

No. 20-3414

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

DONALD J. TRUMP, candidate for  
President of the United States of  
America,

Plaintiff-Appellant,

vs.

THE WISCONSIN ELECTIONS  
COMMISSION, *et al.*

Defendants-Appellees

Appeal from the United States District  
Court for the Eastern District of  
Wisconsin, Milwaukee Division

District Court No. 2:-20-cv-01785

The Honorable Brett H. Ludwig, Judge  
Presiding

**CIRCUIT RULE 30(B) APPENDIX TO THE BRIEF OF PLAINTIFF-  
APPELLANT DONALD J. TRUMP**

Pursuant to Circuit Rule 30(b) the Plaintiff-Appellant submits his Circuit  
Rule 30(b) Appendix.



### **CIRCUIT RULE 30(d) CERTIFICATION**

The undersigned counsel for Plaintiff-Appellant Donald J. Trump, certifies that, pursuant to Circuit Rule 30(d), the following Appendix includes all materials required by Circuit Rule 30(b).

**DATE: DECEMBER 16, 2020**

Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

I certify that the foregoing document was filed and served through the Seventh Circuit’s electronic-filing system on December 16, 2020.

/s/ William Bock, III

*Counsel for Plaintiff-Appellant  
Donald J. Trump, candidate for  
President of the United States*



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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DONALD J. TRUMP,

Plaintiff,

v.

Case No. 20-cv-1785-BHL

The WISCONSIN ELECTIONS COMMISSION, ET AL.,

Defendants.

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**DECISION AND ORDER**

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This is an *extraordinary* case. Plaintiff Donald J. Trump is the current president of the United States, having narrowly won the state of Wisconsin’s electoral votes four years ago, through a legislatively mandated popular vote, with a margin of just over 22,700 votes. In this lawsuit, he seeks to set aside the results of the November 3, 2020 popular vote in Wisconsin, an election in which the recently certified results show he was defeated by a similarly narrow margin of just over 20,600 votes. Hoping to secure federal court help in undoing his defeat, plaintiff asserts that the defendants, a group of some 20 Wisconsin officials, violated his rights under the “Electors Clause” in Article II, Section 1 of the Constitution.<sup>1</sup> Plaintiff seizes upon three pieces of election guidance promulgated by the Wisconsin Elections Commission (WEC)—a creation of the Wisconsin Legislature that is specifically authorized to issue guidance on the state election statutes—and argues that the guidance, along with election officials’ conduct in reliance on that guidance, deviated so significantly from the requirements of Wisconsin’s election statutes that the election was itself a “failure.”

Plaintiff’s requests for relief are even more *extraordinary*. He seeks declarations that defendants violated his Constitutional rights and that the violations “likely” tainted more than

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<sup>1</sup> Plaintiff’s complaint also refers to the First Amendment and the Equal Protection and Due Process Clauses of the Fourteenth Amendment. At the December 9, 2020 final pre-hearing conference, plaintiff disclaimed reliance on any First Amendment or Due Process claims. While counsel purported to reserve the Equal Protection claim, the complaint offers no clue of a coherent Equal Protection theory and plaintiff offered neither evidence nor argument to support such a claim at trial. It is therefore abandoned. See *Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718 (7th Cir. 2012) (undeveloped arguments and arguments unsupported by pertinent authority are waived).



50,000 ballots. Based on this declaratory relief, his complaint seeks a “remand” of the case to the Wisconsin Legislature to consider and remedy the alleged violations. Plaintiff’s ask has since continued to evolve. In his briefing, he says he wants “injunctive relief” requiring the Governor “to issue a certificate of determination consistent with, and only consistent with, the appointment of electors by the Wisconsin legislature.” In argument, counsel made plain that plaintiff wants the Court to declare the election a failure, with the results discarded, and the door thus opened for the Wisconsin Legislature to appoint Presidential Electors in some fashion other than by following the certified voting results.

Defendants want plaintiff’s claims thrown out, arguing his complaint fails to state a claim and raising several knotty issues of federal jurisdiction. With the Electoral College meeting just days away, the Court declined to address the issues in piecemeal fashion and instead provided plaintiff with an expedited hearing on the merits of his claims. On the morning of the hearing, the parties reached agreement on a stipulated set of facts and then presented arguments to the Court. Given the significance of the case, the Court promised, and has endeavored, to provide a prompt decision. Having reviewed the caselaw and plaintiff’s allegations, the Court concludes it has jurisdiction to resolve plaintiff’s claims, at least to the extent they rest on federal law, specifically the Electors Clause. And, on the merits of plaintiff’s claims, the Court now further concludes that plaintiff has not proved that defendants violated his rights under the Electors Clause. To the contrary, the record shows Wisconsin’s Presidential Electors are being determined in the very manner directed by the Legislature, as required by Article II, Section 1 of the Constitution. Plaintiff’s complaint is therefore dismissed with prejudice.<sup>2</sup>

## **PROCEDURAL BACKGROUND AND FINDINGS OF FACT**

### **1. THE PARTIES**

Plaintiff Donald J. Trump is the current, properly elected, President of the United States. In 2016, after a statewide recount, plaintiff won Wisconsin’s Presidential Electors by 22,748 votes. *Certificate of Ascertainment for President, Vice President and Presidential Electors General Election – November 8, 2016*, seal affixed by Governor Scott Walker, National Archives,

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<sup>2</sup> This decision constitutes the Court’s findings of fact and conclusions of law under Federal Rule of Civil Procedure 52.



<https://www.archives.gov/electoral-college/2016>. Plaintiff went on to win the 2016 Electoral College with 304 electoral votes. 2016 Electoral College Results, National Archives, <https://www.archives.gov/electoral-college/2016>. He was a candidate for reelection to a second term as President in the November 3, 2020 election.

Defendant Wisconsin Elections Commission is a creation of the Wisconsin Legislature. *See* 2015 Wis. Act 118 §4, Wis. Stat. §5.05. It is a bi-partisan, six-person commission that has “responsibility for the administration” of the state election laws in Chapters 5 to 10 and 12 of the Wisconsin Statutes.<sup>3</sup> Wis. Stat. §15.61. Any action by the commission requires the affirmative vote of at least two-thirds of its members. Wis. Stat. §5.05(1e). Defendants Ann S. Jacobs, Mark L. Thomsen, Marge Bostelmann, Dean Knudson, and Robert F. Spindell, Jr. are five of the six members of the commission.<sup>4</sup>

Defendant Scott McDonnell is sued in his official capacity as the Dane County Clerk. As the county clerk, McDonnell has a host of election-related responsibilities, including providing ballots and elections supplies to the municipalities, preparing ballots, educating voters, and training election officials. *See* Wis. Stat. §7.10. Additionally, McDonnell serves on the county board of canvassers, which is responsible for examining election returns and certifying the results to the WEC. Wis. Stat. §7.60.

Defendants Maribeth Witzel-Behl, Tara Coolidge, Matt Krauter, and Kris Teske are sued in their official capacities as the City Clerks of Madison, Racine, Kenosha, and Green Bay. As city clerks, they supervise both voter registration and elections. Wis. Stat. §7.15. They provide training for voters and election officials and equip the polling places. *Id.* Additionally, they are part of each respective city’s board of canvassers. Wis. Stat. §7.53.

Because of their substantial populations, Milwaukee County and the City of Milwaukee have additional “election boards.” Milwaukee County has a county board of election commissioners and the City of Milwaukee has a municipal board of election commissioners. Wis. Stat. §7.20(1). These boards have the same powers and duties assigned to the municipal and county clerks in other parts of the state. Wis. Stat. §7.21. Defendant George L. Christiansen is sued in his official capacity as the Milwaukee County Clerk. As the county clerk,

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<sup>3</sup> Chapter 11 of the Wisconsin Statutes contains the state’s campaign finance laws, which are outside of the WEC’s authority.

<sup>4</sup> For reasons not explained, plaintiff did not name Commissioner Julie M. Glancey as a defendant.



he serves as the executive director of the county board of election commissioners, *id.*, but he is not on the county board of canvassers. *See* Wis. Stat. §7.60. Jim Owczarski is sued in his official capacity as the Milwaukee City Clerk. Like Defendant Christiansen, Owczarski maintains some election-related responsibilities, but he is not on the city’s board of canvassers. Wis. Stat. §7.53.

Julietta Henry is sued in her official capacity as Milwaukee County Elections Director. The record is unclear on Henry’s duties as Elections Director. Claire Woodall-Vogg is sued in her official capacity as the Executive Director of the City of Milwaukee Election Commission. She has the same powers and duties assigned to city clerks throughout the rest of the state. *See* Wis. Stat. §7.21.

Defendants Tom Barrett, Satya Rhodes-Conway, Cory Mason, John Antaramian, and Eric Genrich are sued in their official capacities as the Mayors of Milwaukee, Madison, Racine, Kenosha, and Green Bay. Plaintiff contends that these five mayors unlawfully promoted the expansion of mail-in voting in their cities by adopting practices that were banned by the Wisconsin Legislature. Under Wisconsin’s election statutes, mayors play no formal role in presidential elections.

Defendants Tony Evers and Douglas La Follette are sued in their official capacities as the Governor and Secretary of State of Wisconsin. As governor, in accordance with Wis. Stat. §7.70, Defendant Evers signed the certificate of ascertainment prepared by the WEC, affixed the state seal, and forwarded the certificate to the U.S. administrator of general services. Wis. Stat. §7.70(5)(b). Defendant La Follette also signed the certificate of ascertainment.

## **2. WISCONSIN’S MANNER OF CHOOSING PRESIDENTIAL ELECTORS**

Article II, Section 1, Clause 2 of the United States Constitution (the “Electors Clause”) states, “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors...” U.S. CONST. art. II, §1, cl. 2. Pursuant to this federal Constitutional command, the Wisconsin Legislature has directed that Wisconsin choose its Presidential Electors through a general election. *See* Wis. Stat. §8.25. Specifically, the Wisconsin Legislature has directed:

(1) Presidential electors. By general ballot at the general election for choosing the president and vice president of the United States there shall be elected as many electors of president and vice president as this state is entitled to elect senators and representatives in congress. A vote for the president and vice president nominations of any party is a vote for the electors of the nominees.



Wis. Stat. §8.25(1). The statutes define “general election” as “the election held in even-numbered years on the Tuesday after the first Monday in November to elect United States ... presidential electors.” Wis. Stat. §5.02(5).

The Wisconsin Legislature has also established laws detailing the particulars of election administration; these details are set forth in Chapters 5 to 12 of the Wisconsin Statutes. For the last five years, responsibility for the administration of Wisconsin elections has rested with the WEC. The Wisconsin Legislature created the WEC in 2015 specifically to “have the responsibility for the administration of ... laws relating to elections and election campaigns.” 2015 Wis. Act 118 §4; Wis. Stat. §5.05. To carry out these duties, the legislature has delegated significant authority to the WEC. The Wisconsin Legislature directed the WEC to appoint an administrator to “serve as the chief election officer” of the state. Wis. Stat. §5.05(3d), (3g). The Wisconsin Legislature has authorized the WEC to conduct investigations, issue subpoenas, and sue for injunctive relief. Wis. Stat. §5.05(b), (d). The legislature also directed the WEC to receive reports of “possible voting fraud and voting rights violations,” Wis. Stat. §5.05(13), and to “investigate violations of laws administered by the commission and ... prosecute alleged civil violations of those laws.” Wis. Stat. §5.05(2m)(a).

The Wisconsin Legislature has also assigned powers and duties under the state election laws to municipal and county clerks, municipal and county boards of canvassers, and in Milwaukee, the municipal and county boards of election commissioners. Wis. Stat. §§7.10, 7.15, 7.21. The Wisconsin Legislature has directed that these officials, along with the WEC, administer elections in Wisconsin. *See* Wis. Stat. chs. 5 to 10 and 12. When the polls close after an election, these officials make sure that “all ballots cast at an election ... be counted for the person ... for whom ... they were intended.” Wis. Stat. §7.50(2). Once all the votes have been counted, the WEC chairperson “shall publicly canvass the returns and make his or her certifications and determinations on or before ... the first day of December following a general election.” Wis. Stat. §7.70(3)(a). For the determination of Presidential Electors, the Wisconsin Legislature has directed the WEC to “prepare a certificate showing the determination of the results of the canvass and the names of the persons elected.” Wis. Stat. §7.70(5)(b). The legislature has further directed that “the governor shall sign [the certificate], affix the great seal of the state, and transmit the certificate by registered mail to the U.S. administrator of general services.” *Id.* At noon on



the first Monday after the second Wednesday in December, the Presidential Electors meet to vote for the presidential candidate from the political party which nominated them. Wis. Stat. §7.75.

In addition to logistically administering the election, the Wisconsin Legislature has directed the WEC to issue advisory opinions, Wis. Stat. §5.05(6a), and “[p]romulgate rules ... applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns.” Wis. Stat. §5.05(1)(f). The WEC is to “conduct or prescribe requirements for educational programs to inform electors about voting procedures, voting rights, and voting technology.” Wis. Stat. §5.05(12).

Finally, the Wisconsin Legislature has provided detailed recount procedures. Wis. Stat. §9.01. After requesting a recount, “any candidate ... may appeal to circuit court.” Wis. Stat. §9.01(6). The legislature has also directed that “[Wis. Stat. §9.01] constitutes the exclusive judicial remedy for testing the right to hold an elective office as the result of an alleged irregularity, defect or mistake committed during the voting or canvassing process.” Wis. Stat. §9.01(11).

### **3. WEC’S GUIDANCE IN ADVANCE OF THE 2020 PRESIDENTIAL ELECTION IN WISCONSIN**

Consistent with its statutory mandate, since the start of the year, the WEC has published more than 175 messages to County and Municipal elections officials in anticipation of the November 2020 general election. *See Recent Clerk Communications*, Wisconsin Elections Commission, <https://elections.wi.gov/clerks/recent-communications>. In addition to notifying elections officials of training opportunities, relevant court decisions, and upcoming deadlines, these messages provided detailed guidance on how to prepare for the election and count the resulting votes. *See id.* As stipulated by the parties, the WEC issued specific guidance on three specific issues flagged by plaintiff: missing or incorrect absentee ballot witness certificate addresses, voters claiming indefinitely confined status, and absentee ballot drop boxes. (Stipulation of Proposed Facts and Exhibits, ECF No. 127 ¶11.)

WEC’s guidance on at least one of these issues dates back even further. More than four years ago, on October 18, 2016, the WEC issued written guidance to city and county elections boards providing guidance on the topic of witness addresses provided in connection with absentee



balloting. (Stipulation, ECF No. 127 ¶4.)<sup>5</sup> This guidance explained to elections officials how to handle missing or incorrect witness addresses on absentee certificate envelopes. (Pl. Ex. 73, ECF No. 117-72.) The memo highlighted Wis. Stat. §6.87, which states “[i]f a certificate is missing the address of a witness, the ballot may not be counted.” (*Id.*) Since the statute does not provide any additional details, the WEC defined “address” as a “street number, street name and name of municipality.” (*Id.*) The memo then provided guidance for situations where a voter may have left off the certificate one or more components of the witness address. In the memorandum, the WEC states “clerks **must** take corrective actions in an attempt to remedy a witness address error.” (*Id.*) The guidance allowed clerks to contact the voter to notify them of the address requirement; however, the clerk only had to contact the voter if the clerk could not “remedy the address insufficiency from extrinsic sources.” (*Id.*) The WEC stated “clerks shall do all that they can reasonably do to obtain any missing part of the witness address.” (*Id.*) The purpose of the guidance was to “assist voters in completing the absentee certificate sufficiently so their votes may be counted.” (*Id.*) This has been the unchallenged guidance on the issue for more than four years.

In September 2020, as directed in Wis. Stat. §7.08(3), the WEC updated the Wisconsin Election Administration Manual. The updated manual states “[c]lerks may add a missing witness address using whatever means are available.” *Wis. Election Admin. Manual*, 99 (September 2020). Finally, on October 19, 2020, the WEC issued “Spoiling Absentee Ballot Guidance,” reaffirming the previous guidance, and stating “the clerk should attempt to resolve any missing witness address information prior to Election Day if possible, and this can be done through reliable information (personal knowledge, voter registration information, through a phone call with the voter or witness). The witness does not need to appear to add a missing address.” (Pl. Ex. 35, ECF No. 117-35.)

On March 29, 2020, in the early stages of the COVID-19 pandemic, the WEC issued “Guidance for Indefinitely Confined Electors COVID-19” to election officials across the state. (Pl. Ex. 2, ECF No. 117-2.) Through the published guidance, the WEC stated that “many voters

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<sup>5</sup> The parties’ stipulation describes this as an October 19, 2016 memorandum. (Stipulation of Proposed Facts and Exhibits, ECF No. 127 ¶4.) The memo itself is dated October 18, 2016, however. (ECF No. 117-72.) The Court will use the date on the actual document.



of a certain age or in at-risk populations” may meet the standard of indefinitely confined due to the ongoing pandemic. (*Id.*) The Guidance also stated:

1. Designation of indefinitely confined status is for each individual voter to make based upon their current circumstances. It does not require permanent or total inability to travel outside of the residence. The designation is appropriate for electors who are indefinitely confined because of age, physical illness or infirmity or are disabled for an indefinite period.
2. Indefinitely confined status shall not be used by electors simply as a means to avoid the photo ID requirement without regard to whether they are indefinitely confined because of age, physical illness or infirmity, or disability.

(*Id.*) The WEC issued this guidance after the Dane County Clerk issued a statement advising that the pandemic itself was sufficient to establish indefinite confinement for all voters. (*See* Stipulation, ECF No. 127 ¶23.) The statement was challenged in court, and the Wisconsin Supreme Court granted a temporary injunction against the Dane County Clerk. *See Jefferson v. Dane County*, 2020AP557-OA (March 31, 2020). In concluding that the Dane County guidance was incorrect, the Wisconsin Supreme Court expressly confirmed that the WEC guidance quoted above provided “the clarification on the purpose and proper use of the indefinitely confined status that is required at this time.” *Id.*

On August 19, 2020, the WEC sent all Wisconsin election officials additional guidance that, among other things, discussed absentee ballot drop boxes. (Pl. Ex. 13, ECF No. 117-13.) Wisconsin law provides that absentee ballots “shall be mailed by the elector, or delivered in person, to the municipal clerk.” Wis. Stat §6.87(4)(b). The WEC memorandum provided advice on how voters could return their ballots to the municipal clerk, including “information and guidance on drop box options for secure absentee ballot return for voters.” (Pl. Ex. 13, ECF No. 117-13.) Citing to a resource developed by the U.S. Cybersecurity and Infrastructure Security Agency (CISA), the guidance states the “drop boxes can be staffed or unstaffed, temporary or permanent.” (*Id.*) The memorandum stated that the “drop boxes ... allow voters to deliver their ballots in person” and will allow voters “who wait until the last minute to return their ballot.” (*Id.*) The memorandum lists potential types of drop boxes, along with security requirements, chain of custody, and location suggestions for the drop boxes. (*Id.*)

As stipulated by the parties, election officials in Milwaukee County, the City of Milwaukee, Dane County, and the City of Madison relied on the above WEC guidance when



handling absentee ballots with missing or incorrect witness address, using absentee ballot drop boxes, and handling voters that had claimed indefinitely confined status. (Stipulation, ECF No. 127 ¶11.) Because they relied on the guidance, election workers added missing information to the witness address on at least some absentee ballots, more than five hundred drop boxes were used throughout the state, and approximately 240,000 “indefinitely confined” voters requested absentee ballots. (*Id.* ¶¶ 17, 18, 28.)

#### **4. THE 2020 PRESIDENTIAL ELECTION IN WISCONSIN**

On November 3, 2020, nearly 3.3 million Wisconsin voters cast their ballots in the general election for the President and Vice President of the United States. (Stipulation, ECF No. 127 ¶7.) At 8:00 p.m., all polls in Wisconsin closed. Wis. Stat. §6.78. The respective boards of canvassers began to publicly canvass all the votes received at the polling place. Wis. Stat. §7.51.

Voting officials in Milwaukee dealt with an unprecedented number of absentee ballots during this election. (Pl. Ex. 62, ECF No. 117-61.) In Milwaukee and Dane Counties, and likely other locations, election officials processed the absentee ballots in accordance with guidance published by the WEC. (Stipulation, ECF No. 127 ¶11.) The WEC received the last county canvass on November 17, 2020. (*Id.* ¶8.) On November 18, 2020, the deadline for requesting a recount, plaintiff sought a recount under Wis. Stat. §9.01 of only Dane and Milwaukee Counties.<sup>6</sup> (*Id.* ¶9.) The Milwaukee County recount was completed on November 27, 2020 and the Dane County recount was completed on November 29, 2020. (*Id.* ¶10.) Once the recount was complete, the WEC prepared the Certificate of Ascertainment for the Governor’s signature. *See* Wis. Stat. §7.70(5)(b). On November 30, 2020, Governor Evers signed the certificate and affixed the state seal. (Def. Ex. 501, ECF No. 119-1.)

On December 1, 2020, the day after Wisconsin certified its election results, Donald Trump, Michael Pence, and the Trump campaign filed a petition in the Wisconsin Supreme Court against Governor Tony Evers, the Wisconsin Elections Commission, and other state election officials.

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<sup>6</sup> After receiving a recount petition and \$3 million payment from the Trump campaign, the six-member, bipartisan commission conducted a meeting on November 18, 2020, at which the commission unanimously approved the recount order. The WEC ordered a partial recount of the presidential election results in Dane and Milwaukee Counties on November 19, 2020. The recount order required Dane and Milwaukee Counties’ boards of canvassers to convene by 9 a.m. Saturday, November 21, and complete their work by noon on Tuesday, December 1. Wis. Elections Comm’n Order for Recount, Recount EL 20-01, <https://elections.wi.gov/node/7250>.



*Trump v. Evers*, No. 2020AP001971 (Wis. S. Ct.). The issues presented by the plaintiffs included whether absentee ballots should be excluded due to various alleged deviations from legislated election procedures. As a remedy, they asked the Court to decertify the state's election results and exclude 221,000 votes in Milwaukee and Dane Counties from the count. On December 3, 2020, the Wisconsin Supreme Court denied the petition for leave to commence an original action in the state Supreme Court, but noted that, as an aggrieved candidate, plaintiff could refile at the circuit court level.

That same day, plaintiff filed his complaint in this Court. Additionally on that day, plaintiff, along with Michael R. Pence, and Donald J. Trump for President, Inc. filed complaints in Dane and Milwaukee County Circuit Courts against Joseph R. Biden, Kamala D. Harris, and several Wisconsin election officials, some of whom are defendants in this case. *Trump v. Biden*, No. 2020CV007092 (Milw. Co. Cir. Ct.), No. 2020CV002514 (Dane Co. Cir. Ct.). Chief Justice Roggensack of the Wisconsin Supreme Court combined the cases and appointed Racine County Reserve Judge Stephen A. Simanek to hear it. The suits are substantially similar and both allege irregularities in the way absentee ballots were administered. In the Milwaukee County case, the plaintiffs allege the ballots were issued without the elector having first submitted a written application; there were incomplete and altered certification envelopes; and there was a massive surge in indefinitely confined absentee ballot voters. The Dane County case included the same claims, plus one involving an allegation that absentee ballots were improperly completed or delivered to City of Madison employees at a public event, "Democracy in the Park." The plaintiffs asked the state court to set aside the county board of canvassers' legal determinations that certain absentee ballots should be counted due to deviations in state elections laws.<sup>7</sup>

## LEGAL CONCLUSIONS AND ANALYSIS

Plaintiff claims that defendants violated his rights under the Electors Clause by "deviating from the law, substituting their 'wisdom' for the laws passed by the State Legislature and signed by the Governor." (Pl. Br., ECF No. 109.) In the complaint, plaintiff contends three specific pieces of guidance issued by the WEC, and followed by the named defendants, contradict

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<sup>7</sup> On December 11, Judge Simanek affirmed the recount and ruled against plaintiff in the state court proceeding. *Trump v. Biden*, No. 2020CV007092, Doc. 101 (Milw. Co. Cir. Ct. Dec. 11, 2020). Plaintiff has since filed an appeal in the Wisconsin Supreme Court.



Wisconsin's election statutes, and that the WEC lacked the authority to issue any guidance in contravention of Wisconsin law. (Compl., ECF No. 1.) Invoking the Court's federal question jurisdiction under 28 U.S.C. §1331, plaintiff asserts claims for the violation of his federal Constitutional rights under 42 U.S.C. §1983. (*Id.*) Among other remedies, he seeks declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §2201, and asks this Court to declare the Wisconsin general election void under the U.S. Constitution. (*Id.*)

## **I. This Court Has Limited Jurisdiction to Resolve Plaintiff's Electors Clause Challenge.**

Before addressing the merits of plaintiff's claims, this Court has the obligation of confirming that it has jurisdiction even to consider them. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (federal district courts "possess only that power authorized by Constitution and statute"). Defendants offer a host of arguments related to the justiciability of plaintiff's claims. They insist that plaintiff lacks standing to assert his claims, that his claims are barred by the Eleventh Amendment, and that they are moot. (Defs. Brs., ECF No. 70, 81, 87, 95, 98, 100, 101, and 120.) Finally, they contend that even if this Court could resolve plaintiff's claims, it should abstain from doing so. (Defs. Brs., ECF No. 70, 81, 87, 95, 101, and 120.) Despite the tricky questions of federal jurisdiction implicated by plaintiff's claims and requests for relief, the Court concludes plaintiff's claims are justiciable, at least in part. Given the importance of the issues at stake and the need for a prompt resolution, the Court will not abstain from ruling on whether defendants violated plaintiff's federal rights under the Electors Clause.

