

Testimony of Kevin J. Kennedy  
Director and General Counsel  
Wisconsin Government Accountability Board

United States Senate Committee on Rules and Administration  
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**SENTRI Act: Wisconsin's Experience  
Serving Military and Overseas Voters**

Chairman Schumer, Ranking Committee Member Roberts and Committee Members:

Thank you for the opportunity to provide information to the Senate Committee on Rules and Administration about the SENTRI Act. It is an honor to be here. This is a subject the state and local election officials in Wisconsin take very seriously. Please allow me to provide a brief background on the organizational structure of elections in Wisconsin along with a description of our approach to military and overseas voter services. I will also provide some general recommendations based on our experience in Wisconsin.

**Introduction**

I have served as Wisconsin's non-partisan chief election official for more than 30 years. I am also a member of the National Association of State Election Directors (NASED). I served as NASED President in 2006 and currently serve on the NASED executive committee.

I am currently appointed by and report to a non-partisan, citizen board of six former circuit court and appellate judges who comprise Wisconsin's Government Accountability Board. The Board oversees the state's elections, campaign finance, ethics and lobbying laws.

The Board has general supervisory authority over the conduct of elections in the State of Wisconsin. The Board has delegated to me its compliance review authority over Wisconsin's 1,924 local election officials and their staffs. This means any complaint alleging an election official has acted contrary to law or abused the discretion vested in that official must be filed with the Government Accountability Board before it may proceed in court. I have the authority to order local election officials to conform their conduct to law.

The Board has developed comprehensive training programs for local election officials. The Board is also required to certify the chief election inspector, the individual in charge of each of the state's 2,822 polling places. The Board is required to emphasize the integrity and importance of the vote of each citizen in its training programs. Wis. Stat. §5.05 (7)

Wisconsin's elections are administered at the municipal level in our 1,852 towns, villages and cities. The municipal clerk, an elected or appointed non-partisan public official, is responsible for processing all absentee ballots, including those for Wisconsin's uniformed services and overseas voters.

The State of Wisconsin has been a leader in reaching out to voters in our uniformed services, overseas electors and voters with disabilities. Military voters are not required to register in order to vote. Wis. Stat. §6.22 (3). As early as 2000, our Legislature authorized electronic delivery of absentee ballots. 1999 Wisconsin Act 182. Wisconsin accepts and counts absentee ballots postmarked by Election Day if they are received by 4 p.m. on the Friday following Election Day. Wisconsin is one of several states that developed an electronic ballot delivery system for its uniformed services and overseas (UOCAVA) voters. Our *My Vote Wisconsin* tool was put in place for the 2012 election cycle. <https://myvote.wi.gov/> *My Vote Wisconsin* provides valuable information for all Wisconsin voters, but it is designed to provide special services for military and overseas voters.

In 2012, Wisconsin clerks issued just under 10,000 UOCAVA ballots. While this is a very small percentage of the total number of Wisconsin voters participating in the 2012 general election (.31%), our state and local election officials made extraordinary efforts to ensure UOCAVA ballots were sent 47 days before the election as required by state law. In the case of UOCAVA applications received later than 48 days before the election, ballots were sent within 24 hours of receipt of the application, up to and including Election Day as provided by Wisconsin law. Wis. Stat §6.86 (1)(b).

### **The SENTRI Act – Safeguarding Elections for our Nation's Troops through Reforms and Improvements**

The SENTRI Act makes a number of reforms and improvements to safeguard elections for uniformed services and overseas voters. These reforms and improvements include:

- Increased data collection and reporting by state election officials;
- Specific deadlines for transmitting UOCAVA ballots;
- Remedies for late transmission of ballots;
- Permitting a UOCAVA voter to request an absentee ballot for all federal elections beginning with the year of the general election and any federal elections in the subsequent year;
- Requiring review by the Comptroller General of the reports related to UOCAVA voting prepared by the Department of Defense;
- Requiring the Department of Defense to develop a comprehensive voter assistance program for uniformed services voters including an electronic database to assist military voters in registering to vote, requesting an absentee ballot and updating voter information;
- Extending the guarantee of residency for voting purposes to all dependents of absent military personnel.

