



To: Legal Team Reviewing Grounds for Court Challenge of Results of Wisconsin Supreme Court Election Recount  
From: Jonathan Simon, Executive Director, Election Defense Alliance  
Re: Suspect Tabulation Patterns In Milwaukee City and Milwaukee County

### Overview

Since receiving initial returns on Election Night (April 5, 2011) it has been evident to analysts, including myself, that the Milwaukee County numbers were highly suspect. Although there was high drama in Waukesha County revolving around the actions of Waukesha County Clerk Kathy Nickolaus, and although the recount in Waukesha has been the focus of most attention and observation, the numbers in Milwaukee appear to defy benign explanation and suggest a magnitude and direction of mistabulation that, if substantiated, would likely be outcome determinative.

It should also be noted that, according to trusted observers, the Prosser team deployed attorneys and other personnel in significantly higher numbers and proportions during the recount phase in Milwaukee than elsewhere in the state, and that numerous breaches of ballot custody--e.g., improperly sealed ballot bags--were observed during the Milwaukee County recount. As I understand it, the ballots for Milwaukee City were recounted by hand but the ballots for the surrounding Milwaukee County localities were recounted primarily by re-feeding through optical scanners, the memory cards of which were reprogrammed to view only the Sup. Ct. election and ignore all else on the ballot. Given the implausible Election Night results and the ballot bag custody breaches observed during the Milwaukee recount, the possibility of massive ballot substitutions between the initial machine count and the hand recount must not be ignored.

### Kloppenburg Under-Performance In Milwaukee City

Although this election was nominally nonpartisan, it was, as a virtual referendum on the highly polarizing initiatives of Governor Walker, as partisan as any Wisconsin election in recent memory. Candidate funding and GOTV campaigns took on, if anything, an ultra-partisan tinge. In this context, the results from the Democratic stronghold of Milwaukee City do not come near to passing the smell test.

- Kloppenburg/Prosser headed a ballot that also included the contest for Milwaukee County Executive between Democrat Chris Abele and Republican Jeff Stone, a Walker protege. According to official returns, Abele received 86,605 votes (72.74%) to Kloppenburg's 79,561 (67.89%) in Milwaukee City.
- Further, almost 2000 more total votes were recorded as cast in the down-ballot County Executive race than in the top-of-ballot Sup. Ct. race, an egregious reverse undervote that suggests memory cards programmed to either void or flip votes cast in that race (it is not only possible but indeed easy to program cards earmarked for opponents' stronghold precincts to intentionally mistabulate and/or be highly sensitive to any stray marks on the ballot and void or flip votes accordingly).
- Comparison with the 2010 Attorney General contest reinforces this pattern. Here Democratic candidate Hassett (from Dunn County across the state from Milwaukee) polled 70.42% in Milwaukee City to Kloppenburg's 67.89%, while receiving just 43.33% of the statewide vote, 6.67% behind Kloppenburg. To put this in perspective, had Kloppenburg's Milwaukee and statewide numbers been proportional to

Hassett's, she would have polled 77% of the Milwaukee vote, gaining 21,344 votes net, and winning the state by a margin of nearly 14,000 votes.

- I was initially inclined to attribute Kloppenburg's severe Milwaukee City underperformance to a relatively poor turnout among urban Democratic marginal voters who would be more difficult to motivate for an April Special election than for a Presidential election or even an off-year election in November. Specific analysis, both of the raw vote totals ward-by-ward (in 112 of the City's 314 wards, Prosser actually received more votes than did Walker in 2010, despite much lower overall turnout) and using regression by ward partisanship (there is a strong negative correlation between %Dem and turnout shift relative to 2010 and 2008), establishes that this "benign" explanation cannot be invoked.

### Political Pressures

We are all too aware of the intense pressures that have been brought to bear during the course of this recount, mocking its motives and implying that there will be political hell to pay. This extraordinary effort is now reaching its crescendo in an attempt to discourage any further legal challenge. Thus the disparaging Journal-Sentinel editorial, to which Kloppenburg made a swift and strong response, is now followed by the Esenberg column "Recount futile from the start," which asserts that "dark insinuations of 'irregularities' and 'anomalies' that might call the results into question or undermine public confidence in the process are irresponsible." In providing "examples," the column refers thus to the material evidence that observers have documented in several key venues:

"There is the saga of overstuffed bags of ballots that are partially open at the top. How can we know that someone did not reach into the bags to either remove legitimate ballots or insert fraudulent ones?"

