may not serve as a poll worker because the selection of poll workers is vested in the city council. This statute does not apply to the Mayor.
2. Wis. Stat. § 7.30 (2)(a) provides that individuals selected to be election officials "may not be a candidate for any office to be voted for at an election at which they serve." We have always interpreted this prohibition to apply even if an individual is a candidate on the ballot at a different polling location because the individual is still a candidate to be voted for at the election.
3. Under the compatibility of office doctrine, the general rule is that an individual may not hold two public offices or an office and a position within the same unit of government where one post is superior to the other. *Otradovec v. City of Green Bay*, 118 Wis.2d 293 (Ct. App. 1984). *Otradovec* concerned a member of the Green Bay city council who was also a full-time employee of the city. A poll worker, of course, is not a full-time employee, so only a court can decide if the doctrine should apply in the case you have presented. But we note that Wis. Stat. § 66.0501(4) specifically provides that certain local part-time positions are deemed compatible with holding elective office. The omission of other positions suggests that those positions are incompatible. Poll worker is not one of the named positions. Thus, we believe it is problematic that an elected official of the city could also serve as a poll worker.

Assembly Committee on Campaigns and Elections:

RE: Assembly Bill 153/Senate Bill 102

As a County Clerk and former Town Clerk, I have major concerns with two components of AB 153/SB 102.

- 1) The change of the filing deadline to petition for a recount to 5:00 p.m. the first day following the last board of canvassers.

This becomes an issue in Spring Elections.

In the April 4, 2017 Spring Election, over 20 of the 29 municipalities in Rock County held their municipal board of canvass after the polls closed on election night.

In those 20+ municipalities, with the proposed change, the losing candidate would only have until 5:00 p.m. the day after the election to file a petition with their municipal clerk. This is less than 24 hours.

To understand one of the underlying problems with this issue, you need to understand the job of the municipal clerk, especially town clerks. The municipal clerk must deliver their election supplies to the county clerk by 4:00 p.m. the day after the election, after having worked what could very likely have been a 15-18 hour day on Election Day. Many municipal clerks will then deliver their election supplies to their school district clerks. In Rock County, this varies from one to four school districts depending on the municipality. Many town clerks are part-time and have another full-time job. If they are delivering supplies and working their second job, the losing candidate may not be able to reach their clerk for information on what steps they can take to file petition before the deadline to file. With broadband issues throughout the state, including western Rock County, this will hamper anyone looking for guidance.

With over 1,200 town clerks, many part-time throughout the state, this is a major issue. Please do not change the date to file the petition to 5:00 p.m. the first day after the board of canvassers. Please give everyone time to breath.

- 2) The aggrieved party constraints on who can petition for a recount.

I do not agree with the constraints proposed, even though in the recounts I have worked on, the outcome has never changed. Knowing the election process from the municipal and county levels, I can foresee issues many others may miss.

I recommend expanding the difference by changing the 40 vote difference of the total votes cast under 4,000 to an 80 vote difference; and by changing the one percent difference of the total votes cast over 4,000 to a two percent difference of the total votes cast over 4,000. Though any limit on being able to request a recount tends to play against transparency in our elections.

Thank you for your consideration,

Lisa Tollefson, Rock County Clerk

COUNTY CLERK

BROWN COUNTY

305 E. WALNUT STREET, ROOM 120
P.O. BOX 23600
GREEN BAY, WI 54305-3600

SANDRA L. JUNO
COUNTY CLERK

PHONE (920) 448-4016 FAX (920) 448-4498

juno_sl@co.brown.wi.us

TO: Members of the Assembly Committee on Campaigns and Elections
FROM: Sandy Juno
DATE: April 18, 2017
RE: ***AB-153 Parties Petitioning for Recounts – Public Hearing Comments***

In opening, I want to thank you for the legislative changes you made pertaining to recounts in your last session. The Jill Stein Presidential Recount could have been very costly to Wisconsin taxpayers if the new rules regarding recount costs were not in place. In Brown County alone, the savings to taxpayers exceeded \$150,000.

The Stein Recount was a window for us to see the effect of the recount legislative changes and provide an opportunity for fine tuning. Overall, our recount went well and we demonstrated nationwide that Wisconsin has excellent elections management systems as well as accurate election results. However, through this process we were able to identify some important areas where changes still need to be addressed.

First of all, we need to change the requirements as to who can request a recount. Recounts should be limited to when a candidate's petition clearly identifies and documents error(s) that could change the outcome of the election. A candidate's petition for a recount should be denied if there is no documented evidence that error occurred and there is no statistical means that a recount could change the outcome of the election. To conduct a recount otherwise becomes simply a glorified audit of the election equipment. Following each general election, the Wisconsin Elections Commission already schedules random audits of equipment throughout the state for verification of tabulation equipment accuracy. Municipal and county clerk's offices are not staffed for recounts. Therefore, recounts have a negative impact on the delivery of services to constituents and other departments.