The spirit behind these reforms and improvements is commendable and has the support of state election officials. However, implementation of some aspects of these reforms and improvements, while not insurmountable, could be problematic.

## **Data Collection**

The timeframes for collecting and reporting data present challenges, especially around the deadline for transmitting ballots 46 days before Election Day. If a federal election is held on a Tuesday, as is the norm, Day 46 is always a Friday. This means local election officials are scrambling to get the UOCAVA ballot requests fulfilled before the mail goes out. The next two days are not business days, yet state officials must collect and compile data from local election officials and submit a report on the Monday following the transmission deadline. This is particularly challenging for a state where the municipal election officials are responsible for fulfilling UOCAVA absentee ballot requests.

Wisconsin experienced this problem in 2012. A handful of our 1,852 municipalities failed to transmit a small number of UOCAVA ballots before the April Presidential primary. As part of an agreement with the U.S. Department of Justice (U.S. DoJ), Wisconsin collected extensive data similar to what is required by the SENTRI Act for the partisan primary and general election and provided detailed reports to U.S. DoJ. The Wisconsin Government Accountability Board (G.A.B.) devoted almost 2,000 staff hours fulfilling this requirement. Because of the efforts of the G.A.B. and local election officials, all of the late ballots were received before Election Day.

The SENTRI Act provides for express delivery of ballots that are not transmitted by the deadline. This can still be effectively implemented if the State reporting deadline is moved to five or seven days after the 46-day deadline. This is particularly true when the UOCAVA voter has requested to receive the ballot electronically. The required information would still be captured, but the report would also contain a description that the late ballots were sent by electronic transmission or express mail.

The States could also benefit from funding that would enable them to augment their HAVA-required statewide voter registration systems to more easily collect this data from local election officials. Wisconsin has developed a data collection portal that enables our 1,852 municipal clerks to enter election administration data required to comply with state and federal post-election reporting requirements. We hope to enhance this tool to address this pre-election reporting requirement.

Our goal has been to make it as easy as possible for local clerks to complete the reporting requirement so that they can maximize their time spent serving voters, as can we at the State level. Policies that reduce transit time (electronic ballot delivery and/or return) and those that give UOCAVA voters the opportunity to request their ballot earlier, rather than placing additional mandatory reporting requirements on the overwhelming majority of election officials who are already in full compliance with the law, may improve the likelihood that voters will receive and return their ballots in time.

The Department of Defense through its Federal Voting Assistance Program (FVAP) has worked with the U.S. Elections Assistance Commission (U.S. EAC) to coordinate the collection of post-election voting data related to UOCAVA electors required by federal law. It would be good to dovetail the States' 90-day post-election reporting requirement with the U.S. EAC's deadline. This also works well with the new biennial report deadline of June 30 for the Department of Defense.

### **Role of the Department of Defense**

Through acts of Congress such as HAVA and the MOVE Act, States have made great strides in improving the delivery of ballots to uniformed services and overseas voters. Much of this has been done through the allocation of federal resources to improve the election administration infrastructure at the state level. States have more time and resources to ensure timely transmission of UOCAVA ballots. The Department of Defense is uniquely positioned to provide more robust assistance to military voters.

The SENTRI Act provides direction to ensure the mission and role of the Department of Defense to assist uniformed services voters is strengthened. Adding a layer of oversight by the Comptroller General provides an objective outside evaluation of the efforts of the Department of Defense.

Technology has served states well as state election officials seek to improve services for all voters, including uniformed services and overseas voters. Our *My Vote Wisconsin* website is one of many state-level examples. The SENTRI Act requires the Department of Defense to develop a comprehensive online system and electronic database integrated with the existing systems of the military departments to facilitate the requirement to provide enhanced voter assistance. This could prove to be a sword that cuts both ways, improving assistance to uniformed services voters while creating a mishmash of online voter assistance tools that do not relate well to each other.