### **A. Plaintiff Has Standing to Seek an Adjudication of the Alleged Violation of His Rights under the Electors Clause.**

Defendants insist that plaintiff lacks standing to assert claims and obtain declaratory relief based on the Electors Clause. (Defs. Brs., ECF No. 70, 81, 87, 95, 98, 100, 101, and 120.) That plaintiff seeks primarily declaratory relief does not remove his obligation to establish standing. The Declaratory Judgment Act permits the Court to "declare the rights and other legal relations of any interested party," but only when there is "a case of actual controversy within its jurisdiction." 28 U.S.C. §2201(a). "A 'controversy' in this sense must be one that is appropriate for judicial determination," *Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 240 (1937), and



“the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

To establish standing, plaintiff bears the burden of proving that he “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016), as revised (May 24, 2016). An injury in fact is one in which plaintiff claims to have “suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Id.* (quoting *Lujan*, 504 U.S. at 560).

Plaintiff asserts that he suffered an injury in fact when he “was denied the Constitutional right to have electors appointed in a lawful manner in an election in which he was a candidate.” (Pl. Br., ECF No. 109.) The Court agrees. The Eighth Circuit and the Eleventh Circuit have concluded that losing candidates likely have standing to bring a claim under the Electors Clause, because such a candidate has suffered a “personal, distinct injury.” *Wood v. Raffensperger*, No. 20-14418, 2020 WL 7094866, at \*4 (11th Cir. Dec. 5, 2020); *Carson v. Simon*, 978 F.3d 1051, 1057 (8th Cir. 2020) (“An inaccurate vote tally is a concrete and particularized injury to candidates such as the Electors.”). That is the situation here: plaintiff, a candidate for election, claims he was harmed by defendants’ alleged failure to comply with Wisconsin law. Assuming he could prove his claims, he has suffered an injury. Plaintiff, as a candidate for election, has a concrete, particularized interest in the actual results of the general election. *Carson*, 978 F.3d at 1057; see *Carney v. Adams*, \_\_\_ S. Ct. \_\_\_, 2020 WL 7250101 (Dec. 10, 2020) (holding plaintiff had not proved injury in fact sufficient to establish standing where plaintiff was merely potential candidate and had not yet applied for judicial position). Plaintiff has therefore established injury in fact.

Based on the allegations in his complaint, plaintiff also meets the other requirements for standing. He contends that defendants’ failure to comply with Wisconsin law has resulted in a failed election, one in which he was one of the two major-party candidates for President. (Compl., ECF No. 1.) As administrators of the election, defendants implemented the Wisconsin election statutes and WEC’s guidance. His harms are therefore traceable to defendants. And as redress, he seeks a declaration that defendants violated the Electors Clause by failing to follow the



directions of the Wisconsin Legislature during the 2020 Presidential Election.<sup>8</sup> (*Id.*) Redressability is established because “plaintiff ‘personally would benefit in a tangible way from the court’s intervention.’” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 104 n.5 (1998) (quoting *Warth v. Seldin*, 422 U.S. 490, 508 (1975)). Thus, his alleged injury is fairly traceable to the challenged conduct of the defendants and would be redressed by a favorable judicial decision.

Defendants’ arguments against standing are largely premised on their challenges to the merits of plaintiff’s claims. For example, defendants complain that “[p]laintiff offers no proof whatsoever of how many votes were affected in the three categories of alleged state election law violations he identifies.” (Def. Br., ECF No. 98.) But that argument puts the cart before the horse. A court must determine standing based on the allegations in the complaint, not based on its final resolution of the veracity of those allegations. *Spokeo*, 136 S. Ct. at 1547 (“Where, as here, a case is at the pleading stage, the plaintiff must ‘clearly ... allege facts demonstrating’ each element.”). If plaintiff were to succeed in proving that defendants violated the Electors Clause, causing Wisconsin’s Presidential Electors to be appointed in a manner inconsistent with the Wisconsin Legislature’s directives, and depriving plaintiff of his opportunity to win those Presidential Electors, he should have the ability (and the standing) to enforce the Constitution’s plain terms in federal court.

#### **B. The Eleventh Amendment and *Pennhurst* Do Not Apply to Plaintiff’s Unique Article II Claims.**

Defendants next argue that plaintiff’s claims are barred by the Eleventh Amendment and the Supreme Court’s decision in *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984). (Defs. Brs., ECF No. 75, 81, 98, 101, and 120.) They contend that plaintiff is complaining that defendants failed to comply with state law such that the Eleventh Amendment bars this Court from entertaining such claims. (*Id.*)

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<sup>8</sup> The complaint alleges the exclusive remedy for a failed election resides in the Wisconsin Legislature. (Compl., ECF No. 1.) That allegation brought strongly into question whether this Court could redress Plaintiff’s injury, a point raised by the Court at the initial hearing with the parties. Plaintiff has since explained that he seeks a declaration that the Wisconsin general election was a failed election under 3 U.S.C. §2, a declaration he argues is a predicate to allowing the Wisconsin Legislature to take action to determine the manner in which the state should appoint its Presidential Electors now that the originally chosen method has “failed.” (Transcript, ECF No. 130.) While this explanation is tenuous, it sufficiently ties the relief requested to a potential remedy to establish standing.



The Eleventh Amendment provides that: “The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” Defendants are correct that, as a general matter, the Eleventh Amendment bars litigation in federal courts against a state.<sup>9</sup> *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 66 (1989); *MCI Telecommunications Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 336 (7th Cir. 2000) (“[The Eleventh] Amendment bars federal jurisdiction over suits brought against a state ... [and] extends to state agencies as well.”). But the Supreme Court has long held that suits against state agents, rather than against the state itself, based on those agents’ violations of federal law, can be maintained in federal court without running afoul of the Eleventh Amendment. *See Ex parte Young*, 209 U.S. 123, 159-60 (1908). A federal court thus may adjudicate and order relief against state officers based on allegations of ongoing unconstitutional conduct. *Id.*; *MCI Telecommunications Corp.*, 222 F.3d at 345.

In *Pennhurst*, the Supreme Court clarified that the rule in *Ex parte Young* does not extend to claims based merely on alleged violations of state law. 465 U.S. at 106 (“[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law.”). Thus, under the Eleventh Amendment and state sovereign immunity, a federal court “cannot enjoin a state officer from violating state law.” *Dean Foods Co. v. Brancel*, 187 F.3d 609, 613 (7th Cir. 1999).

The *Pennhurst* exception to *Ex parte Young* does not apply here, because plaintiff’s claims are based on federal law—the Electors Clause of Article II, Section 1 of the U.S. Constitution. *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-CV-966, 2020 WL 5997680, at \*75 (W.D. Pa. Oct. 10, 2020) (holding that claims under the Electors Clause are not barred by the Eleventh Amendment); *cf. Dean Foods Co.*, 187 F.3d at 614 (“the question at the heart of this jurisdictional matter is what is the source of the regulations’ potential invalidity”). While plaintiff also cites provisions of Wisconsin’s election statutes, he does so in an attempt to show that defendants violated not merely those statutes, but rather the Electors Clause itself. In this

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<sup>9</sup> The Eleventh Amendment precludes a federal suit against state agencies, and this likely includes the Wisconsin Elections Commission. *See* Wis. Stat. §5.05; *MCI Telecommunications Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 336 (7th Cir. 2000); *Feehan v. Wisconsin Elections Commission*, No. 20-cv-1771, 2020 WL 7250219 (E.D. Wis. Dec. 9, 2020). The WEC has not made this argument. Even if it had, plaintiff’s claims against the individual commission members would survive.



unique context, alleged violations of state laws implicate and may violate federal law. *See Bush v. Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) (“[I]n the case of a law enacted by a state legislature applicable not only to elections to state offices, but also to the selection of Presidential electors, the legislature is not acting solely under the authority given it by the people of the State, but by virtue of a direct grant of authority made under Art. II, §1, cl. 2, of the United States Constitution.”). This is the opposite of what the Eleventh Amendment forbids; here, a truly federal cause of action is being articulated. Because plaintiff’s claims and request for relief are premised on a federal Constitutional violation, not merely a violation of state law, *Pennhurst* does not apply, and the Eleventh Amendment does not bar plaintiff’s claims.

### **C. Plaintiff’s Claims Are Not Moot.**

Defendants also contend plaintiff’s claims are moot. (Defs. Brs., ECF No. 70, 75, 95, 120.) They insist that because plaintiff waited until after Wisconsin certified the election results to file suit, his suit is too late. (*Id.*) They further maintain that plaintiff’s claims are moot because Governor Evers has already signed a “Certificate of Ascertainment For President, Vice President, and Presidential Electors General Election - November 3, 2020” (2020 Electoral College Results, National Archives, <https://www.archives.gov/electoral-college/2020>) on November 30, 2020, an act they contend makes this action irrelevant. (*Id.*)

The final determination of the next President and Vice President of the United States has not been made, however, and the issuance of a Certificate of Ascertainment is not necessarily dispositive on a state’s electoral votes. *See Bush v. Gore*, 531 U.S. 98, 144 (2000) (Ginsburg J., dissenting) (noting none of the various Florida elector deadlines “has ultimate significance in light of Congress’ detailed provisions for determining, on ‘the sixth day of January,’ the validity of electoral votes”).

Under the federal statute governing the counting of electoral votes, a state governor may issue a certificate of ascertainment based on the canvassing and then a subsequent certificate of “determination” upon the conclusion of all election challenges. 3 U.S.C. §6. The certificate of “determination” notifies the U.S. Congress of the state decision when Congress convenes on January 6 to count the electoral votes. Indeed, the WEC acknowledged that plaintiff’s claims are not moot in a filing with the Wisconsin Supreme Court. (Response of Respondents Wisconsin Elections Commission and Commissioner Ann Jacobs, *Trump v. Evers*, No. 20AP1971-OA, filed



Dec. 1, 2020, ECF No. 109-1.) At this time, it is also unclear whether the litigation commenced in state court, *Trump v. Biden*, No. 2020CV007092 (Milw. Co. Cir. Ct.), No. 2020CV002514 (Dane Co. Cir. Ct.), is coming to a final resolution sufficient to resolve plaintiff's challenges. Given plaintiff's pending appeal and the limited time available should that appeal succeed on the state law issues, this Court will proceed to decide the merits of the federal law claims. The Court concludes this case is not yet moot.

**D. This Court Is Not Required to Abstain from Deciding Plaintiff's Challenge under the Electors Clause.**

Defendants also contend that even if this Court could adjudicate plaintiff's claims, it should abstain from doing so. (Defs. Brs., ECF No. 70, 81, 87, 95, 101, and 120.) They focus on three different abstention doctrines: (1) *Wilton/Brillhart* abstention; (2) *Pullman* abstention; and (3) *Colorado River* abstention. (*Id.*) After reviewing the law under all three forms of abstention, this Court will decline defendants' invitation to abstain.

Defendants first invoke the *Wilton/Brillhart* abstention doctrine, derived from *Wilton v. Seven Falls Co.*, 515 U.S. 277, 288 (1995), and *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491 (1942). Under the *Wilton/Brillhart* abstention doctrine, "district courts possess significant discretion to dismiss or stay claims seeking declaratory relief, even though they have subject matter jurisdiction over such claims." *R.R. St. & Co. v. Vulcan Materials Co.*, 569 F.3d 711, 713 (7th Cir. 2009). While labelled with Supreme Court case names, this form of abstention arises from the plain terms of the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, itself. Section 2201 expressly provides that district courts "*may* declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201(a) (emphasis added). The statute thus gives district courts the discretion not to declare the rights of litigants. The Seventh Circuit has confirmed that a district court properly exercises discretion to abstain where, for example, "declaratory relief is sought and parallel state proceedings are ongoing." *Envision Healthcare, Inc. v. PreferredOne Ins. Co.*, 604 F.3d 983, 986 (7th Cir. 2010).

Defendants also invoke *Pullman* abstention. *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 501-02 (1941). The *Pullman* doctrine "applies when 'the resolution of a federal constitutional question might be obviated if the state courts were given the opportunity to interpret ambiguous state law.'" *Wisconsin Right to Life State Political Action Comm. v. Barland*, 664



F.3d 139, 150 (7th Cir. 2011) (quoting *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716-17 (1996)). *Pullman* abstention is appropriate if there is (1) “a substantial uncertainty as to the meaning of the state law” and (2) “a reasonable probability that the state court’s clarification of state law might obviate the need for a federal constitutional ruling.” *Id.* (internal quotation marks omitted).

Finally, defendants ask the Court to avoid deciding this case under *Colorado River* abstention. See *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 818 (1976). Under *Colorado River* abstention principles, a federal court should abstain in favor of a parallel state court lawsuit if (1) “the concurrent state and federal actions are actually parallel” and (2) “the necessary exceptional circumstances exist to support a stay or dismissal.” *DePuy Synthes Sales, Inc. v. OrthoLA, Inc.*, 953 F.3d 469, 477 (7th Cir. 2020) (internal quotation marks omitted).

The Court declines to abstain under any of these doctrines. The federal Constitutional issues raised in plaintiff’s complaint are obviously of tremendous public significance. For the first time in the nation’s history, a candidate that has lost an election for president based on the popular vote is trying to use federal law to challenge the results of a statewide popular election. While there is parallel litigation pending in the state court, that litigation does not address the federal constitutional issue that is the center of plaintiff’s case. Given the importance of the federal issue and the limited timeline available, it would be inappropriate to wait for the conclusion of the state court case. In these circumstances, the Court will exercise its discretion to declare plaintiff’s rights under the Electors Clause and will decline to utilize *Pullman* or *Colorado River* abstention principles to defer to the state court proceedings.

## **II. Plaintiff’s Claims Fail on Their Merits—Wisconsin’s Appointment of Presidential Electors for the 2020 Presidential Election Was Conducted in the Manner Directed by the Wisconsin Legislature.**

To succeed on his claims for relief under 42 U.S.C. §1983, plaintiff must prove that defendants acted under the color of state law and deprived him of a right secured by the Constitution or laws of the United States. *Wilson v. Warren Cnty., Ill.*, 830 F.3d 464, 468 (7th Cir. 2016) (citations omitted). Plaintiff alleges that the defendants violated his rights under the Electors Clause in Article II, Section 1. (Compl., ECF No. 1.) There is no dispute that defendants’ actions as alleged in the complaint were undertaken under the color of Wisconsin law.



Defendants strongly and uniformly dispute, however, that their conduct violated any Constitutional provision. (Defs. Brs., ECF No. 70, 81, 87, 95, 98, 100, 101, and 120.)

**A. The Wisconsin Legislature Has Directed the Appointment of Presidential Electors to Be by Popular Vote.**

The Electors Clause directs state legislatures to appoint presidential electors in a manner of their choosing. U.S. CONST. art. II, § 1, cl. 2. As the Supreme Court explained just this past summer, the Electors Clause was the result of “an eleventh-hour compromise” at the 1787 Constitutional convention. *Chiafalo v. Washington*, \_\_ U.S. \_\_, 140 S. Ct. 2316, 2320 (2020). Apparently fatigued and ready to return to their homes, the delegates decided on language that would give state legislatures the responsibility of choosing the “Manner” in which presidential electors would be appointed. *Id.* And the Supreme Court has confirmed that state legislators have “the broadest power of determination” over who becomes a Presidential Elector. *Id.* at 2324 (quoting *McPherson v. Blacker*, 146 U.S. 1, 27 (1892)).

Today, the manner of appointment among the states is largely uniform. *See Chiafalo*, 140 S. Ct. at 2321. All states use an appointment process tied to the popular vote, with political parties fielding presidential candidates having the responsibility to nominate slates of Presidential Electors. *Id.* at 2321-22. But that manner of appointing Presidential Electors is not required by the Constitution. As Chief Justice Fuller explained in 1892:

The constitution does not provide that the appointment of electors shall be by popular vote, nor that the electors shall be voted for upon a general ticket, nor that the majority of those who exercise the elective franchise can alone choose the electors. It recognizes that the people act through their representatives in the legislature, and leaves it to the legislature exclusively to define the method of effecting the object.

*McPherson*, 146 U.S. at 27. Historically, presidential electors have been appointed directly by state legislatures, by general ticket, by districts, and by majority popular vote. *Id.* at 27-32 (summarizing the methods by which presidential electors were appointed by state legislatures during the first four presidential elections). But by 1832, “all States but one had introduced popular presidential elections.” *Chiafalo*, 140 S. Ct. at 2321.

The Wisconsin Legislature’s decision to appoint the state’s presidential electors by popular vote is embodied in Wis. Stat. §8.25(1). This statute provides:



Presidential electors. By general ballot at the general election for choosing the president and vice president of the United States there shall be elected as many electors of president and vice president as this state is entitled to elect senators and representatives in congress. A vote for the president and vice president nominations of any party is a vote for the electors of the nominees.

Wis. Stat. §8.25(1). The statutes define “general election” as “the election held in even-numbered years on the Tuesday after the first Monday in November to elect United States ... presidential electors.” Wis. Stat. §5.02(5).

Plaintiff contends defendants have violated the Electors Clause by failing to appoint the state’s presidential electors in the “Manner” directed by the Wisconsin Legislature. (Compl., ECF No. 1.) By this, plaintiff means that he has raised issues with the WEC’s guidance on three issues related to the administration of the election. This argument confuses and conflates the “Manner” of appointing presidential electors—popular election—with underlying rules of election administration. As used in the Electors Clause, the word “Manner” refers to the “[f]orm” or “method” of selection of the Presidential Electors. *Chiafalo*, 140 S. Ct. at 2330 (Thomas, J., concurring) (citations omitted). It “requires state legislatures merely to set the approach for selecting Presidential electors.” *Id.* Put another way, it refers simply to “the mode of appointing electors—consistent with the plain meaning of the term.” *Id.*; see also *McPherson v. Blacker*, 146 U.S. 1, 27 (1892) (“It has been said that the word ‘appoint’ is not the most appropriate word to describe the result of a popular election. Perhaps not; but it is sufficiently comprehensive to cover that mode...”).

The approach, form, method, or mode the Wisconsin Legislature has set for appointing Presidential electors is by “general ballot at the general election.” Wis. Stat. §8.25(1). There is no dispute that this is precisely how Wisconsin election officials, including all the defendants, determined the appointment of Wisconsin’s Presidential Electors in the latest election. They used “general ballot[s] at the general election for choosing the president and vice president of the United States” and treated a “vote for the president and vice president nominations of any party is a vote for the electors of the nominees.” Absent proof that defendants failed to follow this “Manner” of determining the state’s Presidential Electors, plaintiff has not and cannot show a violation of the Electors Clause.

Plaintiff’s complaints about the WEC’s guidance on indefinitely confined voters, the use of absentee ballot drop boxes, and corrections to witness addresses accompanying absentee ballots



are not challenges to the “Manner” of Wisconsin’s appointment of Presidential Electors; they are disagreements over election administration. Indeed, the existence of these (or other) disagreements in the implementation of a large election is hardly surprising, especially one conducted statewide and involving more than 3.2 million votes. But issues of mere administration of a general election do not mean there has not been a “general ballot” at a “general election.” Plaintiff’s conflation of these potential nonconformities with Constitutional violations is contrary to the plain meaning of the Electors Clause. If plaintiff’s reading of “Manner” was correct, any disappointed loser in a Presidential election, able to hire a team of clever lawyers, could flag claimed deviations from the election rules and cast doubt on the election results. This would risk turning every Presidential election into a federal court lawsuit over the Electors Clause. Such an expansive reading of “Manner” is thus contrary both to the plain meaning of the Constitutional text and common sense.

**B. Even If “Manner” Includes Aspects of Election Administration, Defendants Administered Wisconsin’s 2020 Presidential Election as Directed by the Wisconsin Legislature.**

Plaintiff’s claims would fail even if the Court were to read the word “Manner” in Article II, Section 1, Clause 2 to encompass more than just the “mode” of appointment. Including material aspects of defendants’ election administration in “Manner” does not give plaintiff a win for at least two reasons. First, the record shows defendants acted consistently with, and as expressly authorized by, the Wisconsin Legislature. Second, their guidance was not a significant or material departure from legislative direction.

Plaintiff’s “Manner” challenges all stem from the WEC’s having issued guidance concerning indefinitely confined voters, the use of absentee ballot drop boxes, and corrections to witness addresses on absentee ballots. (Compl., ECF No. 1.) Plaintiff expresses strong disagreement with the WEC’s interpretations of Wisconsin’s election statutes, accusing the WEC of “deviat[ing] from the law” and “substitut[ing] their ‘wisdom’ for the laws passed by the State Legislature and signed by the Governor.” (Pl. Br., ECF No. 109.) While plaintiff’s statutory construction arguments are not frivolous, when they are cleared of their rhetoric, they consist of little more than ordinary disputes over statutory construction.

These issues are ones the Wisconsin Legislature has expressly entrusted to the WEC.



Wis. Stat. §5.05(2w) (“The elections commission has the responsibility for the administration of chs. 5 to 10 and 12.”). When the legislature created the WEC, it authorized the commission to issue guidance to help election officials statewide interpret the Wisconsin election statutes and new binding court decisions. Wis. Stat. §5.05(5t). The WEC is also expressly authorized to issue advisory opinions, Wis. Stat. §5.05(6a), and to “[p]romulgate rules ... applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns.” Wis. Stat. §5.05(1)(f). The Wisconsin Legislature also directed that the WEC would have “responsibility for the administration of ... laws relating to elections and election campaigns.” Wis. Stat. §5.05(1). In sum, far from defying the will of the Wisconsin Legislature in issuing the challenged guidance, the WEC was in fact acting pursuant to the legislature’s express directives.

If “Manner” in the Electors Clause is read to include legislative enactments concerning election administration, the term necessarily also encompasses the Wisconsin Legislature’s statutory choice to empower the WEC to perform the very roles that plaintiff now condemns. Thus, the guidance that plaintiff claims constitutes an unconstitutional deviation from the Wisconsin Legislature’s direction, is, to the contrary, the direct consequence of legislature’s express command. And, defendants have acted consistent with the “Manner” of election administration prescribed by the legislature.

Plaintiff points to language in Chief Justice Rehnquist’s concurring opinion in *Bush v. Gore*, stating that “[a] significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.” *Bush v. Gore*, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring). But the record does not show any *significant* departure from the legislative scheme during Wisconsin’s 2020 Presidential election. At best, plaintiff has raised disputed issues of statutory construction on three aspects of election administration.<sup>10</sup> While plaintiff’s disputes are not frivolous, the Court finds these issues do not remotely rise to the level of a material or significant departure from Wisconsin Legislature’s plan for choosing Presidential Electors.

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<sup>10</sup> Even these three statutory construction issues were raised only after-the-fact. If these issues were as significant as plaintiff claims, he has only himself to blame for not raising them *before* the election. Plaintiff’s delay likely implicates the equitable doctrine of laches. The Court does not need to reach that issue, however, and therefore makes no findings or holdings on laches.



Because plaintiff has failed to show a clear departure from the Wisconsin Legislature's directives, his complaint must be dismissed. As Chief Justice Rehnquist stated, "in a Presidential election the clearly expressed intent of the legislature must prevail." *Bush v. Gore*, 531 U.S. 98, 120 (2000) (Rehnquist, C.J., concurring). That is what occurred here. There has been no violation of the Constitution.

## CONCLUSION

Plaintiff's Electors Clause claims fail as a matter of law and fact. The record establishes that Wisconsin's selection of its 2020 Presidential Electors was conducted in the very manner established by the Wisconsin Legislature, "[b]y general ballot at the general election." Wis. Stat. §8.25(1). Plaintiff's complaints about defendants' administration of the election go to the implementation of the Wisconsin Legislature's chosen manner of appointing Presidential Electors, not to the manner itself. Moreover, even if "Manner" were stretched to include plaintiff's implementation objections, plaintiff has not shown a significant departure from the Wisconsin Legislature's chosen election scheme.

This is an *extraordinary* case. A sitting president who did not prevail in his bid for reelection has asked for federal court help in setting aside the popular vote based on disputed issues of election administration, issues he plainly could have raised before the vote occurred. This Court has allowed plaintiff the chance to make his case and he has lost on the merits. In his reply brief, plaintiff "asks that the Rule of Law be followed." (Pl. Br., ECF No. 109.) It has been.



**IT IS HEREBY ORDERED:**

1. Plaintiff's complaint, ECF No. 1, is DISMISSED WITH PREJUDICE.
2. Plaintiff's motion for preliminary injunction, ECF No. 6, is DENIED as moot.
3. Defendants' motions to dismiss, ECF No. 69, 71, 78, 84, 86, 96, 97, and 99, are GRANTED.
4. Defendant Governor Evers' oral motion for judgment under Fed. R. Civ. P. 52 is GRANTED.

Dated at Milwaukee, Wisconsin on December 12, 2020.

s/ Brett H. Ludwig  
BRETT H. LUDWIG  
United States District Judge



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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DONALD J TRUMP,

Plaintiff,

**JUDGMENT IN A CIVIL CASE**

v.

Case No. 20-cv-1785-bhl

THE WISCONSIN ELECTIONS  
COMMISSION, COMMISSIONER ANN S  
JACOBS, MARK L THOMSEN,  
COMMISSIONER MARGE BOSTELMANN,  
COMMISSIONER DEAN KNUDSON,  
ROBERT F SPINDELL, JR, GEORGE L  
CHRISTENSON, JULIETTA HENRY,  
CLAIRE WOODALL-VOGG, MAYOR TOM  
BARRETT, JIM OWCZARSKI, MAYOR  
SATYA RHODES-CONWAY, MARIBETH  
WITZEL-BEHL, MAYOR CORY MASON,  
TARA COOLIDGE, MAYOR JOHN  
ANTARAMIAN, MATT KRAUTER, ERIC  
GENRICH, KRIS TESKE, DOUGLAS J LA  
FOLLETTE, TONY EVERS, SCOTT  
MCDONELL,

Defendants,

WISCONSIN STATE CONFERENCE  
NAACP, DOROTHY HARRELL, WENDELL  
J HARRIS, SR, EARNESTINE MOSS,  
DEMOCRATIC NATIONAL COMMITTEE,

Intervenor Defendants.

