UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DONALD J. TRUMP,

Plaintiff,

v. Case No. 20-C-1785

THE WISCONSIN ELECTIONS COMMISSION, et al.,

Defendants.

DECLARATION OF CLAIRE WOODALL-VOGG

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 7th 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 Mikkelson (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

1077-2020-1711:272594

WISCONSIN ELECTIONS COMMISSION

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DON MILLIS
MARK L. THOMSEN, CHAIR

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.

EXHIBIT A

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.

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

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

Administrator
Meagan Wolfe

EXHIBIT C

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.

CENTER FOR
TECH AND
CIVIC LIFE

July 24, 2020

City of Milwaukee

Dear Director Mahan,

I am pleased to inform you that the Center for Tech and Civic Life ("CTCL") has decided to award a grant to the City of Milwaukee Community Development Grant Administration to support the work of the City of Milwaukee.

The following is a description of the grant:

AMOUNT OF GRANT: Two million, one hundred fifty-four thousand, five hundred US dollars (USD $2,154,500).

PURPOSE: The grant funds must be used exclusively for the public purpose of planning and operationalizing safe and secure election administration in the City of Milwaukee in accordance with the Wisconsin Safe Voting Plan 2020 ("Appendix").

Before we transmit these funds, we ask that you sign this agreement promising to use the grant funds in compliance with United States tax laws. Specifically, by signing this letter you agree to the following:

1. The City of Milwaukee is a U.S., state, or local government unit or political subdivision in the meaning of 26 USC 170(c)(1).

EXHIBIT D

2. This grant shall be used only for the public purpose described above, and for no other purposes.

3. The City of Milwaukee shall not use any part of this grant to give a grant to another organization unless CTCL agrees to the specific sub-recipient in advance, in writing.

4. The City of Milwaukee has produced a plan for safe and secure election administration in 2020, including an assessment of election administration needs, budget estimates for such assessment, and an assessment of the impact of the plan on voters. This plan is attached to this agreement as an Appendix. The City shall expend the amount of this grant for purposes contained in this plan by December 31, 2020.

5. This grant is intended to support and shall be used solely to fund the activities and purposes described in the plan produced pursuant to paragraph 4.

6. The City of Milwaukee shall produce a report documenting how this grant has been expended in support of the Appendix. This report shall be provided to CTCL by January 31, 2021.

7. The City of Milwaukee shall not reduce the budget of the City of Milwaukee Election Commission ("the Commission") or fail to appropriate or provide previously budgeted funds to the Commission for the term of this grant. Any amount reduced or not provided in contravention of this paragraph shall be repaid to CTCL up to the total amount of this grant.

8. CTCL may discontinue, modify, withhold part of, or ask for the return of all or part of the grant funds if it determines, in its sole judgment, that (a) any of the above conditions have not been met or (b) it must do so to comply with applicable laws or regulations.

9. The grant project period of June 15, 2020 through December 31, 2020 represents the dates between which covered costs may be applied to the grant.

Your acceptance of these agreements should be indicated below. Please have an authorized representative of The City of Milwaukee Community Development Grant Administration sign below, and return a scanned copy of this letter to us by email at grants@techandciviclife.org

On behalf of CTCL, I extend my best wishes in your work.

Sincerely,

Tiana Epps Johnson
Executive Director
Center for Tech and Civic Life

Accepted on behalf of the City of Milwaukee Community Development Grant Administration:

By: _____

Title: Director

Date: 07/29/2020

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

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

	Green Bay	Kenosha	Madison	Milwaukee	Racine
Estimated Eligible Voters	71,661	73,000	213,725	430,000	56,000
Registered Voters	52,064	47,433	178,346	294,459	34,734
2020 Election Budget	$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

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

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

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

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

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

CENTER FOR TECH AND CIVIC LIFE

CTCL Statement on the Amistad Project

The Center for Tech and Civic Life (CTCL) has released the following statement regarding a baseless challenge to CTCL's COVID-19 Response Grant Program, which is offering funding to election administrators in all 50 states for resources like personal protective equipment and hazard pay for poll workers to ensure a safe and healthy election.