Second, provided in AB-153 this legislation changes the number of days to return excess funds to the recount candidate from 30 days to 45 days. Thirty days is too short of a period for clerks to assemble invoices and account for all incurred expenses. Likewise, within the 30 days the Elections Commission needs to process payments to jurisdictions and refund monies to the campaign. In accounting practices there is typically a 30 day window for billing, but in this case clerks have approximately 2 weeks from certification of the recount to assemble costs from municipalities, county finance departments, and vendors. Just like recounting votes, accuracy in tabulating recount costs is extremely important. Brown County lost over \$3,300 in expenses that weren't refunded because the costs weren't available within 2 weeks of certification to make the 30 day deadline for recount costs reimbursement. It's frustrating that we want the candidate to pay all costs for the recount, but we don't allow ourselves enough time to do the proper accounting.

Third, AB-153 reduces the recount petition filing deadline and provides for an additional day for clerks to identify recount locations and space, prepare recount materials, publish legal notices, secure canvassers, assemble election supplies and ballots, and finalize recount details. During the Stein Recount, the succinct timeline was nearly impossible to work with especially since the filing happened on the Friday after Thanksgiving and numerous government offices were closed. We were required to have certification done in time for the Electoral College to meet. The timing of the Stein Recount caused clerks many sleepless nights, long days recounting ballots, and problems staffing and managing offices to provide services to constituents and complete their other duties and responsibilities.

Finally, I am requesting that you add verbiage to AB-153 requiring candidates/campaigns that are requesting or involved in recounts to provide clerks/board of canvassers with a list of representatives' names including each individuals' role for the recount. There are 3 major roles such as legal counsel, primary representative, and secondary representative. Each role has differing liberties such as to observe the recount, challenge ballots, and ask questions. Some campaign representatives who showed up at the Stein Recount had no clue what their role was; and since the duties and capabilities vary from one role to another it created a "loosey goosey" recount environment. The uncertainty of campaign representatives' roles can cause some serious problems between the candidates when canvassers are determining how questionable votes shall be handled.

Currently this is what is in state statute 9.01(3)(3).

Representation and observation. The petitioner, all opposing candidates and interested persons shall be entitled to be present in person and by counsel to observe the proceedings

Currently this is what is in the Recount Manual.

If there are multiple representatives from a single campaign, a single representative shall be identified as the designated primary representative to the board of canvassers. Secondary representative may ask clarifying questions of recount staff and request that ballots be set aside for further review by the board of canvassers, but any challenges or objections for the record must be made by the designated primary representative.

AB-153 should be amended to incorporate the verbiage from the recount manual into 9.01(3)(3) as follows:

9.01(3)(3) Representation and observation. The petitioner, all opposing candidates and interested persons shall be entitled to be present in person and by counsel to observe the proceedings. If there are multiple representatives from a single campaign, a single representative shall be identified as the designated primary representative to the board of canvassers. Secondary representative may ask clarifying questions of recount staff and request that ballots be set aside for further review by the board of canvassers, but any challenges or objections for the record must be made by the designated primary representative.

Identifying a campaign representative's role is important because if the election recount results aren't satisfactory to one of the candidates, the recount challenges could end up in court for resolution. It's imperative that the board of canvassers conducting the recount understand the role of participating campaign representatives.

In closing, please know that I am in full support of this AB-153 and believe that the changes recommended will further improve the recount process and election's management. Thank you for listening to my comments and I would be happy to answer questions.

To: Assembly Elections Committee
From: Paul Malischke malischke@yahoo.com
4825 Bayfield Terrace, Madison 53705
Date: April 18, 2017

Subject: Opposition to AB-153, Recounts

2015 Act 36, passed in the previous legislative session, will drastically reduce the number of recounts. Please do not advance any further legislation such as AB-153 that will make recounts even scarcer.

The best tool we have to promote quality elections is a high profile recount. Recounts are the most thorough and rigorous method of auditing an election, exposing faults, and opening opportunities to improve. When a recount is for a closely watched high profile office, these effects are magnified.

The recent recount provided vital information on the need to improve our elections. Below are some of the important items:

➤ **“more than 11,000 changes to the original vote total”**

On January 1, 2017, the Wisconsin State Journal reported that over 11,000 votes were not counted correctly on election night or at the normal Board of Canvassers meeting. They were discovered in the recount. http://host.madison.com/wsj/news/local/govt-and-politics/recount-found-thousands-of-errors-but-no-major-flaws-in/article_4ad0fe2a-40d8-5cce-8d84-f3e33469c8f1.html

“At least 9,039 presidential votes weren’t counted correctly on Election Night, and only were added to the official results because of the recount, the State Journal review found. Another 2,161 votes were originally counted but later tossed out for reasons including to square vote totals with the number of voters who signed the poll book.”