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☒ **Decision by Court.** This case came before the court, the court has decided the issues, and the court has rendered a decision.

PURSUANT TO THE COURT'S ORDER, the action is DISMISSED WITH PREJUDICE and the plaintiff shall recover nothing on the complaint.

Dated: December 12, 2020

GINA M. COLLETTI  
Clerk of Court

s/ Melissa P.  
(By) Deputy Clerk



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

Donald J. Trump, Candidate for President of the United States of America,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	Case No. 2:20-cv-01785-BHL
The Wisconsin Elections Commission, et al.	)	
	)	
Defendants.	)	
	)	
	)	

**STIPULATION OF PROPOSED FACTS AND EXHIBITS**

Plaintiff Donald J. Trump, by counsel, and Defendants the Wisconsin Elections Commissions and its members (“WEC”), Scott McDonell in his official capacity as the Dane County Clerk, George L. Christenson in his official capacity as the Milwaukee County Clerk, Julietta Henry in her official capacity as the Milwaukee Election Director, Claire Woodall-Vogg in her official capacity as the Executive Director of the Milwaukee Election Commission, Mayor Tom Barrett, Jim Owczarski, Mayor Satya Rhodes-Conway, Maribeth Witzel-Behl, Mayor Cory Mason, Tara Coolidge, Mayor John Antaramina, Matt Krauter, Mayor Eric Genrich, Kris Teske, in their official capacities, Douglas J. La Folette, Wisconsin Secretary of State, in his official capacity, and Tony Evers, Governor of Wisconsin, in his official capacity, as well as all Intervenor Defendants (collectively, “Defendants”), all by counsel, here stipulate to the following:

**SITUPLATED EXHIBITS**

1. Subject to the objection listed in Paragraph 2 below, the Parties stipulate Plaintiff’s Exhibits 1-75 and Defendants’ Exhibits 501-506 are admissible into evidence in their



entirety and useable for all purposes and that statements attributed to any Defendant therein is a true and accurate record of their prior statements and useable for all purposes, subject to paragraph 2 below.

The Parties further agree not to oppose the introduction of or reliance on any documents or declarations attached to, referenced in, or filed with any of the Defendants' briefing on the Motions To Dismiss or Request for Temporary Restraining Order.

2. Defendants contend that Plaintiff's exhibits are not relevant to this action, and that their consideration at the hearing is likely to cause delay and confusion, including because the exhibits will need to be placed in context. Defendants therefore object, and will briefly restate their objection on the record, to the use of these exhibits at today's hearing under FRE 401 and 403. Subject to preserving that objection, Defendants will not oppose introduction and use of Plaintiff's exhibits. In sum, for purposes of this action Defendants reserve relevance and competence objections, and reserve the right to introduce additional testimony and evidence (including exhibits not heretofor disclosed as exhibits) to place the documents in context. For clarity, Defendants do not stipulate to the accuracy of any of the information in Plaintiff's exhibits.

### **UNDISPUTED FACTS**

3. Plaintiff contends that the facts set forth below would be sufficient to establish a *prima facie* case for his claim. Defendants disagree, but do not dispute the facts set forth below (whether on relevance, hearsay, or other grounds) for purposes of allowing the Court to assess Plaintiff's claims. Defendants reserve the right to put on additional evidence to place Plaintiff's evidence and claim in context should the Court conclude that live witnesses are necessary.



4. The election-related procedures at issue in this action (specifically, election officials' treatment of witness address corrections, drop-boxes, and indefinitely confined voter status), were made public before November 3, 2020. Specifically:

- a. The witness address guidance issued on October 19, 2016;
- b. The indefinitely confined voter guidance issued on March 29, 2020; and
- c. The drop boxes guidance issued on August 19, 2020.

5. Plaintiff President Trump did not bring any legal challenge to any of the procedures identified in Stipulated Fact No. 4 before November 3, 2020.

6. President Trump did bring at least the following pre-election actions challenging election procedures in other states: *Donald J. Trump for Pres., Inc. v. Boockvar*, No. 2:20-cv-00966 (W.D. Pa.); *Donald J. Trump for President v. Cegavske* No. 2:20-cv-01445 (D. Nev.); *Donald J. Trump for President v. Murphy* No. 3:20-cv-10753 (D.N.J.); *Donald J. Trump for President et al v. Bullock et al* No. 6:20-cv-00066 (D. Mont.); *Donald J. Trump for Pres., Inc. v. Philadelphia Cnty. Bd. of Elections* No. 200902035 (Penn. Ct. Common Pleas, Philadelphia Cnty.); *Donald J. Trump for President v. Gloria* No. A-20-824153-C (Nev. Dist. Ct.); *Donald J. Trump for Pres., Inc. v. Philadelphia Cnty.* No. 983 CD 2020 (Pa. Commw. Ct.); *Donald J. Trump for President v. Simon*, No. A20-1362 (Minn. Sup. Ct.). Plaintiff contends that suits brought in other states are not relevant to this action, and that their consideration at the hearing is likely to cause delay and confusion. Plaintiff therefore objects, and will briefly restate the objection on the record, to the consideration of these suits at the hearing under FRE 401 and 403.

7. The November 3, 2020 election took place on that day. Nearly 3.3 million Wisconsin voters cast a vote in that election.



8. On November 17, 2020, the last county canvass was submitted to the WEC. The final state canvass was completed on November 30, 2020.

9. The deadline for requesting a recount in Wisconsin was November 18, 2020, and on that day President Trump formally requested a recount for Dane and Milwaukee counties. President Trump did not challenge Wisconsin's canvass results as to any other counties. The cost to file for this recount was \$3 million. It would have cost approximately \$8 million to conduct a recount of the entire state.

10. There was a recount in Dane and Milwaukee Counties which was completed on November 27, 2020 in Milwaukee County, and on November 29, 2020 in Dane County. Those recounts confirmed the results of the initial canvass, though they are now subject to an appeal currently pending before Judge Simanek.

11. Municipal clerks and election officials in Milwaukee County, the City of Milwaukee, Dane County, and the City of Madison used the written guidance from the WEC contained in the documents identified on the Parties' exhibit lists to guide their treatment of absentee ballot witness certificate addresses, use of absentee ballot drop boxes and handling of voters claiming indefinitely confined status.

12. WEC does not maintain records concerning the number of ballots deposited in absentee ballot drop boxes and does not require that such records be maintained.

13. As of November 1, 2020, the City of Madison had collected approximately 9,346 absentee ballots from dropboxes in the city for the November 3, 2020 election, that figure represents approximately 7% of absentee ballots received in the City of Madison. This is the best information currently available from the City of Madison.



14. For the November 3, 2020 election, the City of Milwaukee had returned 169,519 absentee ballots, of those only approximately 108,000 were non in-person absentee ballots, of those 60-70% are estimated to have been returned via dropbox. This is the best information currently available from the City of Milwaukee.

15. A total of 17,271 absentee ballots were collected through Democracy in the Park events in the 2020 Election in the City of Madison. Because of ballot secrecy, the totals of those ballots for each candidate are unknown.

16. City of Madison Clerk Maribeth Witzel-Behl referred to the election workers who received absentee ballots at the Democracy in the Park events as “human drop boxes.”

17. Some absentee ballots that were counted as valid votes as of the Recount Conclusion Date had information added to the witness address on the ballot envelope by an election worker (including but not limited to by a municipal clerk or an employee of a municipal clerk or other election administrator) in the 2020 Election in Wisconsin.<sup>1</sup> Municipal clerks’ offices do not keep statistics or records concerning election workers adding to witness certifications that would allow calculation of the number of such additions. Nor are there any records that would allow anyone to ascertain for whom such ballots were cast.

18. As of November 10, 2020, approximately 240,000 requests for absentee ballots on and indefinitely confined basis were received, but they were not necessarily cast and counted on that basis. Efforts are still being undertaken to reconcile how many of such ballots were cast and counted on that basis. This is the best information currently available for the WEC.

19. Defendants agree and stipulate that the total number of indefinitely confined absentee ballots cast and counted in the 2016 general presidential election was 66,611. This

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<sup>1</sup> Defendant WEC does not maintain this data, nor is it required to.



represents 7.8% of absentee ballots cast in that election. Because of ballot secrecy, it is unknown for whom such ballots were cast.

20. Defendants agree and stipulate that the total number of indefinitely confined ballots cast and counted in the April 2019 non-partisan election was 71,157. This represents 40.67% of absentee ballots cast in that election. Because of ballot secrecy, it is unknown for whom such ballots were cast.

21. As of the November 3, 2020 election, a total of 11,374 voters in the City of Madison were listed in official records as having identified themselves as indefinitely confined.

22. As of the November 3, 2020 election, a total of 29,391 voters in the City of Milwaukee were listed in official records as having identified themselves as indefinitely confined.

23. On or about, March 25, 2020, the Clerk of Dane County, Scott McDonell, issued the following statement on his official Facebook page:

I have informed Dane County Municipal Clerks that during this emergency and based on the Governors Stay at Home order I am declaring all Dane County voters may indicate as needed that they are indefinitely confined due to illness. This declaration will make it easier for Dane County voters to participate in this election by mail in these difficult times. I urge all voters who request a ballot and have trouble presenting [a] valid ID to indicate that they are indefinitely confined.

People are reluctant to check the box that says they are indefinitely confined but this is a pandemic.... The process works like this:

- A voter visits myvote.wi.gov to request a ballot.
- A voter can select a box that reads “I certify that I am indefinitely confined due to age illness, infirmity or disability and request ballots be sent to me for every election until I am no longer confined or fail to return a ballot.[”]
- The voter is then able to skip the step of uploading an ID in order to receive a ballot for the April 7 election. Voters are confined due to the COVID-19 illness. When the Stay at Home order by the Governor is lifted, the voter can change their



designation back by contacting their clerk or updating their information in myvote.wi.gov. Voters who are able to provide a copy of their ID should do so and not indicate that they are indefinitely confined.

24. On March 25, 2020, the Dane County Clerk emailed the same announcement and instructions to all clerks responsible for administering elections in the municipalities within Dane County.

25. The Clerk of Milwaukee County, George Christenson, issued a similar statement to Clerk McDonell's March 25, 2020 statement.

26. On March 31, 2020, Milwaukee County Clerk George Christenson deleted his original statement regarding the COVID-19 pandemic and placed the following statement on his Facebook page. He also issued a press release with the same statement below.

This statement replaces the statement issued by the Milwaukee County Clerk's Office on March 25th to reflect guidance adopted and other decisions by the Wisconsin Election Commission (WEC) since that date. As always, the Clerk's Office is here to serve the citizens of Milwaukee County. If you have any questions about the upcoming election, please call 414-278-8683. That number once again is 414-278-VOTE!

The Wisconsin Election Commission (WEC) met on Friday, March 27th to clarify Wis. Stat. § 6.86(2)(a) given the Governor's "Safer at Home Order." Specifically, Section 6.86(2)(a) reads in relevant part:

An elector who is indefinitely confined because of age, physical illness or infirmity or is disabled for an indefinite period may by signing a statement to that effect require that an absentee ballot be sent to the elector automatically for every election.

The WEC Board of Commissioners adopted two points of guidance on Friday, March 27, 2020:

1. Each voter must decide for themselves whether they qualify for the "indefinitely confined" photo identification exception based upon their current circumstances. "Indefinite confinement" does not require permanent or total inability to travel outside of the residence. The designation is appropriate for electors who are indefinitely confined because of age, physical illness, or infirmity, or disability.



2. Indefinitely confined status shall not be used by electors simply as a means to avoid the photo identification requirement without regard to whether they are indefinitely confined because of age, physical illness, infirmity, or disability.

Voters should follow this guidance when determining whether they are indefinitely confined, considering the COVID-19 global pandemic, the Governor's Safer at Home Emergency Order, and the individual circumstances of each voter. If a voter determines that they are "indefinitely confined" because of age, physical illness, infirmity or disability, they do not need to upload evidence of a photo ID to receive a ballot for the April 7 election.

It is very important to note that "indefinite confinement" based only upon the Governor's Safer at Home Emergency Order cannot be used to legally avoid the photo ID requirement. An elector must meet the above-noted requirements of Wis. Stat. § 6.86(2)(a).

I hope this information is helpful. For additional voting information, you may also visit MyVoteWisconsin.

27. Absentee Ballot Boxes used by municipalities in Dane and Milwaukee Counties were not staffed by the municipal clerk or the executive director of the board of election commissioners, or employees of the clerk or the board of election commissioners.

28. Over five hundred Absentee Ballot Boxes were used in the 2020 Presidential Election in Wisconsin.

29. The City of Milwaukee used 15 Absentee Ballot Boxes in the 2020 Presidential Election.

30. The City of Madison added Absentee Ballot Boxes on October 16, 2020. One of the Absentee Ballot Boxes was placed in a large public park in Madison not adjacent to any building.

31. The City of Madison held "Democracy in the Park" events on September 26, 2020 and October 3, 2020, at which voters could drop off completed ballots at any of Madison's 206 city parks.



32. On September 26, 2020, 10,813 ballots were collected at the City of Madison held “Democracy in the Park” event.

33. Election workers were trained that missing information relating to a witness address could be written on the ballot envelope in red if the election worker was able to locate the witness’s address.

34. Republicans, Democrats, and Independents were limited to 15 observers at the City of Milwaukee Central Count location where more than 200 election workers counted absentee ballots.

35. Wisconsin engaged in a recount in Dane and Milwaukee Counties, with preliminary vote totals from the November 3, 2020 election showing a more than 20,000 vote difference margin between Vice President Joe Biden and President Trump.

36. Bart Williams (“Williams”) was admitted as an Observer for the November 3, 2020 election and worked at the City of Milwaukee Central Count at 501 W. Michigan St. Milwaukee, WI. On December 10, 2020, counsel for Plaintiff provided an unsigned affidavit for Mr. Williams, attached as Exhibit A, in support of Plaintiff’s motion. To the extent that Plaintiff’s counsel submits a signed copy of Mr. Williams’s affidavit before the conclusion of these proceedings, Defendants do not dispute the authenticity of the affidavit or challenge it on hearsay grounds, and agree the Court may consider it to the extent it may be considered competent, relevant, and material evidence with respect to the issues.

37. On December 10, 2020, counsel for Plaintiff provided an unsigned affidavit for David Bolter, attached as Exhibit B. To the extent that Plaintiff’s counsel submits a signed copy of Mr. Bolter’s affidavit before the conclusion of these proceedings, Defendants do not dispute the authenticity of the affidavit or challenge it on hearsay grounds, and agree the Court may



consider it to the extent it may be considered competent, relevant, and material evidence with respect to the issues.

Date December 10, 2020

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Date December 10, 2020

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### **DECLARATION OF BARTHOLOMEW R. WILLIAMS**

1. My name is Bartholomew R. Williams, I am over the age of 18. All facts stated herein are true and based on my personal knowledge;
2. I am a resident of Milwaukee, Wisconsin.
3. I was an independent observer at the Central Count facility for Milwaukee, Wisconsin in the November 3, 2020 election;
4. I arrived at the Milwaukee Central Counting facility at 6 am on Tuesday, November 3, 2020, but was not allowed on the counting floor until 7:30 am. By that time counting had been going on for at least 30 minute;
5. I did not enter or attempt to enter restricted places at Central Count. I did not interfere with the process of ballot processing, nor mark or alter any official record;
6. Claire Woodall-Vogg, Brenda Wood and several supervisors (who did not have name badges) refused to allow me to remain in an unobtrusive area of the ballot processing/counting area from which I could reasonably see and hear what was occurring for the vast majority of the tables being used for counting/processing.
7. Many of the ballot counters were seated so that the observation areas and distances from their seating did not permit me to see the ballots, in some cases at all, but in many, to the extent that I could see any violations of the ballot voting requirements if they existed;
8. I began to create a log of ballots that were visible to me that were subject to challenge, but after 5 entries, I was told that I could not do that by Brenda Wood as it was slowing down the voting. I asked that the names of voters and ballot numbers be called out since I was too far away to read the ballots and that was refused;
9. It was acknowledged to me by Brenda Wood and another supervisor that the election staff had made changes to many of the ballots where a pre-printed 10 day residency statement was crossed out in red ink and changed to 28 days;
10. Claire Woodall-Vogg announced on a loud speaker that challenges concerning the 10 day / 28 day ballot markup would not be allowed;
11. She made a separate announcement that ballot counters who happened on a ballot without a witness address could go to a computer, look the address up and insert it on

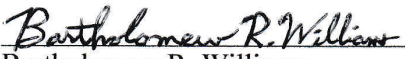


the ballot, but there was no mention of any procedure to verify the address;

12. My estimate is that roughly 20% of the ballots had changes marked to the 10/28 day residency statement.

I affirm under the penalties of perjury the foregoing statements are true and correct  
(28 U.S.C. Sec. 1746)

Dated December 10, 2020

  
Bartholomew R. Williams

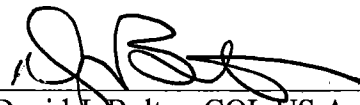


### DECLARATION OF DAVID J. BOLTER

1. My name is David J. Bolter, I am over the age of 18. All facts stated herein are true and based on my personal knowledge;
2. I am a resident of Milwaukee Wisconsin.
3. I was a paid ballot counter at the Central Count facility for Milwaukee, Wisconsin in the November 3, 2020 election;
4. While working, I saw 100's of ballots with the pre-printed 10 day residency requirement crossed out and filled in with 28 days in red ink;
5. I made objections to ballots with the red ink inserts and cross-outs to Claire Woodall-Vogg, but they were ignored;
6. I objected to writing in unconfirmed witness addresses on ballot envelopes;
7. I saw many ballot envelopes with no signature on the witness signature line, but with a signature on the "assistant" signature line and objected, but Ms. Woodall-Vogg announced the ballot would count as long as there was a second signature on the envelope at all;
8. Many ballot envelopes were already opened or unsealed on arrival, but those ballots were counted over objection;
9. I estimate that as many as 15 to 20% of the ballot envelopes I received had been opened;
10. Election observers were, in my opinion, required to observe from locations that prevented them from seeing much of the ballot counting.

I affirm under the penalties of perjury the foregoing statements are true and correct  
(28 U.S.C. Sec. 1746)

Dated December 10, 2020

  
David J. Bolter, COL US Army(ret)



**The Election Clauses and Separation of Powers Provisions of the U.S.**  
**Constitution Safeguard Liberty and Fair and Free Elections**

42. Whether the State of Wisconsin and its public officials respected the limits of the United States Constitution’s Electors Clause is a matter of fundamental national importance not limited to the interests of Wisconsin voters or merely those individuals who voted in the 2020 Presidential Election in Wisconsin.

43. The U.S. Supreme Court has long recognized that “in the context of a Presidential election,” “the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States.” *Anderson v. Celebrezze*, 460 U.S. 780, 794–95 (1983).

44. “For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation.” *Id.*

45. Consistent with other separation-of-powers provisions in the Constitution, the explicit allocation of authority to state legislatures to regulate federal elections, seen in both the Electors Clause and in the authority of state legislatures stated in Art. I, § 4, cl. 2 to establish the time, place and manner of holding elections for Senators and U.S. Representatives (collectively, the “Election Clauses”) are a structural check on governmental power which preserve liberty, freedom, and fair elections for all Americans.<sup>5</sup>

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<sup>5</sup> Counsel for Plaintiff wishes to credit the compelling arguments raised in the *Brief of the State of Missouri and Nine Other States as Amici Curiae in Support of Petitioners* (i.e., the states of Missouri, Alabama, Arkansas, Florida, Kentucky, Louisiana, Mississippi, South Carolina, South Dakota and Texas) in the case of *Republican Party of Pennsylvania v. Boockvar*, Nos. 20-542, 20-574, On Petition for Writs of Certiorari to the Pennsylvania Supreme Court (filed Nov. 9, 2020). The arguments of the Attorneys General on behalf of their States have been liberally borrowed from herein without further attribution, particularly in relation to separation of powers



46. Encroachment on this authority by another state actor from the other branches of government undercuts the specific design for separation of powers in the federal constitution and diminishes one of the most cherished liberties for all Americans, the right to vote for President of the United States.

47. It is nearly uniformly recognized that the separation-of-powers provisions in the Constitution, which allocate authority to specific governmental actors to the exclusion of others, are designed to preserve liberty.

48. “The Framers of the Federal Constitution . . . viewed the principle of separation of powers as the absolutely central guarantee of a just Government.” *Morrison v. Olson*, 487 U.S. 654, 697 (1988) (Scalia, J., dissenting).

49. “Without a secure structure of separated powers, our Bill of Rights would be worthless, as are the bills of rights of many nations of the world that have adopted, or even improved upon, the mere words of ours.” *Id.* “The purpose of the separation and equilibration of powers in general . . . was not merely to assure effective government but to preserve individual freedom.” *Id.* at 727.

50. Given the overriding importance of both separation of powers and free and fair elections to our republican form of government, upholding the Electors Clause against infringement is a Constitutional issue of the highest magnitude.

51. American liberty is safeguarded by the time-tested structure of our government and the wise provisions for its order found in the United States Constitution.

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principles under the Electors Clause and the States’ concerns regarding maintaining uniform standards against absentee ballot fraud.



52. The idea that the Constitution’s division of powers protects liberty applies both to the checks and balances between the branches of government *and* to the checks and balances between the federal government and the States.

53. As James Madison said, in *Federalist 45*: “The State governments may be regarded as constituent and essential parts of the federal government; whilst the latter is nowise essential to the operation or organization of the former. Without the intervention of the State legislatures, the President of the United States cannot be elected at all. They must in all cases have a great share in his appointment, and will, perhaps, in most cases, of themselves determine it.”<sup>6</sup>

54. “The federal system rests on what might at first seem a counterintuitive insight, that ‘freedom is enhanced by the creation of two governments, not one.’” *Bond v. United States*, 564 U.S. 211, 220–21 (2011) (quoting *Alden v. Maine*, 527 U.S. 706, 758 (1999)). “[F]ederalism secures to citizens the liberties that derive from the diffusion of sovereign power.” *Bond*, 564 U.S. at 221 (2011) (quoting *New York v. United States*, 505 U.S. 144, 181 (1992)). “Federalism also protects the liberty of all persons within a State by ensuring that laws enacted in excess of delegated governmental power cannot direct or control their actions.” *Id.*

55. The Supreme Court recognizes that “federalism enhances the opportunity of all citizens to participate in representative government.” *FERC v. Mississippi*, 456 U.S. 742, 789 (1982) (O’Connor, J., concurring in part and dissenting in part). “Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of

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<sup>6</sup> *The Federalist Papers*, Federalist No. 45, available at: [https://avalon.law.yale.edu/18th\\_century/fed45.asp](https://avalon.law.yale.edu/18th_century/fed45.asp).



power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.” *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991).

56. The Election Clauses’ grant of authority to state *Legislatures* implements both horizontal and vertical separation of powers. The Clauses allocate to each State—not to federal actors—the authority to dictate the manner of selecting Presidential electors.

57. And within each State, the Election Clauses explicitly allocate that authority to a single branch of state government: to the “Legislature thereof.”

58. It is not accidental that the Constitution allocates the authority to direct how Presidential Electors will be chosen to state Legislatures alone, rather than executive officers, judicial officers or administrative officials.

59. The Constitutional Convention’s delegates frequently recognized that the Legislature is the branch most responsive to the People and most democratically accountable. *See, e.g.,* Robert G. Natelson, *The Original Scope of the Congressional Power to Regulate Elections*, 13 U.P.A. J. CONST. L. 1, 31 (2010) (collecting ratification documents expressing that state legislatures were most likely to be in sympathy with the interests of the people); Federal Farmer, No. 12 (1788), *reprinted in* 2 THE FOUNDERS’ CONSTITUTION (Philip B. Kurland & Ralph Lerner eds., 1987) (arguing that electoral regulations “ought to be left to the state legislatures, they coming far nearest to the people themselves”); THE FEDERALIST NO. 57, at 350 (C. Rossiter, ed. 2003) (Madison, J.) (stating that the “House of Representatives is so constituted as to support in its members an habitual recollection of their dependence on the people”); *id.* (stating that the “vigilant



and manly spirit that actuates the people of America” is greatest restraint on the House of Representatives).

60. The historical record is clear that the Founders entrusted the solemn responsibility to determine the manner of election of the President to state legislatures because they recognized that state legislatures – more than any other locus of government power – are the people’s representatives and bastions of democratic accountability. A system of federalism, separation of powers, and constitutional government is enshrined in Article II.

61. By identifying the “Legislature thereof” in each State as the regulator of elections for federal officers, the Election Clauses prohibit the arrogation of power over Presidential elections by non-legislative officials and are a safeguard against corruption.

62. The Framers recognized that unelected bureaucrats in charge of elections for President of the United States pose a far greater risk to liberty than the People’s elected representatives in each State having exclusive and unfettered jurisdiction over the rules for federal elections and the manner of appointing Presidential electors.

63. Therefore, it is essential that actions which usurp the power invested in the Wisconsin Legislature by the Elections Clauses not stand in the 2020 Presidential Election, and all future elections.

**Whether Election Administrators Adhered to the Direction of the Wisconsin Legislature in the Conduct of the Presidential Election Presents a Justiciable Issue**

64. It is, of course, imminently likely that the Wisconsin Legislature is aware of some, if not all, of the issues and concerns pertaining to administration of the 2020 Presidential election in the State of Wisconsin.



189. In fact, is understood that over five hundred un-manned, illegal, absentee ballot drop boxes were used in the Presidential election in Wisconsin.<sup>43</sup>

190. Un-manned absentee ballot drop boxes opened the absentee voting process in Wisconsin to the unsavory and, in Wisconsin illegal, practice of ballot harvesting which is otherwise prevented by the requirement in the Election Code that absentee ballots may be voted only by depositing absentee ballots in the mail or by the voter delivering them directly to an authorized election worker at a designated absentee ballot site under Wis. Stat. § 6.855.

