

June 4, 2018

Wisconsin Elections Commission
212 East Washington Avenue
Madison, Wisconsin 53707-7984

Dear Commissioners and Administrator Wolfe:

I was pleased with your May 24 discussion about welcoming citizen input, particularly in the form of constructive ideas. I've always been pleased with the Commission's willingness to listen to public comment at your meetings. Please consider this letter a public suggestion related to **election security**. If you are to take official action on it, I think the subject of planning for the 2018 s.7.08(6) Voting-Machine Audits needs to be on your June 11 agenda.

With a few simple revisions to your instructions for the s.7.08(6) voting-machine audits, scheduled to follow the November 2018 election, the Wisconsin Elections Commission can:

- 1. Immediately create a new level of fraud deterrence that does not now exist; and**
- 2. Introduce Wisconsin's local election officials to the practice of simple 'spot-check' audits, to prepare them for the day when they will do the more rigorous outcome-verifying audits recommended by national authorities.**

Details are discussed below.

Interim Administrator Meagan Wolfe and staff are to be commended for moving ahead with their Post-Election Audit Research Project. Judging by the summary included in your May 24 meeting materials, the project seems to focus entirely on risk-limiting auditing (RLA). There's no question that RLA is the current gold standard for election audits. Colorado, Rhode Island, and Virginia are now committed to using RLA to secure their elections, and RLA is a local option in several other states.

However, security for the November 2018 general election is of critical importance for voter confidence, and quick statewide implementation of RLA is not an option. So while staff studies RLA, we suggest the Commission take the two following, simple, economical actions as soon as possible.

- 1. WEC could and should assertively clarify that local clerks are allowed to open ballot bags to check accuracy at any time, including during the canvass.**

In conversations with fellow voters, I'm often asked why Wisconsin election officials leave the swirling concerns about 'rigged elections' unanswered when they could so easily refute them with audits. When I pass that question along to local officials, they say, "Because I'm not allowed to open the ballot bags unless there's a recount."

This widespread naiveté is surprising, because it's been almost four years since GAB revised the instructions for s.7.08(6) audits to make it clear that paper-ballot audits during the canvass are permitted. This widespread misconception is irrational and damaging in so many ways:

- Wisconsin's elections are barely more secure than those in paperless jurisdictions if our paper ballots are continuously sealed from Election Night until their destruction. By making sure everyone understands that election results could be audited at any time, WEC could immediately put would-be thieves on notice: There is now a risk that a Wisconsin elections clerk might detect their handiwork. This simple step would help to deter fraud *even if no clerks actually audit*.
- The only explanation for discouraging clerks from opening ballot bags I have ever heard is that it creates a risk that the record might be compromised for a later recount. If this ever was a prudent consideration, it is no longer. Wisconsin's Legislature has progressively tightened the recount law over the past few years so that the likelihood of a recount is now a fraction of what it was just five years ago. As soon as Wednesday 8AM, election officials know when a recount petition is likely and when it's out of the question. There is no rational reason to forego a valuable prudent security practice in anticipation of a recount that will never happen.
- Our local election clerks know how to open a ballot bag without compromising its utility for a recount. An unjustified fear that one or two clerks might be unable to maintain a chain of custody is insufficient cause to forego effective election-security measures statewide.
- There is much precedent for opening ballot bags during the canvass. In previous years, many municipalities have carried out s.7.08(6) audits during the county canvass. In addition, I know of at least three other cases. The Stoughton ballot bags were opened in November 2014 even before the municipal canvass deadline. I was present when a 2016 county board of canvass told a city clerk to open one ward's ballot bags to locate and remove a provisional ballot accidentally fed into a machine on Election Day. (The action turned out to be unnecessary; the voter had resolved the ballot.) Just recently, the Rock County Clerk told me of opening ballot bags in April 2018, wisely and responsibly, to resolve an anomaly in the preliminary results for a local race.
- As recounts become rarer, routine audits become more necessary, but audits performed only after county certification cast doubt on both the sincerity of the certification statement and the intent of the audit. Even mildly skeptical voters will perceive a post-canvass audit as being done only to confirm the fait-accompli certification. Finally, post-certification audits risk chaos. If a post-certification audit ever discovers an outcome-altering miscount, the controversy and legal battles could damage voter trust for a decade.

2. WEC could and should, before August, update and retarget the s.7.08(6) audits scheduled for November 2018 to address election security.

Audits constrained within the letter of s.7.08(6), Wis. Stats. answer only a narrow statewide question about the performance of each voting system. The WEC made good use of these audits in 2017, but as currently implemented they provide no deterrence for fraud.

s. 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 commission 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.

This law has never been closely followed. It can't be: the EAC standards are inappropriate for use in field audits with voter-marked ballots, because they were developed for laboratory testing in which every ballot is perfectly marked. So when in 2014 the Legislative Audit Bureau pointed out several ways in which the audits were flawed, even they made no recommendations.

WEC should do what good public administrators often do when saddled with a poorly written, unrealistic, or obsolete statute. That is, respond to the implicit legislative intent by using management discretion to interpret the law in a way that allows them to do something related, but more useful.

In this case, WEC should alter their existing s.7.08(6) audit procedures to focus on measuring real-world error rates and to give the clerks experience in auditing during the canvass.