➤ **“Since the completion of the recount, staff has reviewed county board of canvassers’ minutes to identify common types of errors discovered during the recount so we can learn from them and use them as an opportunity to adjust our training and improve election officials’ ability to conduct elections in Wisconsin”**

At their March 14th meeting, the Wisconsin Election Commission listed common statewide errors that were uncovered because of the recount. On the reverse side are excerpts from the WEC meeting materials detailing many of these errors. The excerpts are from <http://elections.wi.gov/about/meetings/2017/march>

Quality control is not achieved by one-time efforts. It requires continual exposure of problems and follow-up.

Common statewide errors that were uncovered by the 2016 recount.

Ballots/Ballot Containers

Election Inspectors inconsistently handled spoiled, damaged and replacement ballots. They marked these ballots inconsistently as damaged or replaced, or did not mark them at all and often put them in incorrect envelopes for delivery to the municipal clerk's office.

Election inspectors improperly issued provisional ballots.

Municipal clerks did not track the issuance of absentee ballots in WisVote properly and timely. Election inspectors failed to enclose all ballots with the election materials. Additionally, ballot containers were not properly secured in the office of the municipal clerk. On several occasions, the county board of canvassers had to request further investigation of ballots that were not originally provided for review at the recount.

Many ballots were not properly tabulated on Election Day because electors used incorrect ballot marking devices. In most cases this applied to absentee ballots where election officials failed to recognize the limitation of older voting equipment technology still in use that requires marking devices to produce a mark which contains carbon.

Election inspectors failed to properly seal, secure or document ballot containers. They incorrectly recorded tamper-evident seal numbers on the Ballot Container Certificate and the Inspectors' Statement.

Absentee Process and Absentee Ballots.

Absentee Certificate Envelopes lacked witness signatures and addresses. Municipal clerks did not follow up appropriately with electors when absentee ballots envelopes were missing required information prior to Election Day.

Some clerks accepted requests for absentee ballots and transmitted them incorrectly. They issued absentee ballots to voters without first obtaining a written request and to voters who were not properly registered to vote and to voters who had not provided photo ID.

Some clerks and deputy clerks failed to properly sign the witness statement and fill out the address section for absentee ballots completed in the clerk's office.

Voting Equipment and Elections Materials

Municipalities mixed the test ballots with the official ballots and destroyed test decks prior to the retention schedule deadline.

Many tamper-evident seal numbers were not recorded on the chain of custody statement or the EL-104 Inspectors' Statement.

Many election inspectors and clerks were unfamiliar with how to troubleshoot voting equipment issues such as jammed ballots. Additionally, there were many instances where the voter verified paper audit trail was loaded backwards causing candidate selections to not print on the paper receipt properly.

Some county canvass boards improperly used the drawdown process. Other canvass boards failed to proof their official canvass before certification, leading to reporting errors.



**Statement to the Assembly Committee on Campaigns and Elections
regarding Assembly Bill 153,
aggrieved parties petitioning for a recount**

April 18, 2017

Assembly Bill 153 should be called “The We Hate Jill Stein Bill” because it comes in response to the Green Party candidate’s forcing of a recount of the Presidential tally in Wisconsin last November. (Stein came in fourth, with only 1 percent of the vote.)

The bill states that in races where more than 4,000 votes are cast, it would allow only second-place finishers within 1 percent or less of the winner’s total to demand a recall. In races where fewer than 4,000 votes are cast, the candidate seeking a recount must be within 40 votes of the winner.

The Wisconsin Democracy Campaign opposes Assembly Bill 153, for the following reasons:

1. Transparency is good for democracy. When a candidate calls for a recount, whether that candidate was close or not, we get to see whether the machinery of democracy is working properly or not.
2. In this day and age of computer hacking, now is not the time to make it harder to do a recount.
3. The bill favors the two-party system. In big races, second-place finishers are almost always from one of the two major parties, so this bill would discriminate against minor parties.
4. If both major parties are engaging in the same hanky-panky, or if the losing major party doesn’t want to look like a sore loser, there might not be a recall, even though there may have been serious improprieties that a distant third-party candidate or fourth-party candidate could draw our attention to.
5. It won’t cost taxpayers more. Already, right now, taxpayers don’t have to pay for recounts when the difference between the first- and second-place finisher is more than one quarter of one percent. This threshold remains the same in the new bill.

The Wisconsin Democracy Campaign urges you oppose AB153.