191. Un-manned absentee ballot drop boxes permit a ballot harvester to drop off multiple absentee ballots at a time which cannot be legitimately accomplished when the statutory procedures for voting an absentee ballot in person are followed. *See* Wis. Stat. § 6.87.

192. Absentee ballot harvesting opens the election process to the potential for fraud and coercion, identified by the Wisconsin Legislature as a prime concern and reason for the strict limitations on absentee voting contained in the Wisconsin Election Code. *See* Wis. Stat. 6.84(1) (“to prevent overzealous solicitation of absent electors who may prefer not to participate in an election; to prevent undue influence on an absent elector to vote for or against a candidate . . . or other similar abuses”).

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<sup>43</sup> “Ballot drop boxes offer ‘a safe place’ for voting in Wisconsin’s election,” *Wisconsin Center for Investigative Journalism*, October 29, 2020, (“The drop box in the Green Bay suburb where Vincent deposited her ballot is one of more than 500 in the state, according to the Wisconsin Elections Commission.”) *available at*: <https://www.channel3000.com/ballot-drop-boxes-offer-a-safe-place-for-voting-in-wisconsins-election/> Submitted as Plaintiff’s Exhibit **16**; “Search for a ballot drop box in your community using this tool,” *Wisconsin Watch*, October 27, 2020, (“With Election Day just days away, voters are being urged to deposit their absentee ballots in one of the over 500 secure drop boxes across the state.”), *available at*: <https://www.wisconsinwatch.org/2020/10/wisconsin-absentee-ballot-drop-box-search/>. Submitted as Plaintiff’s Exhibit **17**.



193. The Wisconsin Elections Commission's endorsement of standard-less, un-manned absentee ballot drop boxes violated the Wisconsin Election Code and fundamentally altered the 2020 President election in Wisconsin, breaking the detailed statutorily mandated custody, presentment and voting procedures for absentee ballots, *see* Wis. Stat. §§ 6.855, 6.87, 6.875, 6.88, 7.15(2m), thereby voiding the legality of all absentee ballots placed in these un-manned absentee ballot drop boxes. *See* Wis. Stat. §§ ("Notwithstanding s. 5.01(1), with respect to matters relating to the absentee ballot process, ss. 6.86, 6.87(3) to (7) and 9.01(1)(b)(2). and (4) shall be construed as mandatory. *Ballots cast in contravention of the procedures specified in those provisions may not be counted. Ballots counted in contravention of the procedures specified in those provisions may not be included in the certified results of any election.*").

194. Because absentee ballot drop boxes are barred by the Wisconsin Election Code, there are no chain of custody and public access and observation standards or rules regarding the use of such drop boxes in the Wisconsin Election Code.

195. The Wisconsin Elections Commission's guidance on un-manned absentee ballot drop boxes contained absolutely no direction, instructions or standards for local election officials regarding the important aspects of ballot chain of custody, and openness to the public that are emphasized throughout the Wisconsin Election Code in relation to all other aspects of the voting and ballot handling processes.<sup>44</sup>

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<sup>44</sup> *See, e.g.*, Wis. Stat. §§ 6.855, 6.86, 6.87, 6.875, 6.88.



196. Tellingly, the following section from the CISA guidance document was entirely omitted from the Commission's guidance to Wisconsin election officials:

#### **Election Night and Closing Boxes**

You need to give special consideration to returning temporary ballot drop boxes and locking permanent drop boxes on election night. Organizing teams from other county or city departments is one way to accomplish this. Essentially you need bipartisan teams to be at every ballot drop-off location precisely when polls close. Their responsibilities include:

- ☐ Identifying the voter or car in line at the time polls close and ensuring they have the opportunity to deposit their ballots.
- ☐ Retrieving the temporary indoor boxes and returning them to the counting facility.
- ☐ Locking the drop slot on the 24-hour boxes and transferring ballots to a ballot transfer bag or box and returning them to the counting facility.
- ☐ Completing "chain of custody" forms.<sup>45</sup>

197. No uniform standards were issued by the Commission regarding election night procedures, removing absentee ballots from the boxes, transport of the ballots to wards or counting centers, procedures for maintaining the security and chain of custody of the absentee ballots and for ensuring public accountability and observation throughout the process. These are all important aspects of the integrity of an election for which the Wisconsin Legislature has shown a strong concern in the Election Code. *See, e.g.*, Wis. Stat. 6.88.

198. Rather, in the rush to push the use of drop boxes, not only did the Commission not adopt standards for their use, the Commission deleted even the

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<sup>45</sup> CISA Ballot Drop Box Paper, *available at*: [https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot\\_Drop\\_Box.pdf](https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf). Submitted as Plaintiff's Exhibit 15.



barebones notice about the need for standards in the meagre guidelines it issued. Thus, local officials were not even advised to consider adopting standards to guide the use of the ballot drop boxes.

199. Without such standards and procedures there can be no assurance that the drop boxes and their contents were handled consistently throughout the State, regarding who had access to the ballots from the time they left the voters hands until they were ultimately delivered to election officials or even that ballots throughout the State were properly collected from the hundreds of unauthorized sites around the State. Therefore, even if the use of unmanned drop boxes were permissible under State law, it is clear that there was an abject lack of uniform standards regarding the handling, security and openness of the process to the public in connection with the new use of un-manned, absentee ballot drop boxes, rendering them constitutionally suspect under the Equal Protection and Due Process Clauses of the U.S. Constitution. *See Bush v. Gore*, 531 U.S. at 109 (observing that the election recount process at issue there was “inconsistent with the minimum procedures necessary to protect the fundamental right of each voter”) (“there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied”); *Anderson v. Celebrezze*, 460 U. S. 780, 788, (1983) (States should adopt “generally applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process itself.”); *Storer v. Brown*, 415 U. S. 724, 730 (1974) (“[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.”).



200. Regarding un-manned absentee ballot boxes in Wisconsin in the 2020 President election, and as to the ballots that were housed therein, there can be no assurance that the ballots were secured, maintained, and transported in an equal and fair way because there were simply *no standards* in place in relation to these boxes.

201. Rather, it is apparent that, although the use of these drop boxes was sanctioned by the Wisconsin Elections Commission, which operated an interactive list of such locations, using absentee ballot drop boxes in these locations was not subject to uniform rules or any acceptable standards, and there were no uniform chain of custody procedures or standards connected to their use. A review of an interactive list of absentee ballot drop boxes provided on the internet by the Wisconsin Elections Commission (the “WEC Drop Box List”)<sup>46</sup> bears out the lack of any uniform standards related to the unmanned, absentee ballot drop boxes used in the 2020 Presidential election in Wisconsin:

- For the drop box located in Hayward, Wisconsin, the information provided to the public on the WEC Drop Box List is: “Drop Box - Use Water & Sewer payment drop box located in the back of City Hall by the bulletin board.”<sup>47</sup>
- On the WEC List for the City of Menasha, Wisconsin there is a “Library Drop Box” with the instruction: “Designated book drop slot,”<sup>48</sup> apparently

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<sup>46</sup> The WEC Drop Box List was accessible to the public and linked through internet articles. *See, e.g.*, “Search for a ballot drop box in your community using this tool,” *Wisconsin Watch*, October 27, 2020, (Links to the WEC Drop Box List and allows public to search list of all drop boxes in state.), available at: <https://www.wisconsinwatch.org/2020/10/wisconsin-absentee-ballot-drop-box-search/>. Submitted as Plaintiff’s Exhibit **17**; Screenshots of all of the drop box locations on the WEC Drop Box List are submitted as Plaintiff’s Exhibit **18**.

<sup>47</sup> *See* Plaintiff’s Exhibit **19**.

<sup>48</sup> *See* Plaintiff’s Exhibit **20**.



indicating that absentee ballots may have been intermingled with library books and evidently that access to the ballots was available to library staff.<sup>49</sup>

- In the town of Vermont in Dane County the drop box instruction was: “Please drop ballots through the mail slot in the door.”<sup>50</sup>
- For the Village of Deforest in Dane County the drop box instruction was: “Please use the night depository found in the vestibule of Village Hall to drop off your absentee ballot 24/7.”<sup>51</sup>
- In the Village of Boyd the public was instructed: “Ballots can be placed in mail slot in front door of Village Hall.”<sup>52</sup>

202. Thus, the Wisconsin Elections Commission and hundreds of election jurisdictions around the State acting under the imprimatur of the Commission, contrary to the express directions of the Wisconsin Legislature in the Wisconsin Election Code, employed a mish-mash of last minute unauthorized absentee ballot drop off locations which lacked uniform standards regarding security and chain of custody of the ballots and opened up the absentee ballot voting process to the very concerns for ballot harvesting identified by the Legislature in Wis. Stat. 6.84(1).

203. While everyone understands that public officials working in cities and towns across Wisconsin are dedicated and selfless, it should not be a moment of pride that the Wisconsin Elections Commission offered so little guidance that absentee ballots could be intermingled with library books and utility bills without any requirement for

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<sup>49</sup> There were numerous drop boxes located at libraries and other locations where it appears the same slots or boxes were used to deposit books, utility bill payments and perhaps other papers somewhat less critical than ballots in a presidential election.

<sup>50</sup> See Plaintiff’s Exhibit 21.

<sup>51</sup> See Plaintiff’s Exhibit 22.

<sup>52</sup> See Plaintiff’s Exhibit 23.



chain of custody rules or fixed standards regarding who could access ballots. Nor did the Commission apparently require records to be kept of any of this.

204. Milwaukee alone used 15 unauthorized, illegal, un-manned absentee ballot drop boxes in connection with the 2020 Presidential Election.<sup>53</sup>

205. The illegal drop boxes were a last minute, unexpected addition to the election landscape in Wisconsin. For instance, Madison, Wisconsin added 14 un-manned, absentee ballot drop boxes on October 16, 2020, just two and a half weeks before the Presidential Election.<sup>54</sup> One of these drop boxes was placed in a large public park in Madison not adjacent to any building, making it an obvious potential location for dropping off multiple ballots in a ballot harvesting operation.<sup>55</sup>

206. Pictures of these un-manned drop boxes are accessible in the articles referenced in the footnotes below and clearly demonstrate they do not meet the requirements for an alternate absentee ballot site described in the Wisconsin Election Code.<sup>56</sup>

207. Yet another failure of the un-manned absentee ballot drop box program was that it ended up extending the election in some locations beyond the 8 p.m. deadline set in the Wisconsin Election Code for the close of the polls and the end of balloting. *See*

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<sup>53</sup> *See, e.g.*, “Milwaukee gears up for historic election in which up to 70% of voters may not cast a ballot at polls on Nov. 3,” *Milwaukee Journal Sentinel*, September 15, 2020, available at: <https://www.jsonline.com/story/news/local/milwaukee/2020/09/15/milwaukee-offers-15-absentee-ballot-drop-boxes-november-election/5650834002/>, Submitted as Plaintiff’s Exhibit **24**; “Milwaukee absentee ballot drop boxes to be replaced this week with permanent versions,” *Milwaukee Journal Sentinel*, October 27, 2020, available at: <https://www.jsonline.com/story/news/politics/elections/2020/10/27/milwaukee-absentee-ballot-drop-boxes-replaced-week/6046375002/>, Submitted as Plaintiff’s Exhibit **25**.

<sup>54</sup> “City of Madison Unveils Secure Absentee Ballot Drop Boxes,” *cityofmadison.com*, October 16, 2020, available at: <https://www.cityofmadison.com/news/city-of-madison-unveils-secure-absentee-ballot-drop-boxes>. Submitted as Plaintiff’s Exhibit **26**.

<sup>55</sup> *Id.*; The description for the Elver Park location on the WEC Drop Box List says, “Box is located in island of the circle drive near the park shelter.” *See* Exhibit **27**.

<sup>56</sup> *See* photographs in connection with articles identified in footnotes above.



# WISCONSIN ELECTIONS COMMISSION

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## MEMORANDUM

**DATE:** October 18, 2016

**TO:** Wisconsin Municipal Clerks and the Milwaukee City Elections Commission  
Wisconsin County Clerks and the Milwaukee County Elections Commission

**FROM:** Michael Haas, Interim Elections Administrator  
Diane Lowe, Lead Elections Specialist

**SUBJECT:** **AMENDED:** Missing or Insufficient Witness Address on Absentee Certificate Envelopes

**PLEASE NOTE:** The previous guidance on this topic, which was issued on October 4, 2016, has been modified by the WEC and is replaced with the guidance below.

One of the components of 2015 Wisconsin Act 261 is the requirement for an absentee ballot witness to provide their address when signing the absentee certificate envelope.

**SECTION 78. 6.87 (6d)** of the statutes is created to read:

**6.87 (6d)** If a certificate is missing the address of a witness, the ballot may not be counted.

In implementing this requirement, the first question that comes to mind is "What constitutes an address?" The Wisconsin Elections Commission (WEC) has set a policy that a complete address contains a *street number, street name and name of municipality*. But in many cases, at least one component of the address could be missing; usually the municipality.

The purpose of this memorandum is to offer guidance to assist you in addressing this issue. The WEC has determined that clerks **must** take corrective actions in an attempt to remedy a witness address error. If clerks are reasonably able to discern any missing information from outside sources, clerks are not required to contact the voter before making that correction directly to the absentee certificate envelope.

Clerks may contact voters and notify them of the address omission and the effect if the deficiency is not remedied but contacting the voter is only required if clerks cannot remedy the address insufficiency from extrinsic sources. When contacting a voter, you should advise that their ballot will not be counted with an incomplete address so that they can take action and also prevent a similar issue in the future. Clerks shall offer suggestions for correcting the certificate envelope to ensure the voter's absentee ballot will not be rejected.

WEC 000032



Clerks shall assist in rehabilitating an absentee certificate that does not contain the street number and street name (or P.O. Box) and the municipality of the witness address. If a clerk adds information to an absentee certificate, either based on contact with the voter or based on other sources, clerks shall indicate such assistance was provided by initialing next to the information that was added on the absentee certificate. The Commission recognized the concern some clerks have expressed about altering information on the certificate envelope, especially in the case of a recount. On balance, in order to promote uniformity in the treatment of absentee ballots statewide, the Commission determined that clerks must attempt to obtain any information that is missing from the witness address and document any addition by including their initials.

In short, the Commission's guidance is that municipal clerks shall do all that they can reasonably do to obtain any missing part of the witness address. Those steps may include one or more of the following options:

1. The clerk is able to reasonably discern the missing address or address component by information appearing on the envelope or from some other source, such as:
  - The voter has provided his or her complete address and the clerk has personal knowledge that the witness resides at the same address as the voter.
  - The clerk has personal knowledge of the witness and knows his/or her address.
  - The voter's complete address appears on the address label, and the witness indicates the same street address as the voter.
  - The clerk is able to utilize lists or databases at his or her disposal to determine the witness's address.
2. The voter or witness may wish to appear in person to add the missing information, or provide the address information by phone, fax, email or mail. The voter may provide the address separately as an alternative to returning the certificate envelope and having the voter mail it back again as outlined below.
3. The voter may request that the clerk return the certificate envelope so the voter can personally add the witness address.
  - Be sure to include a self-addressed stamped envelope in which the voter may return the certificate envelope containing the ballot. The post office does not approve of placing another stamp over a cancelled stamp. Contact your postmaster or a Mail Piece Design Analyst before attempting to re-stamp or re-meter the certificate envelope. Also, note that the U.S. Postal Service is advising that voters mail absentee ballots at least one week before Election Day to accommodate new delivery standards. We suggest advising the voter of the importance of timely mailing if the voter wishes to have the certificate envelope mailed back to them.
4. The voter may wish to spoil the original ballot and vote a new one.

If the request to spoil the ballot is within the proper time frame, the clerk mails a second ballot and new certificate envelope to the voter. (See procedure for *Spoiling and Replacement Ballots*, beginning on page 109 of Election Administration Manual.)

I hope this guidance is helpful as you continue to issue and receive absentee ballots. Thank you for your efforts to assist voters in completing the absentee certificate sufficiently so their votes may be counted.

If you have questions, please contact the Elections Help Desk at 608-261-2028 or [elections@wi.gov](mailto:elections@wi.gov).

WEC 000033





# Wisconsin Elections Commission

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## **MEMORANDUM**

**TO:** Wisconsin Municipal Clerks  
City of Milwaukee Election Commission  
Wisconsin County Clerks  
Milwaukee County Election Commission

**FROM:** Meagan Wolfe  
Administrator

**DATE:** March 29, 2020

**SUBJECT:** Guidance for Indefinitely Confined Electors

Due to the continuing spread of COVID-19, staff of the Wisconsin Elections Commission (WEC) has received numerous inquiries regarding the application of the indefinitely confined designation for absentee voters under Wisconsin Statutes. At its meeting of March 27, 2020, the Commission discussed this issue and adopted the following guidance related to the use of indefinitely confined status to assist local election officials working with absentee voters:

1. Designation of indefinitely confined status is for each individual voter to make based upon their current circumstance. It does not require permanent or total inability to travel outside of the residence. The designation is appropriate for electors who are indefinitely confined because of age, physical illness or infirmity or are disabled for an indefinite period.
2. Indefinitely confined status shall not be used by electors simply as a means to avoid the photo ID requirement without regard to whether they are indefinitely confined because of age, physical illness, infirmity or disability.

This guidance is consistent with and supplements previous statements of the WEC related to absentee voters who may qualify as indefinitely confined or “permanent” absentee voters. For ease of reference, on March 24, 2020, the WEC posted the following guidance in one of its FAQ documents addressing issues related to conducting the Spring Election in the midst of the COVID-19 pandemic:

*Wisconsin Elections Commissioners*

Dean Knudson, chair | Marge Bostelmann | Julie M. Glancey | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen



### Indefinitely Confined Absentee Applications

WEC staff has received numerous questions from clerks about the increase in voters requesting absentee ballots as indefinitely confined. Wisconsin Statutes provide the option for a voter to self-certify whether they meet the definition of indefinitely confined. The statutory definition of "age, illness, infirmity or disability" does not require any voter to meet a threshold for qualification and indefinitely confined status need not be permanent. A voter with a broken leg or one recovering from surgery may be temporarily indefinitely confined and may use that status when voting during that period of time.

We understand the concern over the use of indefinitely confined status and do not condone abuse of that option as it is an invaluable accommodation for many voters in Wisconsin. During the current public health crisis, many voters of a certain age or in at-risk populations may meet that standard of indefinitely confined until the crisis abates. We have told clerks if they do not believe a voter understood the declaration they made when requesting an absentee ballot, they can contact the voter for confirmation of their status. They should do so using appropriate discretion as voters are still entitled to privacy concerning their medical and disability status. Any request for confirmation of indefinitely confined status should not be accusatory in nature.

There may be a need to do some review of the absentee voting rolls after this election to confirm voters who met the definition of indefinitely confined during the public health crisis would like to continue that status. WEC staff has already discussed this possibility and may be able to provide resources to assist clerks with these efforts.

This guidance is based upon applicable statutes. An elector who is indefinitely confined because of age, physical illness or infirmity or is disabled for an indefinite period may by signing a statement to that effect require that an absentee ballot be sent to the elector automatically for every election. *Wis. Stat. § 6.86(2)(a)*. The absentee ballot request form asks voters to certify to their indefinitely confined status. Statutes do not establish the option to require proof or documentation from indefinitely confined voters. Clerks may tactfully verify with voters that the voter understood the indefinitely confined status designation when they submitted their request but they may not request or require proof.

An elector who qualifies as indefinitely confined "may, in lieu of providing proof of identification, submit with his or her absentee ballot a statement signed by the same individual who witnesses voting of the ballot which contains the name and address of the elector and verifies that the name and address are correct." *Wis. Stat. 6.87(4)(b)2*. Thus, indefinitely confined electors may satisfy the photo ID requirement by obtaining the signature of a witness on the absentee ballot certificate envelope.

Electors who are indefinitely confined due to age, physical illness, infirmity or disability, may be unable to obtain a current photo ID or make a copy to submit with their written absentee ballot request or upload an image of their photo ID with their electronic request through MyVote Wisconsin. If a clerk is contacted by an elector in such circumstances,



WEC recommends discussing the options and making the voter aware of the criteria for qualifying as an indefinitely confined elector.

If any elector is no longer indefinitely confined, they shall so notify the municipal clerk. *Wis. Stat. 6.86(2)(a)*. An elector also loses indefinitely confined status if they do not vote in a Spring or General Election and do not respond to a mailing from the municipal clerk asking whether they wish to continue automatically receiving absentee ballots. *Wis. Stat. 6.86(2)(b)*. Finally, the municipal clerk shall remove the name of any elector from the list of indefinitely confined electors upon receipt of reliable information that an elector no longer qualifies for that designation and service. The clerk shall notify the elector of such action not taken at the elector's request within 5 days, if possible. *Wis. Stat. § 6.86(2)(b)*.

If you have questions regarding this communication, please contact the Help Desk at 608-261-2028 or [elections@wi.gov](mailto:elections@wi.gov).





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## Updated Absentee Witness Signature Requirement Guidance - COVID-19

Priority  
Timely Attention Required

Date  
April 5, 2020 - 1:30pm

To  
Wisconsin County Clerks  
Wisconsin Municipal Clerks  
City of Milwaukee Election Commission  
Milwaukee County Election Commission

From  
Meagan Wolfe, Administrator

### Attachment

### Size

Post 7th Circuit Absentee Witness Guidance 4.7.2020\_o.pdf 189.05 KB

In the last few days, multiple court decisions have addressed the witness requirement for absentee voters who wish to vote by mail for the April 7, 2020 election. The end result of those decisions is that the witness requirement remains in effect for the Spring Election. This memorandum provides an update on the court decisions and reviews frequently asked questions we have received regarding the witness requirement, correcting a defective certificate envelope, and spoiling ballots.

### Timeline and Status

**April 2:** Judge Conley originally ordered that absentee ballots returned without required witness information should be counted if the voter provided a statement that they could not find a witness

<https://elections.wi.gov/node/6816>[12/8/2020 1:27:38 PM]

WEC 000043



despite a reasonable effort.

**April 3:** The 7th Circuit Court of Appeals ruled that all absentee ballots must have the required witness information in order to be counted for the April 7, 2020 election.

**Result:** Each absentee ballot for this election must have the required witness signature and address in order to be counted, including ballots that were returned when Judge Conley's original order was in effect for approximately 24 hours.

### Frequently Asked Questions

1. Does every absentee ballot need a witness signature and witness address?  
Yes, a witness signature and witness address are required from all voters on the absentee ballot return envelope. A federal court ruling temporarily suspended this requirement, but it was reinstated on appeal.
2. Can I show up at my polling place on election day and vote a new ballot if I returned my absentee ballot without the required witness information?  
No, an absentee ballot cannot be spoiled at the polls and a new ballot issued. Wisconsin state law provides "An elector who mails or personally delivers an absentee ballot to the municipal clerk at an election is not permitted to vote in person at the same election on election day." Wis Stat. § 6.86(6).  
  
2011 Act 227 changed the law so it was no longer an option to "beat your ballot" to the polls. Prior to that legislation, an absentee voter could obtain a new ballot at the polls if their absentee ballot had not been processed and a voter number had not been issued.
3. Can I show up at my polling place on election day with my witness to provide the missing required witness information?  
Missing information on the absentee ballot certificate envelope can be provided so that an absentee ballot may be counted. However, the voter must be accompanied by the original witness when providing this information. The absentee voter would need to appear at the polls with the original witness who did not sign at the time the ballot was marked. The witness could then provide the missing signature and/or address information. A returned absentee ballot cannot be spoiled, and a new ballot cannot be issued at the polls. (See Election Administration Manual, page 106).
4. What if I submitted my ballot without witness information while the requirement was suspended?  
The ruling from the 7th Circuit Court of Appeals that was issued on April 3, 2020 applies to all ballots cast for this election, even those returned when the decision from Judge Conley was in effect.
5. What if a clerk sent out ballots after the original court order with instructions about the witness substitution that has since been eliminated?  
They should make their best effort to contact those voters to inform them that the witness requirement is back in effect.
6. What if a clerk has received a ballot back from a voter with required witness information



missing?

They should make their best effort to contact the voter to advise them of their options to provide the missing information. If a witness signature is missing the voter can appear with the original witness in the clerk's office or polling place on election day to provide the signature.

7. What are the options for a voter to provide missing witness information on the absentee ballot return envelope?

The voter has the option to correct the absentee certificate envelope in the clerk's office, by mail, or at the polling place/central count location on election day.

### By Mail

If the voter wants the original ballot mailed back to them, the clerk shall enclose the original ballot in its unopened certificate envelope along with a new certificate envelope in a carrier envelope, to send to the voter. The voter must open the original certificate envelope, verify their ballot, seal the ballot in the new certificate envelope, and obtain a witness signature. Corrected certificate envelopes must mail the ballot back with a postmark no later than April 7 or hand deliver the ballot to their polling place or clerk's office.

A voter who chose to correct the certificate envelope by mail, but did not return a corrected envelope, cannot vote in person at the polling place.

### At Polls or Central Count on Election Day

If the voter appears to correct the certificate envelope at the polling place/central count site, the election inspectors shall issue a new certificate envelope to the voter. The voter must open the original certificate envelope, verify their ballot, and seal the ballot in the new certificate envelope. The voter may NOT remove the ballot from the voting area. The election inspectors may NOT serve as the witness (the original witness must be present). The original certificate envelope is then destroyed.

Please contact us at [elections@wi.gov](mailto:elections@wi.gov) or by phone at (608) 261-2028 with any questions you may have.

