

Email from John Washburn to the Government Accountability Board Feb 21, 2008

Dear Mr. Dunst and Kennedy:

Please forward this written statement and attachments to the Government Accountability Board for the inclusion in the February 25, 2008 meeting.

Please find attached the proposed administrative rules EIBd Chapter 5. I call your attention to

I call your attention to paragraph 5.01(5) of the proposed administrative rules which reads:  
*Security of the ballots and the ballot container shall be maintained as provided under s. 7.51, Stats., until destruction of the ballots is conducted under s. 7.23, Stats. Destruction of the ballots under s. 7.23, Stats., requires shredding, incineration, or some other form of obliteration of the ballots.*

First, this proposed rule brazenly misstates the law. The applicable portions of WI Stats 7.23 read [emphasis mine]:

- • 7.23(1)(am) Unused ballots **may be** discarded or destroyed no earlier than the day after the latest day for the filing of a petition for a recount under s. 9.01 for any office on the ballots.
- • .23(1)(f) Except as authorized in pars. (b) and (g), **ballots**, applications for absentee ballots, registration forms, or other records and papers requisite to voting at any federal election, other than registration cards, **may be** destroyed after 22 months.
- • 7.23(1)(h) Ballots **may be** destroyed 30 days after any election.

The proposed administrative rule should read:

*Security of the ballots and the ballot container shall be maintained as provided under s. 7.51, Stats., until destruction of the ballots is conducted under s. 7.23, Stats. If the custodian defined under s.7.24 of the ballots decides to destroy the ballots, then the destruction of the ballots authorized under s. 7.23, Stats., requires shredding, incineration, or some other form of obliteration of the ballots.*

The administrative rule as proposed by Mr. Dunst serves no compelling state interest and eviscerates the vital public interest under s. 19.23. WI Stats. 19.23(1) reads:

*19.23(1) Any public records, in any state office, that are not required for current use may, in the discretion of the public records board, be transferred into the custody of the historical society, as provided in s. 16.61.*

Unless Mr. Dunst is making the argument that election records are not open records, then s. 19.23 applies to ballots as well as to the minutes of the Government Accountability Board. As you and Mr. Dunst are aware I have sought the preservation of election ballots over the past two years for any of the following three objectives:

- 1) 1) Academic study of optical and infrared scanners using actual ballots marked by actual voters as proposed by staff the Askew School of Public Administration of the Florida State University. (The emails from August 2006 and the complaint before the Joint Committee are attached)
- 2) 2) Transfer of the November 2, 2004 election records (including ballots) to the Wisconsin Historical Society because of the historic significance of that particular election.
- 3) 3) Academic study of the feasibility of the sort and weight method of counting ballots. (See attached paper: How to Count Thousands of Paper Ballots by Hand). Actual empirical data using real ballots marked by real ballots would be a useful study.

The administrative rule as proposed by Mr. Dunst thwarts each of endeavors and destroys the significant public interest served by the preservation of election records for historical and academic study such as these. This overstepping of the statutory bounds was the subject of a complaint before the Wisconsin Legislature's Joint Committee for Review of Administrative Rules when Ms. Lowe of the WI SEB mis-informed every municipal and county clerk in the state via a mass email. At that time it was decided to table the complaint because the WI SEB was to be dissolved and the new Government Accountability Board would be reviewing these administrative rules and re-issuing them under the authority of the GAB. I was informed by the staff of Assemblyman LeMahieu to take the matter up with the GAB when they promulgate the rules on ballot retention and destruction. That time is now.

Again I would urge the GAB to bring the proposed administrative within the scope of the statutes and to preserve the significant public interest provided by the selective preservation of election ballots. Administrative rule EIBd 5.01(5) should be amended to read:

*Security of the ballots and the ballot container shall be maintained as provided under s. 7.51, Stats., until destruction of the ballots is conducted under s. 7.23, Stats. If the custodian defined under s.7.24 of the ballots decides to destroy the ballots, then the destruction of the ballots authorized under s. 7.23, Stats., requires shredding, incineration, or some other form of obliteration of the ballots.*

Thank you for your time on this matter. As always if you have questions you may call me on my cell phone at 414-375-5777.

P.S.

The studies proposed by FSU School of Public Administration are:

- 1) 1) A survey of how actual voters mark real ballots; e.g. types of marks used and kinds of marking instruments used.
- 2) 2) How do different marks (e.g. X's, Checks, filled circles, donuts, etc.) affect the accuracy of scanners?
- 3) 3) How accurately are ballots tallied if marks used are the same but the inks and marking instruments vary?
- 4) 4) Given a same set of voter marked ballots, how do changes in the calibration settings of the scanner affect the accuracy of the scanner; i.e. with the same ballots and different calibrations, how different are the machine tallied results?
- 5) 5) How is accuracy affected given the same calibration but with ballots of different water content; e.g. What is the effect of humidity on ballot scanning accuracy.
- 6) 6) How badly damaged may the edge of ballot be and still not jam? This is because unlike Wisconsin, many states require unused ballots be track, counted and reconciled. Because of this the ballots are numbered on a removable, perforated stub. How fine and what are the specifications needed for the perforation in order to not interfere with the proper operation of the scanner?
- 7) 7) How badly damaged and or stained (e.g. flooding or coffee) can a ballot be and still be read accurately by a scanner?

Surprisingly, after thirty years of use in the field none of these property of optical scanners have been tested outside the context of an actual election. I think it is in the public interest that such test be conducted sometime which is NOT an actual election.

The historical significance of the November 2, 2004 ballots exists if for no other reason than that election is still part of an open investigation by a Joint Task Force organized by US Attorney Steven Biskupic and then DA Michael McCann. The task force has promised the City of Milwaukee Election Commission that the investigation will close and a final report of the findings of the Joint Task force will be published this year