"This year, we've heard from countless election officials, from across the political spectrum, who simply don't have the funding they need to provide a safe, secure voting process for their voters as a result of the COVID-19 pandemic. In this moment of need, we feel so fortunate to be administering an open call grant program available to every local election department in every state in the union to ensure that they have the staffing, training, and equipment necessary so that this November every eligible voter can participate in a safe and timely way and have their vote counted."

"Since the launch of the CTCL COVID-19 Response Grant program open call, we've seen requests from every corner of the U.S. All eligible Americans deserve to have their vote count — regardless of political affiliation, whether they live in rural or urban communities, or somewhere in between. Over 1,100 election administrators across the country agree and have already applied for support. As a non-partisan organization backed by Democrats, Republicans, and nonpartisan officials, we are confident that these frivolous charges are without merit, and look forward to continuing this critical grant program in these unprecedented times."

Grants awarded in states where Project Amistad has filed frivolous litigation

Iowa

Michigan

Minnesota

Exhibit D

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EXHIBIT E

Pennsylvania

Wisconsin

Note: All local election offices responsible for administering election activities covered by the CTCL COVID-19 Response grant program are eligible to apply for grant funds. Every eligible election department that is verified as legitimate will be approved for a grant. The minimum CTCL COVID-19 Response Grant amount awarded is $5,000.

Local Election Jurisdiction	Jurisdiction Type	State
Iowa		
Appanoose	County	Iowa
Benton	County	Iowa
Black Hawk	County	Iowa
Boone	County	Iowa
Bremer	County	Iowa
Buchanan	County	Iowa
Buena Vista	County	Iowa
Butler	County	Iowa
Calhoun	County	Iowa
Carroll	County	Iowa
Cedar	County	Iowa
Cerro Gordo	County	Iowa
Cherokee	County	Iowa
Chickasaw	County	Iowa
Clarke	County	Iowa
Clay	County	Iowa
Clayton	County	Iowa
Clinton	County	Iowa
Crawford	County	Iowa
Decatur	County	Iowa
Delaware	County	Iowa

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Des Moines	County	Iowa
Dubuque	County	Iowa
Emmet	County	Iowa
Floyd	County	Iowa
Franklin	County	Iowa
Fremont	County	Iowa
Hamilton	County	Iowa
Hardin	County	Iowa
Harrison	County	Iowa
Humboldt	County	Iowa
Ida	County	Iowa
Iowa	County	Iowa
Jackson	County	Iowa
Jasper	County	Iowa
Jones	County	Iowa
Kossuth	County	Iowa
Lee	County	Iowa
Louisa	County	Iowa
Lyon	County	Iowa
Mills	County	Iowa
Monona	County	Iowa
Monrioe	County	Iowa
Montgomery	County	Iowa
Osceola	County	Iowa
Page	County	Iowa
Palo Alto	County	Iowa
Polk	County	Iowa
Plymouth	County	Iowa
Pocahontas	County	Iowa
Pottawattamie	County	Iowa
Poweshiek	County	Iowa

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Ringgold	County	Iowa
Sac	County	Iowa
Scott	County	Iowa
Shelby	County	Iowa
Union	County	Iowa
Wapello	County	Iowa
Warren	County	Iowa
Webster	County	Iowa
Winnebago	County	Iowa
Woodbury	County	Iowa
Worth	County	Iowa
Wright	County	Iowa
Michigan		
Ada Township	Township	Michigan
Adams Township	Township	Michigan
Addison Township	Township	Michigan
Adrian	City	Michigan
Adrian Charter	Township	Michigan
Albion	City	Michigan
Albion Township	Township	Michigan
Alcona	Township	Michigan
Alger	County	Michigan
Algoma Township	Township	Michigan
Allendale Charter Township	Township	Michigan
Alma	City	Michigan
Almont	Township	Michigan
Ann Arbor	City	Michigan
Ann Arbor Charter Township	Township	Michigan
Arcada Township	Township	Michigan
Argentine	Township	Michigan