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# Wisconsin Elections Commission

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**DATE:** April 5, 2020

**TO:** Wisconsin Municipal Clerks  
Wisconsin County Clerks  
City of Milwaukee Election Commission  
Milwaukee County Election Commission

**FROM:** Meagan Wolfe, Administrator  
Wisconsin Elections Commission

**SUBJECT:** Updated Absentee Witness Signature Requirement Guidance

In the last few days, multiple court decisions have addressed the witness requirement for absentee voters who wish to vote by mail for the April 7, 2020 election. The end result of those decisions is that the witness requirement remains in effect for the Spring Election. This memorandum provides an update on the court decisions and reviews frequently asked questions we have received regarding the witness requirement, correcting a defective certificate envelope, and spoiling ballots.

## Timeline and Status

**April 2:** Judge Conley originally ordered that absentee ballots returned without required witness information should be counted if the voter provided a statement that they could not find a witness despite a reasonable effort.

**April 3:** The 7<sup>th</sup> Circuit Court of Appeals ruled that all absentee ballots must have the required witness information in order to be counted for the April 7, 2020 election.

**Result:** Each absentee ballot for this election must have the required witness signature and address in order to be counted, including ballots that were returned when Judge Conley's original order was in effect for approximately 24 hours.

## Frequently Asked Questions

### **1. Does every absentee ballot need a witness signature and witness address?**

Yes, a witness signature and witness address are required from all voters on the absentee ballot return envelope. A federal court ruling temporarily suspended this requirement, but it was reinstated on appeal.

### **2. Can I show up at my polling place on election day and vote a new ballot if I returned my absentee ballot without the required witness information?**

No, an absentee ballot cannot be spoiled at the polls and a new ballot issued. Wisconsin state law provides "An elector who mails or personally delivers an absentee ballot to the municipal clerk at an election is not permitted to vote in person at the same election on election day." Wis Stat. § 6.86(6).

*Wisconsin Elections Commissioners*

Dean Knudson, chair | Marge Bostelmann | Julie M. Glancey | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

*Administrator*  
Meagan Wolfe

WEC 000135



2011 Act 227 changed the law so it was no longer an option to “beat your ballot” to the polls. Prior to that legislation, an absentee voter could obtain a new ballot at the polls if their absentee ballot had not been processed and a voter number had not been issued.

**3. Can I show up at my polling place on election day with my witness to provide the missing required witness information?**

Missing information on the absentee ballot certificate envelope can be provided so that an absentee ballot may be counted. However, the voter must be accompanied by the original witness when providing this information. The absentee voter would need to appear at the polls with the original witness who did not sign at the time the ballot was marked. The witness could then provide the missing signature and/or address information. A returned absentee ballot cannot be spoiled, and a new ballot cannot be issued at the polls. (See Election Administration Manual, page 106). The witness signature must be provided by 8 PM on election day or the ballot will be rejected.

**4. What if I submitted my ballot without witness information while the requirement was suspended?**

The ruling from the 7<sup>th</sup> Circuit Court of Appeals that was issued on April 3, 2020 applies to all ballots cast for this election, even those returned when the decision from Judge Conley was in effect.

**5. What if a clerk sent out ballots after the original court order with instructions about the witness substitution that has since been eliminated?**

They should make their best effort to contact those voters to inform them that the witness requirement is back in effect.

**6. What if a clerk has received a ballot back from a voter with required witness information missing?**

They should make their best effort to contact the voter to advise them of their options to provide the missing information. If a witness signature is missing the voter can appear with the original witness in the clerk’s office or polling place on election day to provide the signature.

**7. What are the options for a voter to provide missing witness information on the absentee ballot return envelope?**

The voter has the option to correct the absentee certificate envelope in the clerk’s office, by mail, or at the polling place/central count location on election day.

**By Mail**

If the voter wants the original ballot mailed back to them, the clerk shall enclose the original ballot in its unopened certificate envelope along with a new certificate envelope in a carrier envelope, to send to the voter. The voter must open the original certificate envelope, verify their ballot, seal the ballot in the new certificate envelope, and obtain a witness signature. Corrected certificate envelopes must mail the ballot back with a postmark no later than April 7 or hand deliver the ballot to their polling place or clerk’s office.

A voter who chose to correct the certificate envelope by mail, but did not return a corrected envelope, cannot vote in person at the polling place.

WEC 000136



**At Polls or Central Count on Election Day**

If the voter appears to correct the certificate envelope at the polling place/central count site, the election inspectors shall issue a new certificate envelope to the voter. The voter must open the original certificate envelope, verify their ballot, and seal the ballot in the new certificate envelope. The voter may NOT remove the ballot from the voting area. The election inspectors may NOT serve as the witness (the original witness must be present). The original certificate envelope is then destroyed.

Please contact us at [elections@wi.gov](mailto:elections@wi.gov) or by phone at (608) 261-2028 with any questions you may have.

WEC 000137





# Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8005 | elections@wi.gov | elections.wi.gov

**DATE:** August 19, 2020

**TO:** All Wisconsin Election Officials

**FROM:** Meagan Wolfe      Richard Rydecki  
Administrator      Assistant Administrator

**SUBJECT:** Absentee Ballot Drop Box Information

This document is intended to provide information and guidance on drop box options for secure absentee ballot return for voters. The information has been adapted from a resource developed as part of the Cybersecurity and Infrastructure Security Agency (CISA) Elections Infrastructure Government Coordinating Council and Sector Coordinating Council's Joint COVID Working Group. The original document can be found here:  
[https://static1.squarespace.com/static/5a665c98017db2b60bc22084/t/5e8f42d717ee5e7ee2db8c8b/1586447064805/Ballot\\_Drop-Box\\_final.pdf](https://static1.squarespace.com/static/5a665c98017db2b60bc22084/t/5e8f42d717ee5e7ee2db8c8b/1586447064805/Ballot_Drop-Box_final.pdf).

## What is an Absentee Ballot Drop Box?

A ballot drop box provides a secure and convenient means for voters to return their by mail absentee ballot. A drop box is a secure, locked structure operated by local election officials. Voters may deposit their ballot in a drop box at any time after they receive it in the mail up to the time of the last ballot collection Election Day. Ballot drop boxes can be staffed or unstaffed, temporary or permanent.

Some voters prefer to deliver their by mail absentee ballots to a drop box rather than sending them back through the mail. These voters may be motivated by lack of trust in the postal process, fear that their ballot could be tampered with, or concern that their information will be exposed. Voters may also be concerned about ensuring that their ballot is returned in time to be counted.

Ballot drop boxes and drop-off locations allow voters to deliver their ballots in person. More importantly, the availability of ballot drop boxes and drop-off locations ensures that even voters who wait until the last minute to return their ballot or who receive their requested ballot in the mail too late to return it via USPS will have timely options to return their ballots.

## Repurposing Options

In a COVID-19 environment, creative solutions may be required. Your municipality may already have infrastructure set up for secure collection of payment and materials. Consider repurposing the following options as secure ballot drops:

*Wisconsin Elections Commissioners*

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

Administrator  
Meagan Wolfe

**Exhibit 13**

Case 2:20-cv-01785-BHL Filed 12/09/20 Page 1 of 4 Document 117-13

B063



- Designate drop boxes or mail slots set up for taxes, mail and public utilities as secure ballot drop locations.
- Partnering with public libraries to use book and media drop slots for ballot collection.
- Partnering with businesses or locations that have already implemented social distancing practices, such as grocery stores and banks.



Many of these locations are already secure and located in places familiar to city residents. If you choose to do something similar, be sure to inquire about the security of these drops and identify how you can access ballots returned through these options. These locations should be marked with signage that clearly identifies the location as a ballot drop box and lists the final time ballots will be collected on election day. After the final election day pickup, clear signage should be placed at each drop site marking the location as “closed for ballot drop” and information regarding additional ballot return options and deadlines should be listed on these signs.

## Types of Drop Boxes

### Outdoor Options

#### 1. Staffed, Temporary Drive-Through Drop Off

A drive-through drop-off location is an easy way to keep traffic flowing when demand for a ballot drop box is at its peak, especially on Election Day. This drive-through is typically set up in a parking lot or a street depending on the location.

The team staffing the site accepts ballots from voters as they pull through, depositing them directly into a ballot box. For voters who prefer placing the ballot directly into the box themselves, the portable ballot box is brought to the car window. In addition to the supplies listed below, you will need a team of at least two to three to support the drop-off site.

- Pop-up tent
- Table
- Chairs
- Ballot box
- Road signs
- Orange cones
- Flashlights
- High-visibility vests for workers
- Weather appropriate support— propane heater, rain gear, lanterns
- Personal protective equipment such as gloves, masks, and hand sanitizer as appropriate and in accordance with current CDC guidance





## 2. Unstaffed, 24-Hour Ballot Drop Box

In high-demand areas, installing a permanent ballot drop box—one that can be accessed by voters 24/7—is a good solution. These boxes should be constructed of durable material such as steel and be permanently cemented into the ground. This type of ballot drop box may cost as much as \$6,000 each. Other options such as courier boxes are available from industrial supply companies and may be more affordable. In addition to purchasing the 24-hour box you will need:

- Video surveillance camera (or place the drop box in an area already covered by a security camera)
- Media storage device (for recorded video)
- Municipal decal or Election signage
- Extra keys for opening slot and access door
- Security seals



## Indoor Option

### Staffed or Unstaffed – Indoor Temporary Ballot Drop Box

When demand for a ballot drop box is low, a temporary ballot box located in a place such as the municipal clerk's office is a good solution. These boxes should be constructed of durable material and include a key or combination lock as well as a way to securely fasten the box to prevent it from being moved or tampered with. This type of box looks similar to the example pictured here. Staffed drop boxes can also be used at polling places on election day to collect absentee ballots from voters without having those voters wait in line in the voting area.

In addition to purchasing or renting the ballot box, you will need:

- Padlock and keys (if not included)
- Bike chain or some other way to fasten the box to prevent it from being removed (if not staffed)
- Security seals



## Security

Ballot drop boxes must be secured and locked at all times. Only an election official or a designated ballot drop box collection team should have access to the keys and/or combination of the lock. In addition to locks, all drop boxes should be sealed with one or more tamper evident seals.

Ideally, unstaffed 24-hour drop boxes should be located in areas with good lighting and be monitored by video surveillance cameras. When this is not feasible, positioning the box close to a nearby camera is a good option. Also consider placing it in a high traffic area and inviting local law enforcement to make regular observations.

Try to place indoor drop boxes in locations where they can be monitored by a person in real time. When ballot boxes are unstaffed and not being monitored, the box should be securely fastened to a stationary surface or immovable object, such as a counter or wall, in a way that prevents moving or tampering.



## Chain of Custody

- Chain of custody logs must be completed every time ballots are collected.
- All ballot collection boxes/bags should be numbered to ensure all boxes are returned at the end of the shift, day, and on election night.
- Team members should sign the log and record the date and time, security seal number at opening, and security seal number when the box is locked and sealed again.

## Location

Ballot drop boxes should be placed in convenient, accessible locations, including places close to public transportation routes, near or on college campuses, and public buildings, such as libraries and community centers familiar to voters and easy to find. If there is time, getting input from citizens and community groups is recommended.

All drop box locations should be evaluated for:

- Security
- Lighting (well-lit 24 hours a day)
- High visibility
- Security cameras
- Accessibility
- Voter convenience
- Parking or drive-through options

## How Many Drop Boxes Do You Need?

At a minimum, you should have a drop box at your primary municipal building, such as the village hall. Voters generally know the locations of these buildings and are already accustomed to voting or doing business there. Some other best practices include:

- Have one drop box for every 15,000–20,000 registered voters.
- Consider adding more drop boxes to areas where there may be communities with historically low absentee ballot return rates.
- Use demographic data and analysis to determine whether there should be a different formula for rural and urban locations (i.e., 1 for every 15,000 residents may be every mile in an urban area, but every 50 miles in a rural area).



## Repurposing Options

Your municipality may already have infrastructure set up for secure collection of payment and materials. Consider repurposing the following options as secure ballot drops:

- Designate drop boxes or mail slots set up for taxes, mail and public utilities as secure ballot drop locations.
- Partnering with public libraries to use book and media drop slots for ballot collection.
- Partnering with businesses or locations that have already implemented social distancing practices, such as grocery stores and banks.





## Uniform Instructions for Wisconsin Absentee Voters

Confirm the envelope from your clerk contains your ballot and the envelope you'll use to return your ballot.

- 1 Read and follow the instructions on your ballot. Mistakes may prevent your votes from being counted.
- 2 You must vote your ballot in the presence of an adult witness:



- Start by showing the witness your unmarked ballot.
- Mark your ballot in the presence of your witness.
- Your witness must confirm that you are the one completing your ballot but, because voting is a private activity, your witness cannot tell you who or what to vote for and cannot see the choices you make on your ballot.

### Who can be a witness?

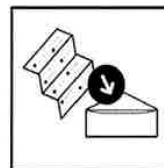
- A witness must be a U.S. Citizen who is at least 18 years old.
- For military or overseas voters, your witness must be at least 18 years old but is not required to be a U.S. Citizen.
- A witness can be a friend, spouse, family member, neighbor, etc.

### Who cannot be a witness?

- A candidate on the ballot for this election.

If you're having trouble finding a witness or have questions about the witness requirement, please contact your municipal clerk or the Wisconsin Elections Commission for assistance. Contact information can be found on the back of this page.

- 3 Refold your voted ballot and place it inside of the return envelope.
- 4 Seal the envelope in the presence of your witness.
- 5 Fill out the required sections of the form on the absentee return envelope.



**To make sure your ballot is counted, double check the following before you return it:**



- **Your voter information:** this section is usually completed by your clerk and includes the date of the election, the county and municipality in which you are registered, your name, the address where you are registered, city, and zip code.
- **Voter Signature:** you (or your assistant) must sign in the Certification of Voter section.
- **Witness Signature and Address:** your witness must sign and provide their **full** address (street number, street name, city) in the Certification of Witness section.
- Make sure your ballot is in your envelope and make sure the envelope is sealed properly.

If any of the required information above is missing, your ballot **will not be counted**.

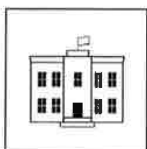
- 6 Return your ballot.



- Your ballot must be received in time to be delivered to your polling place **no later than 8:00 p.m. on Election Day**. There are a few options for returning your ballot.

You can:

- Mail it back
- Drop it off at your municipal clerk's office
- Drop it off at your polling place or central count location
- Drop it off in an absentee ballot drop box (if available)



- The United States Postal Service recommends mailing your ballot at least one week before Election Day. Returning a ballot from overseas may take longer.
- **Absentee ballots may not be returned by email or fax.**

**Exhibit 36**



## Getting Assistance

If you need help reading or filling out your ballot or absentee return envelope, you may ask for assistance from anyone who is not your employer or a representative of your labor union. Your assistant may also serve as your witness. Explaining how to fill out your ballot or return envelope is not "assistance."

### With your ballot

- Your assistant must sign in the Certification of Voter Assistance section.
- Your assistant can read your ballot to you or fill out your ballot under your direction, but cannot tell you how to vote.

### With your absentee return envelope

- If someone signs your absentee return envelope on your behalf, make sure they also sign in the Certification of Assistant section.
- Your assistant may also serve as your witness.

## Correcting Ballot Mistakes

- If you make a mistake while marking your ballot or otherwise require a replacement ballot, contact your municipal clerk. Your municipal clerk's contact information is listed below.
- If there is not enough time to request a replacement ballot and you have not returned your ballot, you may still vote in-person at the polls on Election Day.
- Different types of voters have different deadlines for requesting a replacement ballot. Please see below for additional details.

### 5:00 p.m. on the Thursday before the election

- Regular absentee voters
- Permanent overseas voters
- Temporary overseas voters

### 5:00 p.m. on the Friday before the election

- Military voters\*
- Indefinitely confined voters

\*If the ballot contains federal offices, military voters away from home may request replacement ballots until 5:00 p.m. on Election Day

## Voter Photo Identification Information

- If you have received your ballot, then a copy of your photo ID is already on file or you are exempt from the requirement. You do not need to provide another copy of photo ID unless instructed by your clerk.
- If you have questions about the photo ID requirement, please contact your municipal clerk.

If you have any questions, please contact your municipal clerk for assistance.

### Municipal Clerk Contact Information

(Name of Municipal Clerk)

(Name of Municipality)

Phone:

Email:

Fax:

### State Election Official Contact Information

Wisconsin Elections Commission

**Help Desk:** (608) 261-2028

**Email:** [elections@wi.gov](mailto:elections@wi.gov)

**For voter information, check out [MyVote.wi.gov](http://MyVote.wi.gov)**

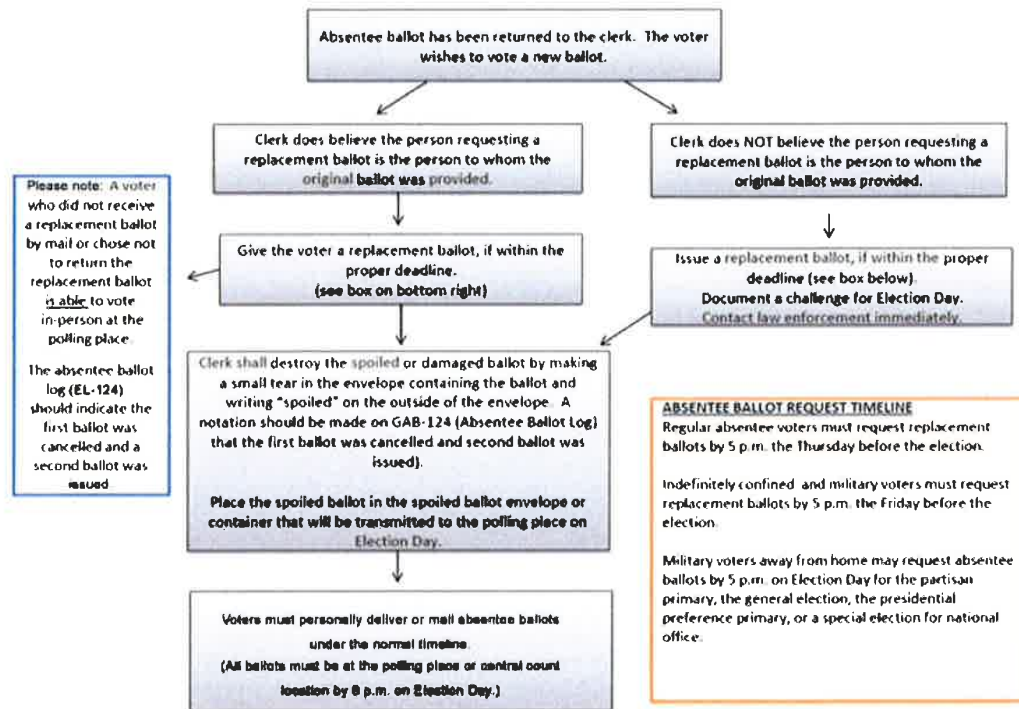
### **Uniform Instructions for Wisconsin Absentee Voters**

| Rev 9-2020 | Wisconsin Elections Commission, P.O. Box 7984, Madison, WI 5377-7984 | (608) 261-2028 | web: [elections.wi.gov](http://elections.wi.gov) | email: [elections@wi.gov](mailto:elections@wi.gov)



- b. Clerks may add a missing witness address using whatever means are available. Clerks should initial next to the added witness address.

### *Correcting Defective Absentee Certificate Envelopes*



1. The municipal clerk reviews each absentee certificate envelope when it is returned to the clerk's office for any errors (e.g. missing certificate, voter signature, witness signature and address, or two SVD signatures).
2. If there is an error, the clerk should contact the voter, if possible. Wis. Stat. § 6.87(9).
  - a. The voter has the option to correct the absentee certificate envelope in the clerk's office, by mail, or at the polling place/central count location on Election Day.
    - i. If the voter wants the original ballot mailed back to them, the clerk shall enclose the original ballot in its unopened certificate



envelope along with a new certificate envelope in a carrier envelope, to send to the voter. The voter must open the original certificate envelope, verify their ballot, and seal the ballot in the new certificate envelope.

1. A voter who chose to correct the certificate envelope by mail, but did not return a corrected envelope, cannot vote in person at the polling place.
  - ii. If the voter corrects the certificate envelope in the clerk's office, the clerk shall issue a new certificate envelope to the voter. The voter must open the original certificate envelope, verify their ballot, and seal the ballot in the new certificate envelope. The voter may NOT remove the ballot from the clerk's office. The clerk may NOT serve as the witness (the original witness must be present). The original certificate envelope is then destroyed.
  - iii. If the voter corrects the certificate envelope at the polling place/central count site, the election inspectors shall issue a new certificate envelope to the voter. The voter must open the original certificate envelope, verify their ballot, and seal the ballot in the new certificate envelope. The voter may NOT remove the ballot from the voting area. The election inspectors may NOT serve as the witness (the original witness must be present). The original certificate envelope is then destroyed.
- b. The original witness must always be present to correct any certificate errors.
  - c. The clerk should document any certificate errors on the Absentee Ballot Log (EL-124).





## WISCONSIN ELECTIONS COMMISSION

Administering Wisconsin's Election Laws

[Home](#) » [Node](#)

# In-Person Absentee Voting and Ballot Drop-Off Reminders

**Priority**

Timely Attention Required

**Date**

September 26, 2020 - 2:00pm

**To**

Wisconsin County Clerks  
Wisconsin Municipal Clerks  
City of Milwaukee Election Commission  
Milwaukee County Election Commission

**From**

Meagan Wolfe, Administrator

Attachment	Size
<a href="#">Clerk Comm IPAV and Witness Reminder 09.26.pdf</a>	128.09 KB

We have received a number of questions regarding the timeline for in-person absentee voting and witness procedures for the November General Election. This communication will provide reminders and links to resources for both issues that clerks can use to prepare for the election. The information below does not represent changes in guidance but are reminders in light of recent questions we have received.

<https://elections.wi.gov/node/7135>

12/8/2020

WEC 000001



**1. In-Person Absentee Voting:** Due to the recent court decision in the One Wisconsin Institute case, in-person absentee voting can only take place in the two weeks prior to election day and no in-person absentee hours can be offered on the Monday prior to election day. Wisconsin Statute § 6.86(1)(b), which sets the 14-day time period for in-person absentee voting was held to be constitutional.

For the November 3, 2020 General Election, in-person absentee voting can begin no earlier than October 20, 2020 and the final day in-person absentee voting hours can be offered is Sunday November 1, 2020.

In-person absentee is defined by state law as the process of issuing an absentee ballot in-person at the clerk's office or alternate site, or sites. During the in-person absentee time period, beginning on October 20 and ending on November 1, there is no restriction on the number of hours you may offer and in-person absentee voting can be offered at multiple locations (although those locations were required to be set by June 12, 2020 for the November General Election). As always, your Type E Notice should accurately reflect the in-person absentee voting hours for your municipality even if you are offering hours by appointment only. More information about the court decision can be found here: <https://elections.wi.gov/node/6978>.

Further, please note that the only way clerk may issue absentee ballots to voters prior to October 20 is by mail. Before this time, you may not provide voters a ballot in-person nor can you deliver a ballot to a voter in-person or through an agent. Prior to October 20, voters may only receive the ballot by mail.

**2. Accepting Absentee Ballot Applications In-Person:** Under Wis. Stat. § 6.86(1)(b), clerks cannot accept applications for absentee ballots in person earlier than 14 days preceding the election and no later than the Sunday preceding the election.

For the November 3, 2020 General Election, in-person absentee applications can be accepted no earlier than October 20, 2020 and the final day these applications can be accepted is Sunday November 1, 2020.

Voters may submit their absentee ballot applications by email, by mail, or through MyVote.wi.gov but they cannot submit absentee ballot applications in-person prior to October 20, 2020 and only at locations designated in your Type E notice and established prior to the June 12, 2020 deadline.

**3. Witness Requirements:** Each absentee ballot is required to have the voter signature, witness signature and witness address on the return envelope in order to be counted. State law requires that the voter must show their unmarked ballot to their witness prior to marking their ballot in their presence (Wis. Stat. § 6.87(2)). The witness then signs the certification indicating the proper voting procedure has been followed. If a



ballot has not been voted in the presence of the witness, a witness cannot certify that the unmarked ballot was shown to them. The voter should request a replacement ballot from their municipal clerk in these situations.

**4. Ballot Drop Off Opportunities:** Under Wis. Stat. §6.87(4)(b)(1) municipal clerks may establish opportunities for voters to hand deliver their ballot in their jurisdictions. Guidance on how to securely establish drop off opportunities and drop box locations please see WEC's August 19 communication <https://elections.wi.gov/node/7036>

Please contact us with any questions you may have at (608)261-2028 or [elections@wi.gov](mailto:elections@wi.gov).

[clerks](#)

Wisconsin Elections Commission | 212 East Washington Avenue, Third Floor P.O. Box 7984 |  
Madison, Wisconsin 53707-7984

*tele* (608) 266-8005 | *fax* (608) 267-0500 | *tty* 1-800-947-3529 | *e-mail* [elections@wi.gov](mailto:elections@wi.gov)

Toll-Free Voter Help Line: 1-866-VOTE-WIS





# Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8005 | [elections@wi.gov](mailto:elections@wi.gov) | [elections.wi.gov](http://elections.wi.gov)

**DATE:** September 26, 2020

**TO:** All Wisconsin Elections Officials

**FROM:** Meagan Wolfe  
Administrator

**SUBJECT: In-Person Absentee Voting Reminders**

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Wisconsin Elections Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

Administrator  
Meagan Wolfe



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3. **Witness Requirements:** Each absentee ballot is required to have the voter signature, witness signature and witness address on the return envelope in order to be counted. State law requires that the voter must show their unmarked ballot to their witness prior to marking their ballot in their presence (Wis. Stat. § 6.87(2)). The witness then signs the certification indicating the proper voting procedure has been followed. If a ballot has not been voted in the presence of the witness, a witness cannot certify that the unmarked ballot was shown to them. The voter should request a replacement ballot from their municipal clerk in these situations.
4. **Ballot Drop Off Opportunities:** Under Wis. Stat. §6.87(4)(b)(1) municipal clerks may establish opportunities for voters to hand deliver their ballot in their jurisdictions. Guidance on how to securely establish drop off opportunities and drop box locations please see WEC's August 19 communication <https://elections.wi.gov/node/7036>

Please contact us with any questions you may have at (608)261-2028 or [elections@wi.gov](mailto:elections@wi.gov).