Well, we can know quite easily. There is a chain of custody for each bag. Beyond that, the ballots were counted before they were placed into the bag. If the count of the ballots in the 'uncinched' bag correlates to the count on election night, it is evident that they were not tampered with."

These, then, are the arguments that lead Esenberg to his conclusion that "A legal challenge to the recount would have almost no chance of success:"

1. There is a chain of custody for each bag. Yes, there is supposed to be a chain of custody; and uncinched bags and/or mismatched seals are prima facie evidence of breach of that chain of custody. The whole point to chain of custody is intactness and accountability. Any breach equates to an opportunity for fraud, and there have been dozens of documented breaches. The naked assertion, obviously specious, that there is a chain of custody for each bag thus begs the further question of whether that chain of custody has been maintained—the evidence shows clearly that it has not.
2. If the count of the ballots in the 'uncinched' bag correlates to the count on election night, it is evident that they were not tampered with. This is patently absurd. The whole point of post-election ballot substitution is to swap out genuine ballots that were initially mis-tabulated by the election night machine count and replace them with fraudulent ballots that match that initial count. 'Uncinched' ballots bags and other breaches in the chain of custody permit such post-election fraud to occur and, yes, if such tampering is successful, the ballot count in the uncinched bags will indeed match the machine count. Given the breaches in the chain of custody and the exposure of thousands of ballots to fraudulent substitution, only further investigation under color of law stands to reveal whether such frauds have been committed.

The very weakness of such arguments betrays the desperation of those who would by any means prevent the further investigation of this election and the exposure of the vulnerability of machine-counted elections, not only in Wisconsin but nationwide, to gross and outcome-determinative manipulation. Whatever the outcome of further legal proceedings, a very strong, logical, and likely-to-be-popular rebuttal can be made to such threats and disparagements in the court of public opinion.

Judicial review will not only give IT experts an unprecedented opportunity to examine the programming that produced the implausible Milwaukee results, and has been and is being used across this nation to produce

similarly implausible results in election after election, it will also strongly focus media attention on the issue of secret vote counting. It is, in short, the rarest of rare opportunities to scale what has been to date a towering never-happen-here wall of denial. EDA has received an earmarked initial grant of \$18,000 for immediate application to legal costs of exploring the feasibility of bringing a challenge to court. The donor has pledged to do all he/she can to raise substantially more if a case does go forward.

### Conclusions

It is trivially easy to rig an election through the programming of the vote counting computers. This vulnerability has been established by experts from Princeton to Johns Hopkins to the Congress's own GAO. It is harder to prevent that rig from being exposed in the extremely rare instances, such as the current recount in Wisconsin, where some ballots are actually examined and deeper investigation looms as a possibility.

Observers have seen and recorded a carnival of breaches of ballot security, unsealed or improperly sealed ballot bags and other evidence that makes it impossible to rule out the massive substitution of ballots between the initial count and the recount. These observations are coupled with numbers in certain venues, including Milwaukee, that are glaring red-flag anomalies and, upon analysis, defy all benign explanation. From what we've seen so far, it is hard to imagine an election looking more like a rigged election without being a rigged election.

While compelling numerical evidence does not necessarily add up to a winning legal case, it does indicate the strong likelihood of outcome-determinative mistabulation in this contest. It must be viewed in conjunction with the series of breaches in ballot custody and the strenuous attempts of the Prosser team in Milwaukee to prevent observers from seeing and/or hand tabulating the votes indicated on the ballots. Massive ballot substitution is a very real possibility, one that, with aggressive impounding and inspection of ballots and other recorded evidence (GAB 190s, unused ballots, ballot bags, etc.), may be exposed.

While the GAB has received from the Wisconsin Attorney General language amounting to a blanket denial of open records requests, subpoenas issued under legal process could succeed in securing documents and other evidence from which initial vote manipulation exploits and/or their subsequent cover-up could be established (please note that analysis is ongoing, both of Milwaukee and of other suspect venues in the state). The significance of the numbers provided above is in establishing from a numerical/statistical point of view that we are looking at a pervasive pattern (i.e., not simply an anomaly), of a magnitude more than great enough to reverse the outcome of this election, and without any plausible benign explanation. It is a situation with very obvious national implications calling, indeed screaming, for deeper investigation.