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Bainbridge Township	Township	Michigan
Bark River	Township	Michigan
Battle Creek	City	Michigan
Bay City	City	Michigan
Beaver Township	Township	Michigan
Bedford Township	Township	Michigan
Belding	City	Michigan
Belleville	City	Michigan
Bellevue Township	Township	Michigan
Benton Charter Township	Township	Michigan
Benton Harbor	City	Michigan
Benzonia Township	Township	Michigan
Berkley	City	Michigan
Berlin	Township	Michigan
Bethany Township	Township	Michigan
Big Creek Twp.	Township	Michigan
Big Rapids	City	Michigan
Birch Run Township	Township	Michigan
Blaine Township	Township	Michigan
Blair Township	Township	Michigan
Blendon	Township	Michigan
Bloomfield Township Missaukee	Township	Michigan
Boyne Valley Township	Township	Michigan
Breen Township	Township	Michigan
Bridgeport Charter Township	Township	Michigan
Brookfield Twp	Township	Michigan
Brownstown	Township	Michigan
Buchanan	City	Michigan
Buchanan Township	Township	Michigan
Buena Vista Charter	Township	Michigan
Burlington	Township	Michigan

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Cadillac	City	Michigan
Caldwell	Township	Michigan
Caledonia Twp.	Township	Michigan
Cannon	Township	Michigan
Canton Township	Township	Michigan
Carmel	Township	Michigan
Caro	City	Michigan
Casco	Township	Michigan
Casnovia Township	Township	Michigan
Caspian	City	Michigan
Cedar Creek Township/Muskegon	Township	Michigan
Center Line	City	Michigan
Champion	Township	Michigan
Charleston Township	Township	Michigan
Charlotte	City	Michigan
Charter Township Of Bedford	Township	Michigan
Charter Township Of Brighton	Township	Michigan
Charter Township Of Caledonia	Township	Michigan
Charter Township Of Clinton	Township	Michigan
Charter Township Of Commerce	Township	Michigan
Charter Township Of Elmwood	Township	Michigan
Charter Township Of Flint	Township	Michigan
Charter Township Of Harrison	Township	Michigan
Charter Township Of Highland	Township	Michigan
Charter Township Of Independence	Township	Michigan
Charter Township Of Oakland	Township	Michigan
Charter Township Of Oxford	Township	Michigan
Charter Township Of Union	Township	Michigan
Charter Township Of Ypsilanti	Township	Michigan
Chassell Township	Township	Michigan
Cheboygan	City	Michigan

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Chippewa Township, Mecosta	Township	Michigan
City Of Brighton	City	Michigan
City Of Burton	City	Michigan
City Of Farmington Hills	City	Michigan
City Of Grosse Pointe Woods	City	Michigan
City Of Hudsonville	City	Michigan
City Of Luna Pier	City	Michigan
City Of Munising	City	Michigan
City Of Niles	City	Michigan
City Of Plymouth	City	Michigan
City Of Royal Oak	City	Michigan
City Of Stanton	City	Michigan
City Of Traverse City	City	Michigan
City Of Wayne	City	Michigan
Clare	City	Michigan
Clare	County	Michigan
Clawson	City	Michigan
Coldsprings Township	Township	Michigan
Coldwater Township	Township	Michigan
Colfax Township Mecosta	Township	Michigan
Colon Township	Township	Michigan
Columbia (Van Buren)	Township	Michigan
Convis Township	Township	Michigan
Conway Township	Township	Michigan
Cooper Charter Township	Township	Michigan
Corunna	City	Michigan
Courtland	Township	Michigan
Crockery Township	Township	Michigan
Croswell	City	Michigan
Crystal Lake Township	Township	Michigan
Dallas Township	Township	Michigan

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Dalton Township	Township	Michigan
Dearborn	City	Michigan
Dearborn Heights	City	Michigan
Delhi Charter Township	Township	Michigan
Delta Township	Township	Michigan
Denver Township	Township	Michigan
Detroit	City	Michigan
Dewitt	City	Michigan
Dewitt Charter Township	Township	Michigan
Dexter	City	Michigan
Douglas	City	Michigan
East Bay Charter Township	Township	Michigan
East Lansing	City	Michigan
East Tawas	City	Michigan
Eastpointe	City	Michigan
Eaton	County	Michigan
Eaton Rapids Township	Township	Michigan
Eaton Township	Township	Michigan
Eckford Township	Township	Michigan
Ecorse	City	Michigan
Egelston Township	Township	Michigan
Elba Township	Township	Michigan
Ensign Township	Township	Michigan
Escanaba	City	Michigan
Essex	Township	Michigan
Evart	City	Michigan
Evart Township	Township	Michigan
Fennville	City	Michigan
Fenton	City	Michigan
Ferndale	City	Michigan
Flint	City	Michigan