Question Asked	Answer Given
The new uniform instructions are awesome, by the way	Great, glad you like them!
The drop box I wanted to order was not approved by the Village president so he chose one. It is also a payment drop box that will be used by residents to drop utility payments after hours. I do not like that idea but there was not any way I was going to win that fight. Disallowed or just a really bad idea?	Some municipalities are combining the return of absentee ballots with existing drop boxes, which is fine. Clerks need to be certain that ballots are retrieved in a timely manner.
What if the county clerk does not provide us with ballots by the 17th because he/she has not yet received them?	Ballots have been received by the deadline.
What if they came and voted in person after requesting an absentee and did not use it?	Voters who do not return their absentee ballot can vote at the clerk's office during in person absentee voting hours or at the polls on Election Day.
But if the voted in person in August and did not use their absentee ballot and voted in person, do I send out another for Nov?	Yes, you still send it to them for November.
Are election inspectors with exceptions required to the face covering requirement?	Election inspectors are required by the state mandate to wear face masks at the polls.
Can election inspectors use a shield instead of mask	No, they can use both, but masks are mandated.
Are drop boxes safe? What if someone puts something in the drop box to burn or ruin the absentee ballots?	Drop boxes are used successfully in many municipalities for the return of property tax or utility payments. We recommend placing any new drop boxes in a high visibility area for security reasons. The drop box should be checked often for ballots.
Yeah Cody! I think it looks great and will be much better in terms of voter information	Thanks!
What is the end date of the Governor's mandate?	September 28, 2020. (Note, it has been extended)
I am a small municipality. Can I issue the ballots in the absentee tile of the Election in WisVote but set the date ahead so I can print the labels?	Please call the Help Desk and ask for a WisVote Specialist: 608-261-2033.
We are getting some post card absentee requests that do not ask for a birthday. Is it ok to send them an absentee ballot by just receiving that card if we already have their photo ID	An absentee ballot request does not have to have their birthday listed. It is on the form for cross-checking purposes, but is not required by law.

WEC 000098



Currently the only voters who can receive their ballot by fax or email are:	Military and Overseas (perm and temp) voters.
May want to mention the Federal only ballot for permanent overseas voters.	Permanent overseas voters receive the federal only ballot. Military and temporary overseas voters receive the full ballot.
Can you please touch on the difference between drive-through and curbside voting? We do not have the staff to necessarily do complete curbside, but if you could touch on when we have to...disability/sickness not just fear of getting COVID. Hopefully, this makes sense.	Drive-through voting requires everything typically in the polling place to be available outside, voting equipment, poll books, poll workers, etc. Curbside voting must be available during voting in the polling place for any voter who is unable to enter the polls due to a disability.
Great explanation...I think people are using these terms synonymously so I wanted to have a good explanation to provide.	Good, thanks.
Is it permissible for the Post Office to empty their postal drop boxes on Election Day and deliver the ballots directly to the clerk or hold them at the post office and ask you to pick them up on election day?	They may have occurred in the past, but it is against post office regulations and is unlikely to occur in the future. They would not have a post mark, which could be problematic.
Can incomplete absentee certificate envelopes be corrected at the Clerk's office on Election Day until 7PM (as opposed to voters correcting them at the polls) and then the Clerk's office would deliver them to the polls before 8 to be counted or rejected if not corrected?	Clerks cannot establish different deadlines. Voters have until 8 pm on Election Day at the polls to remedy any missing information on their absentee certificate envelope.
Does anyone know what the postage is?	Please check with your post office.
Do we clerks have to put that postage on the return envelope before sending out?	Yes, for any ballots sent to voters to be returned within the United States. Military voters have a special return envelope.
Allison, could you repeat what you just said about who gets what type of ballot?	Military, temporary overseas, regular voters: full ballot; permanent overseas voters: federal-only ballot.
Can I hold a curbside absentee voting drive out side of our polling place as I did not notice a different location in June	You should offer curbside voting as part of your in person absentee hours. It does not have to be noticed.
You could remove the second bullet from the Uniform - it has to do with military and there is a separate military instruction sheet. Otherwise it is much better than the previous ones.	Thanks for the feedback!
Can municipalities share a drop box?	There is nothing that prohibits it.
Alternate location for absentee in-person cannot be changed after June ?	June 11, 2020 was the deadline for changing in person absentee voting locations.



Is there no way to change that? Emergency order by the governing body? We are under a new City Hall build, have lost space and now with the pandemic need to move or won't be able to service the in-person . . . there was no way to know the Mail-In ballot was going to turn upside down . . . we will have a large # of in-person absentee.	You can call and ask for Nate, our staff attorney or consult with your municipal attorney.
If we reject the insufficient ballot in WisVote so it shows up as declined in MyVote, would we need to issue them a completely new ballot to fix since the original was rejected?	If the absentee ballot certificate envelope was insufficient, it should not be rejected until after the polls close at 8 pm to give the voter a chance to fix the missing or incomplete information. A voter who returned a ballot may only fix it and cannot be issued a new ballot on Election Day.
Can you please go back over husband / wife insufficiency? What if its same address but the names are not determinable as spouses?	Contact the voter to determine if it was their spouse. If the certificate envelope is missing the witness address, it can be added by the clerk. Initial next to the added information.
With COVID 19 and ballot boxes do we still have to have postage on these? It seems a waste of postage.	It is still required by state law.
A large number of voted ballots are being returned in the Village's drop box. Is there anything that can be done to address the unneeded postage on the returned ballot that does not go through the mail?	I am sorry, but it is still required by state law.
Is there a form letter available for missing information?	There are letter templates on the forms' page of our website for missing POR or missing photo ID.
Chain of custody for ballots logs...can you give more detail? Is this for drop boxes outside as well? We open the box several times a day...does this mean we have to log each time or is this only for temporary boxes for returned ballots and in person voting? Where does the log go once completed?	We do not have a template, but recommend recording when a drop box is opened and emptied, date/time and by whom. The log is kept by the clerk with their election materials.
Where did you say we can find the PowerPoint pages so we can print them?	With the webinar access memo in Recent Clerk Communications.
If a Military voter does not include their DOB on their absentee envelope, after contacting the voter, can the Clerk write in their DOB?	No, they cannot.
If you have to send a letter asking for photo ID, do we have to provide self-addressed stamped envelope?	No, you do not have to in this situation.



People should be aware that if they use this new absentee instructions, Dymo labels, ballot, certificate envelope will make them over the weight of a 55 cents stamp and they make have to pay an additional 15 cent stamp.	Thank you for the information.
To clarify, curbside absentee voting must be offered to voters who are COVID symptomatic? Wouldn't it make more sense to treat these voters the same as hospitalized rather than requiring election officials to be exposed?	By definition, hospitalized voters are in a hospital and we cannot expand the definition to include voters who are symptomatic. The Commission did include in the hospitalized voter definition any voter who is guaranteed by a doctor for COVID.
How would you suggest we word the Type E Notice to reflect the drop box location?	Yes, it is a best practice to include this information for voters. Also, send it into us so we can include it on the MyVote website.
Do we issue an absentee ballot if they were issued a previous ballot (August election), and the voter did not return the previous ballot?	If they had a calendar year request on file or are an indefinitely confined voter, you should send them a ballot for November.
Can a ballot be dropped off to the home of a municipal clerk?	Only if the clerk's home is the official office of the municipal clerk.
If a voter comes in on election day and votes and then that person's absentee ballot comes in the mail later that day, what do we do with the ballot?	Reject the absentee ballot and report the double voting to the District Attorney's office.
Can you explain what central count is?	When a municipality process all of their absentee ballots in a central location to be counted. They are not counted at the polling places.
If we have a couple who are temporary overseas, can they mail the two ballots back in the same mailer envelope?	Yes, they can.
Can you explain the difference between federal only and presidential only ballot?	Federal only ballots have all federal contests on them, for November, that includes the presidential election and congressional contests. Federal only ballots are issued to permanent overseas voters. Presidential only ballots only have the presidential contest listed. They are issued to voters who move to Wisconsin from another state and cannot meet the 28-day residency requirement or move to another state and cannot meet that state's residency requirement.
Right, I understand that a permanent overseas gets the federal only, is that correct?	Yes.



We had several ballots dropped off on Election Day in April and again in August that were for other municipalities. What is our responsibility regarding getting these to the correct location?	We recommend due diligence in getting those ballots to the correct municipal clerk's office.
I have 3 or 4 voters who requested ballots as Military Electors but are being mailed to their home. Isn't military designation for those who are "active away"?	They can still have it mailed to the address of their choice.
If the County has an error in the candidates, can we still check Candidates Complete on the main page?	Please contact the Help desk and ask for a WisVote specialist.
What if the absentee envelope looks like it has been opened and resealed? Can you contact the voter to have a new ballot?	Reach out to the voter to determine if they had opened and resealed the ballot. Make a note to the inspectors to process the ballot. The voter may prefer and request a new ballot.
Should an absentee ballot go through the forwarding process with the USPS?	Absentee ballots are not forwardable.
If an overseas voter requests that their ballots is sent by priority mail, are we required to comply?	No. The only time you would need to do so is if you did not send the ballot out by the applicable deadline or made some other error that caused a delay in issuing their ballot. In that case you should send it priority mail (or email/fax, if the voter is entitled to emailed/faxed ballots) and provide priority shipping return.



# Organizing and Processing Absentee Ballots

- When receiving absentee ballots, sort them into two stacks: Sufficient and Insufficient.
- What is required:
  - Voter Signature (Please note: Date is not required)
  - Witness Signature
  - Witness Address (Please note: If you are able to determine the witness' address using alternative resources, you must do so.)
- Contact the voter (if there is time) so they can remedy the envelope. If the voter did not provide an email or phone number, send them a letter.
- All envelopes must be remedied by 8 p.m. on Election Day.
- Do not number the ballots before election officials determine whether the envelope is sufficient.





# Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984

**DATE:** October 19, 2020

**TO:** Wisconsin County Clerks  
Wisconsin Municipal Clerks  
City of Milwaukee Election Commission  
Milwaukee County Election Commission

**FROM:** Meagan Wolfe  
Administrator

**SUBJECT:** Spoiling Absentee Ballot Guidance

Many voters are contacting the Wisconsin Elections Commission regarding spoiling their absentee ballot. Issues include damaged ballots, making an error when voting the ballot (such as filling in the wrong circle or voting for too many candidates), or voters changing their mind after returning their absentee ballots. Absentee voters can request to spoil their absentee ballot and have another ballot issued as long as the appropriate deadline to request the new absentee ballot has not passed. In addition, voters can request to have their returned absentee ballot spoiled and instead vote in person, either during the in-person absentee period or at their polling place on election day, but they must request their ballot be spoiled by the appropriate deadlines. Once that deadline has passed, a returned absentee ballot cannot be changed, and the voter cannot be issued another ballot on Election Day. The spoiling absentee ballot deadlines for the November 3 General Election are:

- For regular absentee voters who spoil their ballot and request a new ballot by mail: October 29, 2020.
- For indefinitely confined by absentee voters who spoil their ballot and request a new ballot by mail: October 30, 2020.
- For all absentee voters who spoil their ballot and request a new ballot in person at the clerk's office or at their in-person absentee voting location: For most municipalities it is October 30, 2020, but may be as late as November 1, 2020, depending on their in-person absentee hours.

## Spoiling Absentee Ballot Deadlines

	Spoils ballot; requests new ballot by mail	Spoils ballot; requests new ballot in person at the clerk's office or in-person absentee location
<b>Regular Voters</b>	October 29	October 30 in most munis, but could be as late as November 1
<b>Indefinitely Confined Voters</b>	October 30	October 30 in most munis, but could be as late as November 1

*Wisconsin Elections Commissioners*

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

Administrator  
Meagan Wolfe

**Exhibit 35**

Case 2:20-cv-01785-BHL Filed 12/09/20 Page 1 of 4 Document 117-35

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Please note an absentee voter cannot spoil their returned absentee ballot at their polling place on Election Day. If an absentee ballot has been returned to the clerk, or is in the mail, a voter cannot spoil their returned ballot at the polling place and request a new one. 2011 Wisconsin Act 227 changed the law and that option is no longer permitted. The voter also cannot spoil a returned absentee ballot on Election Day even if that ballot is expected to be rejected due to an error made by the voter on the ballot. Please note that a voter, whether voting by absentee ballot in the clerk's office or by mail, or at the polling place, can receive up to three ballots (the first two are spoiled). This has been the law in Wisconsin for many years.

### **Spoiling an Absentee Ballot**

After a voter has been issued an absentee ballot at the clerk's office or by mail, they can request to spoil that ballot and receive a new one in the event the voter makes a mistake or changes their mind. The voter must request to spoil their ballot in writing (by mail or email) so that the clerk can confirm the request to spoil the ballot is being made by the original requestor of the absentee ballot.

Voters may also go to the clerk's office and make the request for a new ballot in person during the in-person voting hours offered by the municipality. The deadline to request a new absentee ballot is the last day the clerk offers in-person absentee voting. For most clerks that is Friday, October 30, but voters should contact their municipal clerk for scheduled hours.

If the voter returned their ballot by mail, but their ballot has not been received at their polling place by Election Day, the voter cannot spoil their absentee ballot and get a new ballot. It is suggested that voters return their ballot as soon as possible to ensure that it makes it to their polling place on time. The voter can only cancel the returned ballot (whether or not it was received) prior to the spoiling deadlines listed above.

### **Spoiling an Election Day Ballot (NOT Absentee) at the Polling Place**

For voters who make an error while marking their ballot, the voter can request another ballot at their polling place as long as the ballot has not been cast (placed in a ballot box or tabulator). The first ballot must be returned to the election officials and spoiled (torn to make it unusable). Then, the inspectors place the spoiled ballot in the spoiled ballot envelope to be returned to the clerk with other election materials. A notation (2<sup>nd</sup> or 3<sup>rd</sup> ballot) should be made on the Inspectors' Statement (EL-104) and poll list for each additional ballot issued to each voter.

### **Voters Who Have Not Returned their Absentee Ballot**

Please note that voters who have not returned their absentee ballots can vote at their polling place and do not need to "spoil" their absentee ballot. State law only prohibits voters who returned an absentee ballot from receiving and voting a new ballot at the polling place on Election Day. Voters who have not returned the absentee ballot can be issued a new ballot at their polling place on Election Day. It is suggested that those individuals discard their absentee ballot at home, but if they do bring it into the polling place, the voter should rip in half and discard that ballot on their own. Poll workers should not take the unvoted absentee ballot from the voter.



### **Determining if an Absentee Ballot Has Been Returned by a Voter**

Care should be taken in relying only on the poll book to determine whether an absentee ballot has been issued, re-issued or returned. If the poll book is printed prior to receiving a valid request to spoil a ballot, the information will not appear on the poll book. Since the absentee ballot log should be printed only after the completion of absentee voting, the log should be consulted to determine whether a voter's ballot has been returned. If so, the voter may not spoil the ballot and receive another one. (If the voter insists that the log is incorrect, the inspector should attempt to confirm with the municipal clerk whether the ballot was returned or spoiled by the deadline.)

If the absentee ballot log indicates that an absentee ballot has been issued but has not been returned, election inspectors should ask the voter whether they returned (placed their absentee ballot in the mail) or personally delivered the absentee ballot. If the voter says yes, the voter is prohibited from spoiling that ballot on Election Day, even if their ballot has not yet been processed. If the voter says no, they haven't returned their ballot, then they can be issued a ballot and vote at the polling place. See the Election Day Manual for further guidance and a helpful flow chart regarding this process.

### **Absentee Voter Errors or Ballot Damage After the Spoiling Deadline**

If the deadline to spoil and receive a replacement ballot has passed, and a voter has mistakenly filled out or damaged their ballot in their possession, they have two options: 1) Choose not to return their absentee ballot, discard it and vote in person at their polling location, or 2) Make their voter intent/candidate choices clear on their ballot. For example, if they mistakenly voted for two candidates, they could make it clear on the ballot that they meant to only vote for one of those candidates. Intent should be determined by the election officials. These clarifying actions such as crossing a vote out, writing a note next to a contest, or highlighting a certain candidate should all be considered when inspectors are process the absentee ballot and determining voter intent on the ballot.

On Election Day, if a voter needs to correct information on the absentee certificate envelope, they and/or their original witness, depending on what the error is, must appear at the polling place or central count. This would be due to missing voter information, missing voter signature, or missing witness signature. The witness can appear without the voter to add their signature or address. Please note that the clerk should attempt to resolve any missing witness address information prior to Election Day if possible, and this can be done through reliable information (personal knowledge, voter registration information, through a phone call with the voter or witness). The witness does not need to appear to add a missing address.

### **Legal Citations**

Wis. Stat. § 6.80(2)(c) states that "An elector who by accident or mistake, spoils or erroneously prepares a ballot may receive another, by returning the defective ballot, but not to exceed 3 ballots in all." At a polling place, a voter informs the inspector that they have spoiled their ballot and the inspector issues a new one, noting the number of replacement ballots a voters has



requested and received. Absentee voters are afforded the same opportunity to obtain a replacement ballot if their original ballot has been spoiled.

Wis. Stat. § 6.86(5) directs clerks to issue a new ballot to voters who return a damaged or spoiled ballot and specifies that any request for a replacement ballot must be made within the applicable time limits to request an absentee ballot.

Wis. Stat. § 6.86(6) states that “An elector who mails or personally delivers an absentee ballot to the municipal clerk is not permitted to vote in person at the same election on election day.”

Wis. Stat. § 7.50(2) explains the process of determining voter intent.

Please contact the WEC Help Desk at (608) 261-2028 or [elections@wi.gov](mailto:elections@wi.gov) if you have any questions.





**Wisconsin Safe Voting Plan 2020**  
**Submitted to the Center for Tech & Civic Life**  
**June 15, 2020**

The State of Wisconsin found itself in the midst of an historic election in April of 2020 when statewide elections occurred in the midst of the COVID-19 pandemic. These elections included not only the presidential preference vote, but also local races for city councils, county boards, school board, and mayors, a statewide election for a seat on the Wisconsin Supreme Court, and numerous district-wide school referenda.

Municipalities were required to make rapid and frequent adjustments to ensure compliance with the rapidly changing Supreme Court, Wisconsin Supreme Court, and Wisconsin Election Commission (WEC) rulings about the election. (The April 2020 Election may go down in history as the only election in which the Wisconsin Supreme Court and the US Supreme Court weighed in on the same day on how the election would be conducted.)

The shifting legal landscape was also complicated by the extraordinary lengths municipal clerks went to to ensure that both voting and election administration were done in accordance with prevailing public health requirements.

As mayors in Wisconsin's five biggest cities - Milwaukee, Madison, Green Bay, Kenosha, and Racine - we seek to work collaboratively on the two remaining 2020 elections (August 11th and November 3rd) to: safely administer elections to reduce the risk of exposure to coronavirus for our residents as well as our election officials and poll workers; identify best practices; innovate to efficiently and effectively educate our residents about how to exercise their right to vote; be intentional and strategic in reaching our historically disenfranchised residents and communities; and, above all, ensure the right to vote in our dense and diverse communities.



**Table 1: Summary of Municipalities' Electorate Data, June 2020**

	<b>Green Bay</b>	<b>Kenosha</b>	<b>Madison</b>	<b>Milwaukee</b>	<b>Racine</b>
<b>Estimated Eligible Voters</b>	71,661	73,000	213,725	430,000	56,000
<b>Registered Voters</b>	52,064	47,433	178,346	294,459	34,734
<b>2020 Election Budget</b>	\$329,820	\$205,690	\$2,080,283	\$2,986,810	\$409,529

All five jurisdictions share concerns about how to best facilitate voter participation and limit exposure to coronavirus. All five jurisdictions spent all or most of the budgeted resources for all of 2020 on the extraordinary circumstances this Spring. If no plan is approved, it will leave communities like ours with no choice but to make tough decisions between health and the right to vote; between budget constraints and access to fundamental rights. The time that remains between now and the November Election provides an opportunity to plan for the highest possible voter turnouts in the safest possible ways.

We are collectively requesting a total of \$6,324,527 as summarized in Table 3 below and detailed extensively in the plan.

#### **Review of the April 2020 Election**

The April 2020 election placed two sacred duties of cities in conflict: keeping our residents safe and administering free and fair elections. Since Wisconsin's elections are administered at the municipal level, each municipality was on its own to deal with these dynamics. Our Municipal Clerks and their staff are all remarkable public servants, who responded nimbly and effectively to marshal the resources needed to run these elections under exceedingly challenging circumstances. In this election, all five of our municipalities faced:

- Precipitous drop-offs of experienced poll workers;
- A scramble to procure enough PPE to keep polling locations clean and disinfected and to mitigate COVID-19 risk for election officials, poll workers, and voters;
- A never-before-seen increase in absentee ballot requests;
- High numbers of voters who struggled to properly submit required photo ID and/or provided insufficient certification of absentee ballot envelopes; and
- Voters who, understandably, were completely confused about the timeline and rules for voting in the midst of a pandemic and required considerable public outreach and individual hand-holding to ensure their right to vote.



See Table 2, below, for detailed data on all five municipalities' April 2020 absentee mail and in-person early voting experiences.

**Table 2: Summary of Municipalities' Experiences in April 2020 Election**

	<b>Green Bay</b>	<b>Kenosha</b>	<b>Madison</b>	<b>Milwaukee</b>	<b>Racine</b>
<b># of voters who requested absentee ballots for April election</b>	15,509	16,017	89,730	96,712	11,615
<b># of absentee ballots successfully cast in April</b>	11,928	13,144	77,677	76,362	9,570
<b># of absentee ballot requests unfulfilled due to insufficient photo ID</b>	Unknown	Unknown	1,840	2.5%	Estimated hundreds
<b># of absentee ballots rejected due to incomplete certification</b>	312	196	618	1,671	368
<b># of secure drop-boxes for absentee ballot return</b>	1	2	3	5	1
<b># of days of early voting</b>	12	10	19	14	13
<b>Use curbside voting for early voting?</b>	✓	✗	✓	✓	✓
<b># of voters who voted in-person early absentee</b>	778	85	4,930	11,612	1,543
<b># of additional staff enlisted for election-related efforts</b>	86	60	225	95	20
<b>\$ spent on PPE</b>	\$2,122	\$13,000	\$6,305	Unknown	Unknown
<b># of polling locations</b>	2	10	66	5	14
<b>Use drive-thru or curbside voting on Election Day?</b>	✓	✗	✓	✓	✓



## **Comprehensive Election Administration Needs for 2020**

In early June 2020, all five municipal clerks and their staff, with review and support from all five cities' Mayors and Mayoral staff, completed a detailed, multi-page template (attached) providing both data and information about the municipalities' election plans and needs. This Wisconsin Safe Voting Plan 2020 is based on that comprehensive information. All five of our municipalities recommend the following four strategies to ensure safe, fair, inclusive, secure, and professional elections in our communities for the remaining 2020 elections:

### **Recommendation I: Encourage and Increase Absentee Voting (By Mail and Early, In-Person)**

1. Provide assistance to help voters comply with absentee ballot requests & certification requirements
2. Utilize secure drop-boxes to facilitate return of absentee ballots
3. Deploy additional staff and/or technology improvements to expedite & improve accuracy of absentee ballot processing
4. Expand In-Person Early Voting (Including Curbside Voting)

### **Recommendation II: Dramatically Expand Strategic Voter Education & Outreach Efforts, Particularly to Historically Disenfranchised Residents**

### **Recommendation III: Launch Poll Worker Recruitment, Training & Safety Efforts**

### **Recommendation IV: Ensure Safe & Efficient Election Day Administration**

As detailed in this plan, our municipalities are requesting **a total of \$6,324,567** to robustly, swiftly, comprehensively, and creatively implement these four strategic recommendations in each of our communities. That request is summarized as follows in Table 3, below, and detailed extensively in the remainder of this plan.



**Table 3: Summary of Resources Needed to Robustly Implement All Four Recommendations**

<b>Recommendation</b>	<b>Green Bay</b>	<b>Kenosha</b>	<b>Madison</b>	<b>Milwaukee</b>	<b>Racine</b>	<b>Totals</b>
<b>Encourage and Increase Absentee Voting By Mail and Early, In-Person</b>	\$277,000	\$455,239	\$548,500	\$998,500	\$293,600	<b>\$2,572,839</b>
<b>Dramatically Expand Strategic Voter Education &amp; Outreach Efforts</b>	\$215,000	\$58,000	\$175,000	\$280,000	\$337,000	<b>\$1,065,000</b>
<b>Launch Poll Worker Recruitment, Training &amp; Safety Efforts</b>	\$174,900	\$145,840	\$507,788	\$800,000	\$181,500	<b>\$1,810,028</b>
<b>Ensure Safe &amp; Efficient Election Day Administration</b>	\$426,500	\$203,700	\$40,500	\$76,000	\$130,000	<b>\$876,700</b>
<b>Totals:</b>	<b>\$1,093,400</b>	<b>\$862,779</b>	<b>\$1,271,788</b>	<b>\$2,154,500</b>	<b>\$942,100</b>	<b>\$6,324,567</b>



### **Recommendation I: Encourage & Increase Absentee Voting By Mail and Early, In-Person**

Of all the things that need to be done to ensure access and safety at the polls, this is perhaps the most important and timely. It is time, resource, and labor intensive but results in the voter being able to vote by mail or from the relative safety of their car or at a socially distanced and carefully planned early voting site.

