

4825 Bayfield Terrace
Madison, WI 53705
December 11, 2007

Dear Representative Terese Berceau:

This letter is a companion to my request for legislation to improve our recounts. The key component of that request is to restore the option for the Board of Canvassers to count by hand or by machine. This letter examines this component.

The option existed from 1980 until Act 451 changed it on July 1, 2006. Act 451 requires a machine-readable ballots to be recounted by machine, unless there is a court order for a manual count. There were two rationales for the change in Act 451:

1) Standardization

It was felt that all jurisdictions should utilize the same method, so the automatic tabulator was made a requirement. However, this has not led to standardization. Many wards have Direct Reading Equipment (DRE, commonly called touch-screen) that prints a paper tape of the votes. For a recount, this is the legal record of the vote and there is no method available for a machine count. In fact, many wards have both optical scan ballots and DRE records.

Therefore, the only way to have standardization within the ward is to have a manual count of all ballots.

2) Removing subjective judgment

It was felt that the tabulator count would remove subjectivity. However, there are very few ballots that are not clear as to voter intent. Any controversies will generally be minimal. The key is that the manual process is completely transparent. Evaluation of these ballots can be improved by directing the GAB to develop a better manual for judging voter intent, such as produced by the state of Washington.

Contrast this with the count via computerized machine, which has no transparency. There have been two major programming errors in Wisconsin recently, in Medford and in Milwaukee. At least one of these resulted in wrong candidate counts in significant numbers.

Numerous studies of currently available voting machines have shown that they lack security measures that have become routine in the computer industry. This has raised voters concerns about the accuracy of the equipment. Occasional manual recounts will act as a cross check to the machine results reported on election night, and maintain voter confidence.

On April 10, 2007, I witnessed a recount of a referendum for the New Glarus school district. The New Glarus school district encompasses two counties. The boundaries are erratic. In the Dane County wards, only a few voters are in the district. Present for the recount were the Dane County clerk, the Green County clerk and deputy, and three township clerks from Dane County. Dane uses the Optech IIIp "Eagle" (optical scan) and the AutoMARK to meet HAVA. Green County uses the Diebold Accuvote (optical scan) and Diebold touchscreens to meet HAVA.

There are three illustrations here of the advantages of re-establishing the option for a manual count.

(1) The town of Montrose had 2 ballots in this school district. The town of Perry had about 29 voters in this district. It is ludicrous to use the tabulator for these counts. It takes longer and can be more confusing.

(2) After the tabulator run for the town of Perry (29 ballots), there was a discrepancy between the election night results and the recount results. Then the Dane County clerk supervised a manual count (illegally – he had no court order!) This was the logical thing to do, and they verified the count and then went on.

(3) They had multiple categories of ballots and it got confusing to keep them straight. For the town of Primrose, there were some ballots counted by tabulator; one optical scan ballot that the tabulator saw as an overvote in this contest due to a stray mark; and 9 paper ballots that were Xerox ballots because they ran out of ballots. The only way to have consistent counting for this ward would be a complete manual count.

In three of five recounts that I have witnessed recently, the clerks completely skipped the pre-recount test required by statute. In the fourth, the clerk performed a poor test after I prompted them. Apparently the clerks feel the test is too time consuming, and I believe they will welcome the option for manual counts.

In a letter dated April 17, 2007, Kevin Kennedy, the Executive Director of the State Elections Board, stated that he had no objections to the change I am proposing, and wrote “I think local election officials and candidates prefer this option.”

There are situations when manual counts are simpler and faster, provide more consistency, and will lead to greater confidence in the accuracy.

Sincerely,

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