You have substantial unilateral leeway to update your s.7.08(6) audit procedures because the statute doesn't prescribe specifics and there's no administrative code. All the existing criteria and procedures for these audits have been created independently by the state elections agency and can be amended the same way. Done well, these changes can both get Wisconsin started toward valid election-results auditing and allow you to assess each voting system in a way that complies with the law at least as closely as past audits have.

So, we submit the following suggestions for your consideration.

First, retain the current s.7.08(6) audit instructions' focus on only the ballots counted by machine on Election Day, and on four top-of-the ballot races. Then, revise the instructions to:

- a) **Explicitly encourage municipalities to conduct the audits during the county canvass**, immediately after municipal certification. Point out the benefits of completing the audits in time to report any anomaly to the county board of canvass before they certify, and the dangers of finding a miscount after county certification. Because municipal clerks are busy after an election, remind them that they can delegate the audit tasks to chief inspectors, other municipal staff, or qualified volunteers such as the local bank manager or civics teacher.
- b) **Describe an efficient method of hand-counting.** We can demonstrate it for you (*have ballots, will travel*), or you can contact Racine County Clerk Wendy Christensen and ask her about the projected-ballot method we used with her paper ballots in November 2017. When ballots are projected, only one person needs to handle the paper. At the same time, volunteers can accurately and transparently count votes in one race at a rate of 100 ballots every four minutes—and that includes time for paired counters to compare subtotals and resolve differences. Even the largest single precinct can be hand counted in less than two hours, with much more transparency for observers than the relatively time-consuming manual counting method now prescribed.
- c) **Redefine ‘error’ and introduce the idea that a small error rate is unsurprising.** The EAC standard of no more than 1 error in 500,000 votes is *literally impossible* when counting ballots marked by actual voters, and it has deformed the s.7.08(6) audit instructions from their inception.
- Instruct auditors to use the same voter-intent standard used in recounts. Eliminate the instruction to excuse discrepancies the municipal clerks can explain.
 - Have the auditors calculate the error rate in a straightforward way: Hand-count totals for each balloted and registered write-in candidate, all the unregistered write-ins as a single group, and blank or over-voted ballots as a group; calculate the difference between those totals and the corresponding vote totals from the machines’ Election-Night poll tapes; sum up to determine how many votes were miscounted; and calculate that as a percentage of total ballots.
 - Ask them to report the results to you, even if they do the audits voluntarily, so that you can accumulate data on expected error rates and the various machines’ performance.
 - For the 2018 instructions, until you gather more data, I would think you can leave it to the county officials’ judgment and your existing canvass guidance to decide how much of an error rate can be tolerated and how much should trigger expansion and resolution. (When you move to RLA, this won’t be an issue. The RLA formulae indicate when to expand the sample, and the method imposes only a very loose accuracy standard—that is, ‘Did we identify the right winner?’)

Second, encourage municipal clerks and county boards of canvass voluntarily to try out the new instructions in the August primary, and in the November election if they are not selected for the official sample.

I’ve spoken to enough municipal clerks to know that at least a sizable minority will welcome this. Many—particularly those with IT backgrounds—are soberly aware of the risks and uncomfortable not knowing whether their safeguards worked. The only thing holding them back from doing manual audits now is their fear that going it alone will attract criticism from WEC or

their peers. Give them explicit permission, let them know you have their backs, and many will do it.

Third, increase the sample size and change the selection criteria for the November voting-machine audits. To make sure every county canvass has the benefit of the results of at least two voting-machine audits during their canvass, randomly select two machines from each county. To give more municipalities experience with election auditing, select no more than one voting machine for any municipality—even the large ones. When you move to RLA, the sample will need to be more traditional, but when the audit's purpose is limited to deterring fraud (rather than reliably detecting it), and when the scope of the audit is limited to the federal and state races included in an s.7.08(6) audit, you don't need more than one machine per municipality. For those races, the same code is copied to all machines within a municipality, so auditing only one is a sufficient countermeasure. Select a few more machines if the random sample didn't pick up the variety of voting systems that you believe necessary.

Close observers of Wisconsin elections appreciate the difficult position in which WEC finds itself. Security is, in 2018, the highest priority for election administrators nationwide. We know you manage your own systems (WisVote and CRS) with diligence and dedication, but we also know the vote-tabulating systems' security is controlled not by you, but by the vendors and the local election officials. WEC cannot oversee the technicians' actions as they service the vote-tabulating systems, or the municipal clerks' as they store them. WEC can exercise no oversight of the vendors' or local governments' security practices as they create the software for each new election. WEC has no control over how securely that software is then transferred from vendor to county to municipality to polling place before each Election Day, or back again after. Finally, you don't have clear statutory authority to mandate specific county canvass methods.

But if you creatively and responsibly use the authority and control that you do have—that is, prescribing how the s.7.08(6) audits will be performed—WEC can powerfully advance the two most effective aspects of elections security: Deterring fraud by creating a risk of timely detection, and improving the odds that any miscounted preliminary results will be detected and corrected before they affect our final, certified election results.

Thank you,

Karen McKim, Coordinator,
Wisconsin Election Integrity