#### **Overview of Absentee Voting in Wisconsin**

Before discussing our strategies and plans to encourage and increase absentee voting, both by mail and in-person, early voting, it's important to first understand the absentee voting context in Wisconsin.

There are two ways to vote early in Wisconsin: in-person and through the mail. Both are technically called "absentee voting," a phrase held over from a time when absentee voting required you to affirm that you were over 80, ill, or going to be out of the municipality on Election Day. Those requirements no longer exist in the statutes, and people can vote early, or absentee, for any reason. The April 2020 election saw dramatic increases in the number of absentee ballot requests over previous elections.

While for many regular voters, absentee voting - whether completed by mail or early, in-person - is a relatively easy process, our five cities understand that absentee voting does not work easily for all voters. Our communities of color, senior voters, low-income voters without reliable access to the internet, people with disabilities, and students all have legitimate concerns about the absentee voting process.

Voting absentee by mail has been complicated by the fairly recent imposition of state law requiring voters to provide an image of their valid photo ID prior to first requesting an absentee ballot. While this works relatively easily for voters who have valid photo IDs and the technology necessary to upload an image file of that valid ID into the state's myvote.wi.gov website, it does not work well or easily for other voters who do not have valid photo ID (complicated by closure of DMVs due to the pandemic), lack access to reliable internet (also complicated by coronavirus-related closures or reduced hours at libraries and community centers, leaving those residents without regular public internet access that our municipalities normally provide), those who don't have smart phones to take and upload photos, and those who need additional education about what constitutes a valid photo ID. (For example, countless voters in our municipalities attempted to submit "selfies" as valid photo ID. Explaining to them that this was not a valid form of photo ID and instructing them on how to properly submit valid ID took considerable staff time and resources.)

Once the absentee ballot is received, it must be completed correctly to be successfully cast, and there are numerous certification requirements on the absentee ballot envelope; if not correctly completed, the ballot could be rejected. Prior to this April's



election, very small numbers of voters had traditionally chosen to cast ballots by mail. Municipal clerks' offices simply were not prepared and do not have the staffing or technological resources needed to quickly process dramatically higher numbers of absentee ballot requests, troubleshoot problems, answer voter questions, provide information and to expedite the processing of thousands of received absentee ballots on Election Day.

In-person early absentee voting also poses challenges for voters and election administrators. While all of our communities had previously offered early voting locations and hours, April's election required election officials to creatively and quickly expand in-person early voting opportunities, including curbside voting, all while prioritizing necessary COVID-19 precautions.

As indicated by Table 4, below, all five of our municipalities are already experiencing dramatic increases in the number of voters requesting to vote absentee, compared to pre-pandemic, and must procure resources to enable voters in our communities to meaningfully access absentee voting.

**Table 4: Absentee Ballots in All Municipalities as of June 2020**

	<b>Green Bay</b>	<b>Kenosha</b>	<b>Madison</b>	<b>Milwaukee</b>	<b>Racine</b>
<b># of voters on permanent absentee list prior to 2/18/20</b>	1,628	1,856	2,062	6,252	613
<b># of voters on permanent absentee list as of 4/7/20</b>	4,306	3,469	8,665	23,374	2,684
<b># of voters who have already requested absentee ballots for August 2020</b>	5,162	9,450	36,092	53,438	3,389
<b># of voters who have already requested absentee ballots for November 2020</b>	4,859	9,123	34,164	50,446	3,204

We are committed to making voting accessible via mail, in-person prior to Election Day, and at the polls on Election Day. Particularly in the midst of a global pandemic when many voters are rightfully apprehensive about in-person voting, we want to ensure that voters in our communities know they have options and we are committed to conducting the necessary voter outreach and education to promote absentee voting and encourage higher percentages of our electors to vote absentee.



Increasing the number of voters who cast votes prior to Election Day minimizes the risk of spreading COVID-19 on Election Day from in-person contacts at our polling locations, and it reduces the chance for lines and delays in voting on Election Day.

The Wisconsin Election Commission (WEC) has approved a proposal to mail all registered voters absentee ballot request forms, which allows our five communities to focus on helping voters overcome the barriers to successfully returning those forms so they can obtain, and then successfully submit, their completed absentee ballots. This measure will provide absentee request information directly to voters, alleviating the need for municipalities to expend the cost to send the mailing. However, it is unclear how this measure will affect the workload of municipal clerks. Although the WEC has directed that the forms be returned to the WEC for entry, municipal clerks must still review each record, process, mail, record receipt and canvass each absentee ballot.

All of our municipalities anticipate continued large increases in absentee voting based on the April 2020 trends. Milwaukee, for example, anticipates that 80% of residents will vote absentee by mail for both the August primary and the November general election.

All five cities have identified numerous barriers to successful absentee voting, including: voters facing numerous challenges to successfully submitting valid photo ID; voters needing assistance complying with absentee ballot certification requirements, including obtaining the required witness signature on the absentee ballot return envelope; the labor-intensive process faced by all of our clerks' offices of processing absentee ballot requests; and U.S. Postal Service errors and mail delays. All of these are challenges for our municipalities in normal elections, but they are all compounded by the coronavirus pandemic, and made exponentially more difficult by the unprecedented volume of absentee voting requests. This puts tremendous strain on municipal election clerks and their staff.

Our five cities share the desire to assist as many residents as possible with casting ballots before Election Day, serving as the greatest opportunity we have to mitigate the spread of COVID-19 in our communities. We have identified several strategies to help voters in each of our communities overcome these barriers to successful absentee voting, both by mail and in-person early voting.

Overall, our five communities are requesting **\$2,572,839** in resources related to enabling our municipalities to overcome these particular barriers and ensure that our voters can meaningfully access absentee voting, both by mail and in-person early voting. These strategies and resource needs are broken down into four distinct component recommendations, within the overall umbrella of increasing and encouraging absentee voting:



**1. Provide assistance to help voters comply with absentee ballot requests & certification requirements**

- **Green Bay:** The City would like to employ bilingual LTE “voter navigators” (\$45,000) to help residents properly upload valid photo ID, complete their ballots and comply with certification requirements, and offer witness signatures. These voter navigators can assist voters prior to the elections and then also be trained and utilized as election inspectors. They would also like to utilize paid social media and local print and radio advertising to educate and direct voters in how to upload photo ID and how to request and complete absentee ballots. (\$2,000)  
**Total: \$47,000**
- **Kenosha:** The City would like to have Clerk’s staff train library staff on how to help residents request and complete absentee ballots, would like to produce (\$3,000) and mail (\$26,200) a bilingual absentee ballot instruction sheet with all absentee ballots to increase correctly completed and submitted ballots. The City would like to hire a trainer for seasonal election workers, volunteers and poll workers. This employee would also coordinate assignments to polling locations, the early driver up voting site, the Clerk’s office for assistance in processing, data entry and filing of absentee requests and the Absentee Board of Canvassers (approximately \$50,000). The increase in absentee ballots due to COVID-19 has tremendously increased the workload of the department. In order to properly serve the citizens and voters additional LTE employees are needed (approximately \$175,000). **Total: \$254,200**
- **Madison:** Plans to hold curbside “Get your ID on File” events with the Clerk this summer utilizing volunteers or paid poll workers (\$15,000) equipped with PPE (estimated \$5,000) and digital cameras (\$4,500) to capture voter ID images for voters who are unable to electronically submit their IDs to the Clerk’s office. They also need large flags to draw attention to these curbside sites (\$4,000). Would also like mobile wifi hotspots and tablets for all of these sites (\$100,000) so voters could complete their voter registration and absentee requests all at once, without having to wait for staff in the Clerk’s office to follow up on paper forms. (These mobile wifi hotspots, tablets, and flags, could all then be repurposed for early in-person voting closer to the election.) **Total: \$128,500**
- **Milwaukee:** The City notes that the biggest obstacle to Milwaukee residents, particularly those in poverty, to applying for an absentee ballot in April was access to the internet and securing an image of their photo ID. To address this, the City will be promoting and utilizing Milwaukee Public Library branch staff (\$90,000 for both elections) for 3 weeks prior to each election to assist any potential absentee voters with applying, securing, and uploading images of their valid photo ID. **Total: \$90,000**
- **Racine:** The City will recruit and promote (\$1,000), train (\$3,000), and employ paid Voter Ambassadors (\$8,000) who will be provided with both PPE and



supplies (\$4,000) and set up at the City's community centers to assist voters with all aspects of absentee ballot request, including photo ID compliance. Due to the increase of absentee mailed requests the City of Racine will need an additional 2 full time staff members in the Clerk's Office in order to have a reasonable turn-around time for absentee requests (\$100,000). Total: **\$116,000**.

**Total: \$635,700**

## **2. Utilize Secure Drop-Boxes to Facilitate Return of Absentee Ballots**

Our five communities all share a desire to expand voters' ability to easily return absentee ballots to the municipality without having to rely on the postal service, since, after April's election, many voters are (rightfully) apprehensive that putting their completed ballot in the mail does not guarantee it will be received and counted by the municipality by statutory deadlines. Voters also need to have confidence that they are returning their completed absentee ballots into secure containers that are not at risk of tampering. All five cities need resources to purchase additional secure drop-boxes and place them at key locations throughout their cities, including libraries, community centers, and other well-known places, to ensure that returning completed ballots is as secure and accessible to voters throughout our cities as possible.

- **Green Bay:** The City would like to add secure (security cameras \$15,000) ballot drop-boxes (approximately \$900 each) at a minimum of the transit center and two fire stations, but if funding were available would also install secure drop boxes at Green Bay's libraries, police community buildings, and potentially several other sites including major grocery stores, gas stations, University of Wisconsin Green Bay, and Northern Wisconsin Technical College, in addition to the one already in use at City Hall. **Total: \$50,000**
- **Kenosha:** The City currently has two drop-boxes that are checked throughout the day, and would like to install 4 additional internal security boxes at Kenosha libraries and the Kenosha Water Utility so that each side of town has easy access to ballot drop-boxes. **Total: \$40,000**
- **Madison:** The City would like to have one secure drop box for every 15,000 voters, or 12 drop boxes total (\$36,000). The City would also like to provide a potential absentee ballot witness at each drop box, utilizing social distancing and equipped with PPE (staff costs unknown): **Total: \$50,000**
- **Milwaukee:** The City would like to install secure 24-hour drop boxes at all 13 Milwaukee Public library branches, staffed with socially distanced volunteers to serve as witnesses. **Total: \$58,500**



- **Racine:** The City currently has one secured drop box for absentee ballots, and would like to have 3 additional drop boxes, each equipped with security cameras, to install at key locations around the City. **Total: \$18,000.**

**Total: \$216,500**

### **3. Deploy Additional Staff and/or Technology Improvements to Expedite & Improve Accuracy of Absentee Ballot Processing**

The process of assembling and mailing absentee ballots is labor-intensive, slow, and subject to human error. Absentee ballot requests must be approved and entered into the statewide system, labels must be printed and applied to envelopes, ballots must be initialed, folded, and inserted into the envelope along with instructions. Ballots must be logged when received back from the voter. Undeliverable ballots must be reviewed, reissued or canceled. When voters make mistakes on ballots the requests to reissue must be completed. These tasks are time-consuming and utilizing existing clerk's office staff pulls them away from all of the other service requests, phone answering, and tasks handled by busy municipal clerks' offices.

The tremendous increase in absentee ballot requests in April was unprecedented, and municipal clerks and their staff were unprepared for the volume. They responded remarkably well - particularly since many of their staff were, by late March and early April, working remotely or, at a minimum, all needing to adhere to social distancing and masking precautions when working together in the same room - but all five municipalities need additional resources to accurately and swiftly process absentee ballot requests.

- **Green Bay:** The City needs 45 additional staff to process absentee ballot requests before the election, to open and verify envelopes on Election Day, and insert them into the tabulators. After the election, staff are needed to enter new voter registrations and assist with all election certification tasks (\$140,000 for staffing) The City would also like to purchase a ballot opener and ballot folder to expedite processing (\$5,000). **Total: \$145,000.**
- **Kenosha:** The City needs resources for absentee ballot processing, to staff and process early, in-person absentee requests, and to answer voters' questions (approximately \$100,000). Additional workers are also needed to canvass absentee ballots (approximately \$11,000) **Total: \$111,000**
- **Madison:** Based on data from April, the City estimates it will need additional staffing (\$110,000) for hourly election clerks for the fall elections, and will incur



additional overtime costs (\$100,000) for staff processing of absentee ballots and other election-related tasks. **Total: \$210,000**

- **Milwaukee:** Given its tremendous volume of absentee ballot requests and processing tasks which far exceeds that of the other municipalities, Milwaukee would like to completely automate and expedite the assembly and mailing of requested absentee ballots. The City would like to purchase a high-speed, duplex printer, a top-of-the-line folding machine, and a high quality folding and inserting machine. This would reduce staff costs and eliminate the use of absentee labels, by enabling the City to print directly onto inner and outer envelopes. This would also allow the City to have a small 2D barcode that the inserter machine would be able to scan to ensure that the outer envelope is for the same voter; increasing quality controls. This automation would enable the City to eliminate the assembly delay no matter the volume of daily absentee requests, allowing experienced election workers and previously trained election temporary employees to be re-deployed to early voting sites as supervisors and lead workers. **Total: \$145,000**
- **Racine:** To process absentee ballot requests in April, the City estimates that it will need seven additional full-time employees to process fall election requests. These employees will be needed full-time for one month prior to the August Election (approximately \$17,000) and seven weeks prior to the November election (approximately \$30,000). **Total: \$47,000**

**Total: \$658,000**

#### **4. Expand In-Person Early Voting (Including Curbside Voting)**

For a variety of reasons, many voters in our municipalities do not want to vote by mail and prefer to vote in-person. As a result of the coronavirus, far more voters are interested in early, in-person absentee voting (EIPAV) than we've seen in previous elections, wishing to avoid lines or crowds on Election Day. All five municipalities would like to have resources to accommodate these early, in-person voters. Expanding access to early, in-person voting also will lessen lines at polling places on Election Day and allow for proper social distancing and other pandemic precautions to be uniformly implemented.

Curbside and drive-thru voting have been very popular with residents of our municipalities, particularly for those with health concerns who can remain in the cars and have a virtually contact-less voting process. For example, Milwaukee previously operated in-person early voting for one week leading up to the April election at three sites and then transitioned to one site of drive-thru voting. 11,612 cast ballots through these options: 5,571 via in-person and 6,041 at drive-thru, and these numbers represent a 46% increase over April 2016 "early voting" totals. However, it is slow-moving and



labor-intensive. Additionally, particularly in the larger cities among us, it requires law enforcement and traffic control assistance to help manage traffic.

- **Green Bay:** The City would like to expand and establish at least three EIPAV sites in trusted locations, ideally on the east (potentially UWGB) and west sides (potentially NWTC or an Oneida Nation facility) of the City, as well as at City Hall. The City is planning to offer early voting starting two weeks before each election, with several weekdays available until 6:30pm and Saturdays 10am-4pm. They would like to staff these early voting sites with election inspectors who are bilingual and would like to increase the salary rate for these bilingual election inspectors to assist with recruitment and retention, as well as in recognition of their important role at these sites. The City also will need to print additional ballots, signage, and materials to have available at these early voting sites. **Total: \$35,000.**
- **Kenosha:** The City plans to have one early voting location, at City Hall, and plans to hold early voting two weeks before the August election, with no weekend or evening hours planned, and 4 weeks before the November election, with access until 7pm two days/week and Saturday voting availability the week before the election. If City Hall is still closed to the public, they will explore offering early drive thru voting on City Hall property. Resources are needed for staffing (approximately \$40,000), PPE (\$1,050), signage (\$200), laptops, printers, and purchase of a large tent (\$8,789) to utilize for drive thru early voting. Staff could see voters' ID, print their label, hand them their ballot, and then collect the completed envelope. This would also allow staff to help voters properly do certification and provide witness signatures if necessary. The City could do this for one full week before elections. **Total \$50,039.**
- **Madison:** The City would like to provide 18 in-person absentee voting locations for the two weeks leading up to the August election, and for the four weeks leading up to the November election. Their original plan was to offer in-person absentee voting at all nine library locations, the City Clerk's Office, a city garage, Edgewood College, two Madison College locations, and four UW-Madison locations. Due to weather uncertainties, they will need to purchase and utilize tents (\$100,000) for the curbside voting locations in order to protect the ballots, staff, and equipment from getting wet and will also need large feather flags to identify the curbside voting sites. (Additional staff costs covered by the earlier question re. Absentee ballot processing.) The City would also like to get carts (\$60,000) for our ExpressVote accessible ballot marking devices so we can use the ExpressVote for curbside voting to normalize the use of ExpressVote to help voters with disabilities feel less segregated during the voting process. **Total: \$160,000.**
- **Milwaukee:** The City would like to set up 3 in-person early voting locations for two weeks prior to the August election (\$150,000) and 15 in-person early voting



locations and 1 drive-thru location, potentially at a central location like Miller Park, for four weeks prior to the November election (\$450,000). (Establishing this many EIPAV sites requires a significant investment in IT equipment, an additional ballot printer, tents, signage, and traffic control assistance. Milwaukee would also like to offer evening and weekend early voting hours which would add additional costs for both August (\$30,000) and November (\$75,000). **Total: \$705,000.**

- **Racine:** The City would like to offer a total of 3 EIPAV satellite locations for one week prior to the August election, as well as offering in-person early voting - curbside, if City Hall is still closed to the public - at the Clerk's office for 2 weeks prior to the August election. For the November election, Racine would like to offer EIPAV at 4 satellite locations two weeks prior to the election and at the Clerk's office (again, potentially curbside) 6 weeks prior. The City would need to obtain PPE, tents, supplies and cover staff time and training (\$40,000). Racine would also like to have all satellite locations available for half-day voting the two Saturdays (\$17,000) and Sundays (\$17,000) prior to the November election, and the library and mall locations would be open until 8pm the week prior to the Election. Additional resources needed include one-time set-up fee per location (\$7,500), laptops and dymo printers (\$10,000), training (\$1,100), and signage (\$12,000.) As well, the City would like to host at least one drive-thru Voter Registration Day, where City Hall would be set up for residents to come get registered, curbside, and get their voting questions answered by Clerk's staff. Newly registered voters could also get assistance requesting absentee ballots for upcoming elections while they're there. (\$8,000) **Total: \$112,600**

**Total: \$1,062,639.00**

**Recommendation I Total for All Strategies to Encourage and Increase Absentee Voting by Mail and Early, In-Person: \$2,572,839.00**



## **Recommendation II: Dramatically Expand Voter & Community Education & Outreach, Particularly to Historically Disenfranchised Residents**

All five municipalities expressed strong and clear needs for resources to conduct voter outreach and education to their communities, with a particular emphasis on reaching voters of color, low-income voters without reliable access to internet, voters with disabilities, and voters whose primary language is not English. This outreach is particularly necessary given the voter confusion that ensued in the lead-up to the April election, and voters' concerns and questions about voting during the COVID-19 pandemic. We understand that our communities of color do not necessarily trust the voting process, and that we need to work to earn that trust. We want to be transparent and open about what happens behind the scenes in elections, and what options are available for casting a ballot. We also want to make sure we are listening to groups that have historically been disenfranchised and groups that are facing obstacles with voting during this pandemic, and working with them to effectively respond to their concerns.

Voter outreach and education is also needed to encourage and explain new voter registration, and to encourage voters to verify and update their address or other voter registration information to do so prior to the Election. None of our communities have sufficient resources budgeted or available for the strategic, intentional, and creative outreach and education efforts that are needed in our communities over the summer and into the fall.

We all want our communities to have certainty about how the voting process works, trust in our election administration's accuracy, and current, accurate information on what options are available to vote safely in the midst of the pandemic. Significant resources are needed for all five municipalities to engage in robust and intentional voter education efforts to reduce confusion; encourage and facilitate new voter registration and registration updates; provide clear, accessible, and accurate information; address voters' understandable pandemic-related safety concerns; reassure voters of the security of our election administration; and, ultimately, reduce ballot errors and lost votes and enhance our residents' trust and confidence in our electoral process.

- **Green Bay:** Would like to reach voters and potential voters through a multi-prong strategy utilizing "every door direct mail," targeted mail, geo-fencing, billboards, radio, television, and streaming-service PSAs, digital advertising, and automated calls and texts (\$100,000 total). The City would also like to ensure that these efforts can be done in English, Spanish, Hmong, and Somali, since roughly 11% of households in the Green Bay area speak a language other than English. Ideally, the City would employ limited term communications staff or engage communications consultants (\$50,000) from August through the November election to design these communications and design and launch paid advertising on Facebook, Twitter, and Instagram, also in multiple languages. The City would also like to directly mail to residents who are believed to be eligible but not registered voters, approximately 20,000 residents. It would require both



considerable staff time to construct that list of residents and directly mail a professionally-designed piece (in multiple languages) to those voters. (\$50,000 total for staffing, design, printing, and postage). To assist new voters, the City would also like resources to help residents obtain required documents (i.e. birth certificates) which are needed to get a valid state ID needed for voting. These grant funds (\$15,000) would be distributed in partnership with key community organizations including churches, educational institutions, and organizations serving African immigrants, LatinX residents, and African Americans.

**Total: \$215,000**

- **Kenosha:** Would like to directly communicate to all Kenosha residents via professionally-designed targeted mail postcards that include information about the voter's polling location, how to register to vote, how to request an absentee ballot, and how to obtain additional information. The City would have these designed by a graphic designer, printed, and mailed (\$34,000). The City would also like resources for social media advertising, including on online media like Hulu, Spotify, and Pandora (\$10,000) and for targeted radio and print advertising (\$6,000) and large graphic posters (\$3,000) to display in low-income neighborhoods, on City buses, and at bus stations, and at libraries (\$5,000).  
**Total: \$58,000**
- **Madison:** Would like to engage the City's media team to produce videos to introduce voters to the election process, voting options, and to explain the safety precautions taken at polls and early voting sites. These videos would then be shared in numerous ways, including through partner organizations and on the City's social media platforms. The City would also like to partner with community organizations and run ads on local Spanish-language radio, in the Spanish-language newspapers, on local hip hop radio stations, in African American-focused printed publications, and in online publications run by and for our communities of color (advertising total \$100,000). Additionally, the City has many poll workers who are from historically disenfranchised communities. The City would like to pay those poll workers (\$75,000) to conduct voter outreach and additional poll worker recruitment activities. **Total: \$175,000.**
- **Milwaukee:** Would like to partner with other City divisions to develop mailings and door hangers (\$10,000) that could accompany water bills, be distributed by the Department of Neighborhood Services, or hung on trash receptacles by sanitation staff. The City would also like to revamp current absentee voting instructions to be more visual, address issues specific to the pandemic such as securing a witness signature, prepare it in English and Spanish, and print 150,000 color copies (estimated total \$15,000). The Election Commission would also like to produce a short video (\$5,000) with visuals showing voters how to apply for an absentee ballot and how to correctly complete and return the ballot. Additionally, the Election Commission would like to hire a communications firm to prepare and implement a comprehensive voter outreach communications plan



(\$250,000). This communications effort would include numerous voter education ads and PSAs on radio, billboards, buses, with some using local celebrities like Milwaukee Bucks players. This communications effort would focus on appealing to a variety of communities within Milwaukee, including historically underrepresented communities such as LatinX and African Americans, and would include a specific focus on the re-enfranchisement of voters who are no longer on probation or parole for a felony. Additionally, this campaign would include an edgy but nonpartisan and tasteful communications campaign to harness the current protests' emphasis on inequity and ties that message to voting. The video, the ads, and the PSAs could all also be placed on social media, the Election Commission and City websites, and GOTV partner websites and social media. **Total: \$280,000**

- **Racine:** The City would like to retain a communications firm to design and implement a comprehensive voter outreach communications plan (\$80,000). This would include ads on Facebook, Instagram, and Snapchat. The City would also like to rent billboards in key parts of the City (\$5,000) to place messages in Spanish to reach Spanish-speaking voters. The City would also like to do targeted outreach aimed at City residents with criminal records to encourage them to see if they are not eligible to vote; this outreach will be accomplished with the production, editing, and sharing of a YouTube video (\$2,000) specifically on this topic shared on the City's website, social media channels, and through community partners. Racine would also like to purchase a Mobile Voting Precinct so the City can travel around the City to community centers and strategically chosen partner locations and enable people to vote in this accessible (ADA-compliant), secure, and completely portable polling booth on wheels, an investment that the City will be able to use for years to come. (Estimated cost \$250,000). **Total: \$337,000**

**Recommendation II Total For All Strategies to Dramatically Expand Strategic Voter Education and Outreach Efforts, Particularly to Historically Disenfranchised Residents: \$1,065,000.00**



### **Recommendation III: Launch Poll Worker Recruitment, Training, and Safety Efforts**

The pandemic made conducting Election Day activities extremely challenging. Most poll workers in Wisconsin are retirees doing their civic duty to help facilitate the election. Given the increased risk for the elderly if exposed to COVID-19, many experienced poll workers opted out. Milwaukee had so many poll workers decline to serve that the City went from 180 polling locations to five polling locations. Green Bay, facing a similar exodus of poll workers, went down to two polling locations. Racine usually relies on nearly 190 poll workers for a spring election; only 25 of those experienced poll workers were under the age of 60.

As fears about the coronavirus increased in mid-late March and early April, poll workers in all five municipalities declined to work the election, leaving cities scrambling to quickly recruit enough bodies to keep polling locations open. All cities were appreciative of the last minute assignment of hundreds of Wisconsin National Guard members to assist with Election Day activities, and all of our cities re-assigned City staff from other departments to serve as poll workers and election officials and to assist with the myriad of tasks related to Election Day administration. The remainder of positions were staffed by high school students, college students, and members of the National Guard. Many of our poll workers had never worked an election before.