Not only does each military department have an existing online tool to provide a myriad of services to uniformed services personnel, but the states and territories along with civilian organizations such as the Overseas Vote Foundation also have already developed online tools to assist uniformed services and overseas voters. On behalf of state election directors, I encourage the Department of Defense to carefully evaluate the development of this online service to integrate not only with existing military departments, but also with state and civilian online voter services. Significant investments at the state level in online voter tools may be diminished if the addition of Department of Defense tools does more to create voter confusion than to assist military voters.

Congress also needs to be mindful of the privacy rights of uniformed services personnel when developing a tool that tracks voter participation of military voters. We ask a lot of the Department of Defense to support our uniformed services personnel and the SENTRI Act reinforces Congress' commitment to ensure military voters have the best opportunity to participate in the electoral process. It is equally important to safeguard the confidence

of uniformed services personnel in the outreach and assistance provided by the Department of Defense.

### **Other Provisions of the SENTRI Act**

The SENTRI Act provides that a UOCAVA voter may with a single request ensure that absentee ballots will be sent for all federal elections beginning with the year of the general election and through any federal elections in the subsequent year. This appears to be a compromise from the change in the MOVE Act requiring UOCAVA voters to make a separate request for each election. Prior to the MOVE Act, Wisconsin required local election officials to honor military requests for three full election cycles and overseas absentee requests for two full election cycles. This led to a bloated roster of UOCAVA voters, resulting in a large number of undeliverable ballots at each federal election.

The exemptions for UOCAVA voters who change their registration or whose ballots are undeliverable provide some relief from a return to outdated UOCAVA voter lists. Similarly, the required Department of Defense electronic database should assist state and local election officials with keeping UOCAVA lists current. However, this will still result in a list of UOCAVA voters that is not current. The MOVE Act recognized the responsibility of the voter to keep the application current.

The SENTRI Act provision extending the guarantee of residency for voting purposes to all family members of military personnel will improve access to voting for all uniformed services UOCAVA voters.

### **Conclusion**

Elections are the cornerstone of our democracy. A citizen's right to vote is one of our enduring principles. Our uniformed services and overseas voters make extreme sacrifices to protect that right for us. They deserve the commitment and effort of all public officials to enable them to fully participate in the electoral process.

Thank you for the opportunity to share my thoughts with you. I would be happy to answer any questions Committee Members may have.

# State of Wisconsin\Government Accountability Board

Post Office Box 7984  
212 East Washington Avenue, Third Floor  
Madison, WI 53707-7984  
Voice (608) 266-8005  
Fax (608) 267-0500  
E-mail: [gab@wisconsin.gov](mailto:gab@wisconsin.gov)  
<http://gab.wi.gov>



KEVIN J. KENNEDY  
Director and General Counsel

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## Kevin J. Kennedy

Kevin J. Kennedy is Director and General Counsel for the Wisconsin Government Accountability Board, a position he has held since November 2007. Before assuming the top staff position for the Board, he was Executive Director – and before that Legal Counsel – for the Wisconsin State Elections Board. Kevin has served as the Chief Election Official for Wisconsin since August, 1983.

Kennedy was in private practice before joining the Elections Board in 1979, and prior to that served as an assistant district attorney in Washington County, Wisconsin. He graduated from the University of Wisconsin-Madison Law School in 1976, and received his Bachelor of Arts degree in Mathematics and Communication Arts from the University of Wisconsin-Madison, College of Letters and Science in 1974.

Kennedy is a member of the National Association of State Election Directors (NASD) and served as NASD President in 2006. He also served as co-chair of the National Task Force on Election Reform established by the Election Center, a non-profit organization dedicated to training and educational opportunities for state and local election officials. Kennedy is a Certified Elections and Registration Administrator (CERA), having completed the professional certification program (2003) and along with continuing recertification (2006, 2009, 2012). He is also a member of the Council on Governmental Ethics Laws (COGEL) and has served on the organization's Steering Committee. In December 2008, he received the COGEL Distinguished Service Award.