- **Green Bay:** The City needs to hire a total of 380 workers per election (total \$112,660). The City would like to pay poll workers more than they have previously received, to signify their importance in the process and to acknowledge the extra challenge it represents to serve as an election official during a pandemic. The City would like to increase poll worker salaries by 50% (additional \$56,330). All poll workers will be trained through the Wisconsin Elections Commission website and the City's own training manual (\$6,000). **Total: \$174,900**
- **Kenosha:** The City needs to hire 350 poll workers per election (\$100,000). They would like to offer hazard pay to increase pay to \$160/worker and \$220/chief inspectors (\$10,840). To aid in recruitment efforts, the City would like to hire a recruiter and liaison position for poll workers (\$35,000). **Total: \$145,840.**
- **Madison:** The City utilizes the election toolkit available through the MIT Technology Project to determine the staffing levels needed to ensure that voters will not have to wait in line for more than 15 minutes. In addition to the one Chief Inspector per polling location, Madison also has additional election officials who are certified as the Absentee Lead at each polling location. Madison estimates that if 75% of votes cast are absentee, the City will need 1,559 election officials at the polls in August. The City envisions a robust and strategic poll worker recruitment effort, focusing on people of color, high school students, and college students. The City would like to have resources for hazard pay for poll workers this fall at a rate comparable to what the U.S. Census is paying in the area



(\$369,788). The City has also found it challenging to convince facilities to host a polling location in the midst of a pandemic, and would like to provide each facility with a small amount of funds to compensate for their increased cleaning and sanitization costs (\$750/location, \$138,000 total). **Total: \$507,788**

- **Milwaukee:** The City plans to have 45 voting locations in August and to keep open as many of the normal 180 polling places as possible in November. August will require 3 chief inspectors per site and 20 election workers per site, for a total of 1200 election workers minimum and 150 chief inspectors. The City has a goal of recruiting 1,000 new election workers. The City would like to add an additional \$100 per worker in hazard pay to the poll workers' stipends of \$130 (\$460,000 additional for both elections) and \$100 hazard pay to chief inspector stipends of \$225 (\$87,750 additional for both elections). Additionally, the City of Milwaukee utilizes a Central Count of absentee ballots, which necessitates 15 chiefs and 200 election workers per election at Central Count (\$50,000/day for 2- days each election for a total of \$200,000). Total payroll for both elections will reach \$750,000 based upon these calculations. The City will launch a recruitment campaign for a new generation of election workers to sign up and be involved in their democracy, and hopes this effort can be included in the above request for resources for a marketing firm. Recruiting new and younger poll workers means that the Election Commission will need to innovate in election training. The Commission would like to produce polling place training videos (\$50,000) with live small-group, socially distanced discussions and Q&A sessions. These videos will augment existing training manuals. **Total: \$800,000**
- **Racine:** The City needs approximately 150 poll workers for August and 300 for November, in addition to 36 Chief Inspectors, and would like to pay all workers a \$100/election hazard pay (\$118,000 total payroll for both elections). City notes that its desire to have more early voting locations and hours is directly impacted by its ability to hire and train election officials. To that end, the City would like to launch a recruitment campaign that includes radio ads (\$1,000), ads on social media platforms (\$10,000), billboards in strategic City locations (\$5,000), and film videos for high school students in history/government classes (\$500). The City would also like to enlist a communication firm to: create a training video for election officials, develop an online quiz, detailed packets for election officials, and a PPE video filmed by a health professional about necessary COVID-19 precautions during all voting operations (\$22,000 total). Racine would also like to hire a liaison position to schedule, training and facilitate poll workers. (\$35,000) **Total: \$181,500.**

**Recommendation III Total for All Strategies to Launch Poll Worker Recruitment, Training and Safety Efforts: \$1,810,028.00**



#### **Recommendation IV: Ensure Safe & Efficient Election Day Administration**

It is no small task to mitigate risk of a lethal pandemic at all polling locations and throughout all required Election Day processing. Municipal clerks must ensure they have done everything possible to comply with public health guidelines and mitigate the risk of COVID-19 for all of the election officials, poll workers, observers, and voters. Our five municipalities are in need of numerous resources to both ensure seamless processing of voters on the upcoming Election Days, procure Personal Protective Equipment (PPE), disinfectant, and cleaning supplies to protect election officials and voters from the coronavirus, and to aid in processing of an expected high volume of absentee ballots. Additionally, as several of our municipalities move to add or expand drive-thru voting on Election Days, those expansions come with additional unbudgeted expenses for signage, tents, traffic control, publicity, and safety measures. All of our municipalities need resources to ensure that the remaining 2020 Election Days are administered seamlessly and safely.

- **Green Bay:** Green Bay would like to purchase 135 electronic poll books (\$2,100/each for a total of \$283,500) to reduce voter lines, facilitate Election Day Registrations and verification of photo ID. The City would also like a high speed tabulator (\$62,000) to count absentee ballots on Election Day, a ballot opener and ballot folder (\$5,000), and additional staff to process absentee ballots on Election Day (\$5,000). The City also needs masks, gloves, gowns, hair nets, face shields (\$15,000), cough/sneeze guards (\$43,000), and disinfectant supplies (\$3,000). **Total: \$426,500**
- **Kenosha:** The City would like to purchase automatic hand sanitizer dispensers for all polling locations (\$14,500) as well as PPE (gloves, masks, disinfectant, etc.) for all poll workers and voters (\$15,200). Kenosha would also like to be able to offer elderly residents and people with disabilities who wish to vote in person on Election Day two-way transportation, utilizing a local organization such as Care-A-Van (\$2,000). The City also needs resources for technology improvements to include a ballot opener, a ballot folder, 12 additional laptops and dymo printers, and high-speed scanner tabulators (\$172,000 total) to expedite election day processing and administration. **Total: \$203,700**
- **Madison:** The City needs hand sanitizer for all poll workers and voters, disinfectant spray, plexi-glass shields to allow poll workers to split the poll books, face shields for curbside election officials, and face masks for all poll workers and observers (\$20,000) as well as renting additional space to safely and accurately prepare all supplies and practice social distancing at the public test of election equipment (\$20,000). If the new voter registration form is not translated by the state into both Spanish and Hmong, Madison plans to translate the form (\$500). **Total: \$40,500**



- **Milwaukee:** The City will be purchasing 400 plexiglass barriers (\$55,000) for election workers at all polling location receiving and registration tables. Additionally, the Milwaukee Election Commission will need to acquire 400 face shields for workers not staffed behind plexiglass (\$4,000), gloves for all poll workers (\$3,000), masks on hand for election workers and members of the public (\$5,000), hand sanitizer (\$2,000) and disinfectant (\$2,000). Additionally, since Milwaukee also plans to offer curbside voting as an option at all polling places, updated, larger, more visible signage is necessary (\$5,000). **Total: \$76,000**
- **Racine:** Racine plans to issue all 36 wards its own PPE supply box which will each include masks, cleaning supplies, pens for each voter, gloves, hand sanitizer, safety vests, goggles, etc. (\$16,000). The City also needs large signs to direct and inform voters printed in English and Spanish (\$3,000). Additionally, the City would like to deploy a team of paid trained EDR Specialists for each polling location (\$10,000, including hourly pay, training expenses, and office supplies). As well, Racine would like iPads with cellular signal for each polling location to be able to easily verify voters' registration status and ward (\$16,000). The City would like to equip all wards with Badger Books (\$85,000); Racine began using electronic poll books in the February 2020 election and has found they dramatically increase and facilitate EDR, verification of voters' photo ID, expedite election processes, and reduce human error. **Total: \$130,000**

**Recommendation IV Total for All Strategies to Ensure Safe & Efficient Election Day Administration: \$876,700.00**

## Conclusion

As Mayors in Wisconsin's five largest cities, we are committed to working collaboratively and innovatively to ensure that all of our residents can safely exercise their right to vote in 2020's remaining elections in the midst of the COVID-19 pandemic. The April 2020 election placed two of our most sacred duties in conflict: keeping our residents safe and administering free, fair, and inclusive elections. This Wisconsin Safe Voting Plan 2020 represents a remarkable and creative comprehensive plan, submitted collaboratively by all five of our cities. With sufficient resources, all five municipalities will swiftly, efficiently, and effectively implement the recommended strategies described in this plan, to ensure safe, fair, inclusive, secure, and professional elections in all of our communities this year.









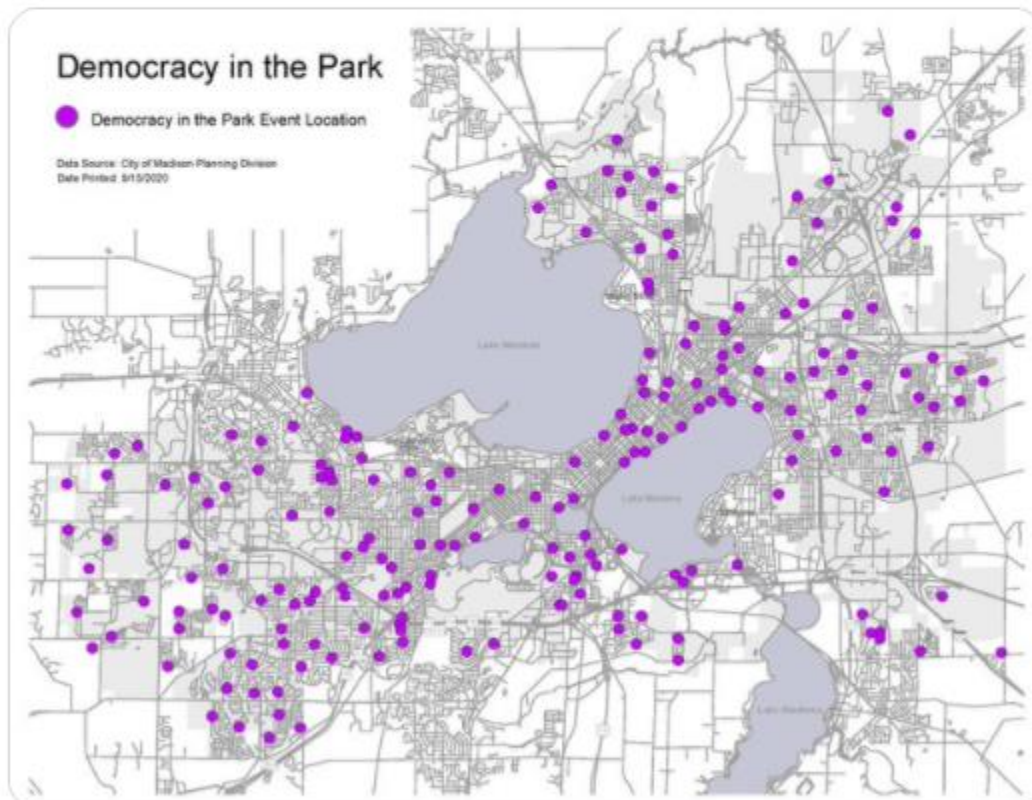
**Madison WI Clerk** ✓  
@MadisonWIClerk



Democracy in the Park: created by, planned by, staffed by,  
and paid for by the @CityofMadison Clerk's Office

[cityofmadison.com/news/statement...](https://cityofmadison.com/news/statement...)

#MadisonVotes2020 #VoteByMail #vote #elections2020



4:34 PM · Sep 25, 2020



129



56 people are Tweeting about this



# City of Madison Unveils Secure Absentee Ballot Drop Boxes

Friday, October 16, 2020 - 8:14am

The City of Madison Clerk's Office has purchased 14 secure ballot drop boxes that are being placed at 13 Madison Fire stations and at Elver Park shelter. Installation of the boxes should be completed by City of Madison Engineering crews this afternoon.

The drop boxes are made for the sole purpose of ballot collection, and are manufactured with a minimum of 1/2" steel. The seams are fully welded to prevent damage and tampering.

The last ballot box pick up will occur by 5:00pm the day before Election Day, and the slots will be closed and locked at that time. Voter's will be directed to drop their absentee ballot off at their polling place on Election Day if they still have it.

Anticipating that these boxes will be a very popular option for City of Madison absentee voters this weekend, the City Clerk's Office has scheduled two pick-ups for each location this Saturday and Sunday: the first pick up will happen by 1:00pm and the second pick-up will happen by 5:00pm. Clerk's Office staff will determine if more than one pick-up time will be necessary after this weekend.

Sworn election officials will pick-up ballots from the secure drop boxes and deliver them directly back to the Clerk's Office. The election officials will be wearing City of Madison Clerk high-visibility vests and nametags. They will count the number of ballots they are picking up, place them in a bag and secure the bag with a tamper-evident seal. The number of ballots and the seal number of the bag will be noted on the chain of custody form specific to that ballot box location. The chain of custody form will be returned back to the Clerk's Office with the ballots, and Clerk's Office staff will confirm the seal number of the bag and the number of ballots returned.

The City of Madison absentee ballot drop boxes are for City of Madison voters. Voters in other municipalities should seek information from their own municipal clerk about how to safely return their absentee ballot.

The City Clerk's Office would like to thank the Department of Planning, the Madison Fire Department, Madison Parks, City of Madison Traffic Engineering, and City of Madison Engineering for all of their help in determining locations and in coordinating the installation of the drop boxes.

## City of Madison Absentee Ballot Drop Box Locations

### Station 1: 316 W Dayton St

Box is located just east of the main driveway.

### Station 2: 421 Grand Canyon Dr

Box is located on west side of Grand Teton Pkwy before the station's back driveway.

### Station 3: 1217 Williamson St

Box is located in small garden just outside station front door. Walk-up traffic only.

### Station 4: 1437 Monroe St

Box is located just east of driveway right across from the badger at Camp Randall. Just beneath the Madison: Solar America City sign.

### Station 5: 4418 Cottage Grove Rd

Box is located on Atlas Ave between the bus stop and the station's back driveway.

### Station 6: 825 W Badger Rd

Box is located behind station on west side of Perry St just south of Madison College driveway.

### Station 8: 3945 Lien Rd

Box is located east of station on east side of Parkside Dr.

### Station 9: 201 N Midvale Blvd

Box is located behind station on west side of Meadow Ln.

### Station 10: 1517 Troy Dr

Box is located on north side of station near the intersection of Troy Dr and Hanover St.

### Station 11: 4011 Morgan Way

## Links

[City of Madison Absentee Ballot Drop Off Sites](#)

## Images



Exhibit 26



Box is located behind station on east side of Crossing Pl between station driveway and intersection of Crossing Pl and Nelson Rd.

Station 12: 400 South Point Rd

Box is located just north of station on South Point Rd near intersection of South Point Rd and Briar Haven Dr.

Station 13: 6350 Town Center Dr

Box is located just east of station driveway on north side of Town Center Dr.

Station 14: 3201 Dairy Dr

Box is located just north of station driveway near intersection of Dairy Dr and Prairie Dock Dr.

Elver Park Shelter: 1250 McKenna Blvd

Box is located in island of the circle drive near the park shelter.

## Contacts

- Maribeth Witzel-Behl, (608) 266-4601, [clerk@cityofmadison.com](mailto:clerk@cityofmadison.com)



**ELECTIONS**

## Milwaukee absentee ballot drop boxes to be replaced this week with permanent versions

**Alison Dirr** Milwaukee Journal Sentinel

Published 11:07 a.m. CT Oct. 27, 2020 | Updated 3:42 p.m. CT Oct. 27, 2020

[View Comments](#)



New City of Milwaukee absentee ballot drop boxes are being installed. This is one at the Milwaukee Election Commission's warehouse at 1901 S. Kinnickinnic Ave. *Michael Sears / Milwaukee Journal Sentinel*

**Exhibit 25**



Milwaukee's 15 absentee ballot drop boxes will be replaced this week with versions that are sturdier, longer-lasting and have important security features, according to the city's top election official.

The first box was replaced Monday at 1901 S. Kinnickinnic Ave.

"I don't expect that we'll see a huge decrease in absentee voting" in future elections, Milwaukee Election Commission Executive Director Claire Woodall-Vogg said during a meeting of the Common Council's Judiciary and Legislation Committee on Monday. "I think this will become the new normal as it often is in states where voters discover how convenient it is to vote at home."

The permanent boxes had been delayed by the coronavirus pandemic, an increase in demand and wildfires close to the manufacturer, according to the city.

The boxes will be installed by Department of Public Works staff, who will be accompanied by staff from the city's Election Commission to retrieve ballots from the old boxes. New security seals will be installed on the new boxes. No security problems have been reported with the temporary boxes.

Voters can return their absentee ballots to the drop boxes until 7:30 p.m. on Election Day, Nov. 3. That's a half-hour before the in-person polls close to allow time for the ballots to be delivered for counting by 8 p.m. as required under state law.

The city has also taken steps to ensure absentee ballots reach voters, she told the committee, including working more closely with the U.S. Postal Service and eliminating a third-party mail provider for absentee ballots.

**VOTER GUIDE:** How to vote and what to know about the ballot

The Wisconsin Elections Commission has also started using "intelligent mail barcodes," she said, which allows for better tracking of absentee ballots through the mail system.



The city has seen fewer phone calls this election from voters who said they never received their ballots, she told the committee.

And Stan Franke of USPS expressed confidence in the Postal Service's ability to carry out the election, saying he wasn't aware of any issues at this point.

"We're very confident in our ability to effectively have a successful election this cycle," Franke said, including getting the influx of absentee ballots to the city's central count by 8 p.m. on Election Day.

She was also asked about security for the election.

Woodall-Vogg said the biggest threat on election night will be misinformation about election results on social media. To combat that, the city plans to live stream central count, where absentee ballots will be counted on Election Day, she said.

The city could see as many as 175,000 absentee ballots.

As of 1:10 p.m. Monday, the city had issued 151,741 absentee ballots and had 112,969 of those returned. That figure includes ballots cast through early voting.

**RELATED:** '2016 was the wake-up call': Black voters in Milwaukee turn out for early voting after turnout decline 4 years ago

The state, FBI and U.S. Department of Homeland Security have not alerted the city to any foreign interference, including with the voter database, Woodall-Vogg said.

The city has seen no voter intimidation at any of its early voting locations, and law enforcement has shared no elevated concerns with her regarding issues anticipated the day-of, she told the Journal Sentinel.

*Contact Alison Dirr at 414-224-2383 or [adirr@jrn.com](mailto:adirr@jrn.com). Follow her on Twitter [@AlisonDirr](https://twitter.com/AlisonDirr).*



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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DONALD J. TRUMP,

Plaintiff,

v.

Case No. 20-C-1785

THE WISCONSIN ELECTIONS COMMISSION, et al.,

Defendants.

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**DECLARATION OF CLAIRE WOODALL-VOGG**

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I, Claire Woodall-Vogg, do hereby affirm under the pains and penalties of perjury as follows:

1. I am the Executive Director of the City of Milwaukee Elections Commission (“MEC”). In my capacity as Executive Director, I administer elections for the City of Milwaukee (“City”), and led the MEC’s operations in connection with the November 3, 2020 general election, including our office’s handling of the absentee balloting process.

2. Presumably as a result of the COVID-19 pandemic, our office processed an unprecedented number of absentee ballot requests in the Spring Election conducted on April 7, 2020, the Fall Primary conducted on August 11, 2020, and the General Election conducted on November 3, 2020.

3. When our office received returned absentee ballots, we reviewed the envelopes to confirm that they included the required voter signature, witness signature, and witness address.



4. If an absentee ballot envelope was missing a voter signature or a witness signature, we returned the envelope to the voter with instructions to add the missing signature(s) and return the corrected envelope no later than 8:00 p.m. on election day.

5. If an absentee ballot envelope included the signatures of the voter and witness, but was missing some or all of the witness' address, we followed the October 18, 2016, Wisconsin Election Commission ("WEC") Guidance Memorandum addressed to all Wisconsin County and Municipal Clerks as well as the City and County of Milwaukee Elections Commissions, attached as Exhibit A. In that memo, the WEC instructed that Clerks "**must** take corrective actions in an attempt to remedy a witness address error. If clerks are reasonably able to discern any missing information from outside sources, clerks are not required to contact the voter before making that correction directly to the absentee ballot envelope." (Emphasis in original.)

6. The WEC Guidance is reinforced by the WEC Election Administration Manual at page 99, attached as Exhibit B, which states: "Clerks may add a missing witness address using whatever means are available. Clerks should initial next to the added witness address."

7. Since receiving the WEC Memo in October 2016, the MEC consistently adhered to the following process for completing missing witness address information on an absentee ballot envelope certification:

a. If the only missing item was the municipality, we confirmed that the street address was located in the City and we added the municipality.

b. If the street address was not in the City, but we could confirm the municipality from available governmental databases, we added the municipality.

c. If there was not a full street address but the witness signature was legible, we consulted the WisVote database or the Tax Assessor's database to determine the



address of the witness. If there was only one person by the witness's name, we would add the address. If more than one person went by that name, we would call the voter to ask the identity and address of the witness.

d. If the witness signature was not legible, we called the voter to acquire the missing information. If the voter could provide the missing information, we added it to the envelope. If the voter could not, we informed the voter that the absentee ballot would not be processed unless the information could be provided and offered to send the envelope back to the voter to add the missing information.

8. All added information was done using a red pen so that it was transparent that the MEC had added the information.

9. We have not received any complaints about the witness address process from any candidate or any voter.

10. The MEC at all times followed the WEC's Guidance for Indefinitely Confined Electors issued on March 29, 2020, attached as Exhibit C.

11. If at any point the MEC had within its possession reliable information that an elector no longer qualified as indefinitely confined, the name of that elector would have been removed from the list of indefinitely confined electors pursuant to Wis. Stat. § 6.86(2)(b).

12. The City applied for a grant from the Center for Tech and Civic Life ("CTCL") in the amounts and for the purposes listed in the attached Grant Agreement and Wisconsin Safe Voting Plan (collectively "Agreement") attached as Exhibit D.

13. The City received a grant in the amount of \$2,154,500.00 from CTCL.

14. I examined the Agreement, which awards CTCL grant funds to the City and sets rules for how the funds are to be spent.



15. Pursuant to the Agreement, the City must use the CTCL grant funds exclusively for the purpose of planning and operationalizing safe and secure election administration in the City in accordance with the Wisconsin Safe Voting Plan.

16. My office is charged with administering the CTCL grant for the City.

17. The City has expended or encumbered all of the CTCL grant funds.

18. All of the CTCL grant money that was spent or encumbered by the City was done so in accordance with the rules given in the Agreement.

19. All of the CTCL grant money that was spent or encumbered by the City was done so in accordance with the laws governing the conduct of elections in the state of Wisconsin.

20. None of the CTCL grant money was spent or encumbered to engineer a certain election result or for a partisan purpose.

21. Rather, the CTCL grant money was spent or encumbered City-wide to protect the right to vote and accommodate the safety of voters during the COVID-19 pandemic.

22. Attached as Exhibit E is a true and correct copy of the CTCL Statement on the Amistad Project.

23. I have examined the CTCL Statement on the Amistad Project, and it indicates that 111 towns, townships, villages, and cities in the state of Wisconsin have received grant funds from the CTCL in 2020 as of October 5, 2020.

24. Attached as Exhibit F is a true and correct copy of Judge Griesbach's Order Denying Motion for Preliminary Relief in *Wisconsin Voters Alliance, et al. v. City of Racine*, Case No. 20-C-1487, dated October 14, 2020.

25. The MEC at all times followed the WEC's Absentee Ballot Drop Box Information Memo issued on August 19, 2020 and attached as Exhibit G.



26. Attached as Exhibit H is a true and correct copy of the 7<sup>th</sup> Circuit Court of Appeals Order Denying an Injunction Pending Appeal in *Wisconsin Voters Alliance, et al. v. City of Racine*, No. 20-3002, dated October 23, 2020.

27. Attached as Exhibit I is a true and correct copy of webpage of the WEC's webpage users are directed to when clicking on the link entitled "Information for Local Election Officials and the Public about COVID-19 and the WEC's Response to the Pandemic," (December 3, 2020).

28. Attached as Exhibit J is a true and correct copy of "Fact check: Trump falsely claims that votes shouldn't be counted after Election Day," by Barbara Sprunt (NPR), November 2, 2020.

29. For nearly ten years, I and other MEC officials have sought changes to state law that would allow for the processing of absentee ballots prior to election day.

30. Attached as Exhibit K is a true and correct copy of "Debunking Trump's Tweets: Biden's 143K Vote 'Dump' in Wisconsin," by David Mikkelsen (Snopes), November 18, 2020.

31. Attached as Exhibit L is a true and correct copy of the WEC's Observer Rules At-A-Glance, issued in October, 2020.

32. Attached as Exhibit M is a true and correct copy of the WEC's Recount Manual issued in November, 2020.

33. Attached as Exhibit N is a true and correct copy of an Order issued by the Wisconsin Supreme Court on December 3, 2020 in *Trump v. Evers*, 2020AP1971.

34. Attached as Exhibit O is a true and correct copy of an Order issued by the Wisconsin Supreme Court on December 4, 2020 in *Wisconsin Voters Alliance v. Wisconsin Election Commission*, 2020AP1930.



35. Attached as Exhibit P is a true and correct copy of an Order issued by the Wisconsin Supreme Court on March 31, 2020 in *Jefferson v. Dane County*, 2020AP557.

36. A partial recount was requested by the Plaintiff in this matter, President Donald J. Trump, of both Milwaukee and Dane Counties.

37. The recount in Milwaukee County, of which the City of Milwaukee is a part, took place over a span of 10, approximately 8 hour or longer days, excluding Thanksgiving, from Friday, November 20, 2020 through Sunday, November 29, 2020.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct to the best of my knowledge.

Dated: December 8, 2020.

s/Claire Woodall-Vogg  
Claire Woodall-Vogg  
Executive Director, Milwaukee Election Commission

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