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Flushing	City	Michigan
Fort Gratiot Charter Township	Township	Michigan
Frankenmuth	City	Michigan
Frankfort	City	Michigan
Fredonia	Township	Michigan
Freeman Township	Township	Michigan
Frenchtown Charter Township	Township	Michigan
Frost Township	Township	Michigan
Fruitport Charter Township	Township	Michigan
Fulton Township	Township	Michigan
Gaastra	City	Michigan
Gaines (Kent)	Township	Michigan
Galesburg	City	Michigan
Garden City	City	Michigan
Geneva	Township	Michigan
Genoa Charter Township	Township	Michigan
Gibraltar	City	Michigan
Gobles	City	Michigan
Grand Haven	City	Michigan
Grand Haven Charter Township	Township	Michigan
Grand Rapids	City	Michigan
Grand Traverse	County	Michigan
Grandville	City	Michigan
Green Oak Charter Township	Township	Michigan
Greenwood	Township	Michigan
Grosse Ile Township	Township	Michigan
Grosse Pointe Farms	City	Michigan
Grosse Pointe Park	City	Michigan
Groveland Township	Township	Michigan
Hadley Township	Township	Michigan
Hamburg	Township	Michigan

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Hamlin Township	Township	Michigan
Hampton	Township	Michigan
Hamtramck	City	Michigan
Hanover Township	Township	Michigan
Harper Woods	City	Michigan
Harrison	City	Michigan
Hatton Township	Township	Michigan
Hayes Township	Township	Michigan
Hayes Township, Charlevoix	Township	Michigan
Hazel Park	City	Michigan
Henrietta Township	Township	Michigan
Hersey Township	Township	Michigan
Highland Park	City	Michigan
Holland	City	Michigan
Holland Charter Township	Township	Michigan
Holton	Township	Michigan
Hope Township	Township	Michigan
Howard Twp Michigan	Township	Michigan
Howell	City	Michigan
Hubbell	Town	Michigan
Hudson Township	Township	Michigan
Huntington Woods	City	Michigan
Huron Charter Township	Township	Michigan
Ida	Township	Michigan
Imlay City	City	Michigan
Ingham		Michigan
Inkster	City	Michigan
Iron Mountain	City	Michigan
Irving Township	Township	Michigan
Ishpeming	City	Michigan
Ishpeming Township	Township	Michigan

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Ithaca	City	Michigan
Jackson	City	Michigan
Jamestown Charter Township	Township	Michigan
Johnstown Township	Township	Michigan
Juniata	Township	Michigan
Kalamazoo	City	Michigan
Kalamo Township	Township	Michigan
Kentwood	City	Michigan
Kingsford	City	Michigan
L'Anse Township	Township	Michigan
Lafayette	Township	Michigan
Lansing	City	Michigan
Lansing Charter	Township	Michigan
Lapeer	City	Michigan
Lawrence	Township	Michigan
Leland Township	Township	Michigan
Leslie Township	Township	Michigan
Lexington	Township	Michigan
Lincoln	Township	Michigan
Lincoln Charter	Township	Michigan
Lincoln Park	City	Michigan
Linden	City	Michigan
Livingston	County	Michigan
Livonia	City	Michigan
Long Lake Township	Township	Michigan
Lowell	City	Michigan
Macomb	County	Michigan
Macomb Township	Township	Michigan
Madison Charter Township	Township	Michigan
Madison Heights	City	Michigan
Mancelona Township	Township	Michigan

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Marengo	Township	Michigan
Marine City	City	Michigan
Markey Township	Township	Michigan
Marquette	County	Michigan
Marquette	City	Michigan
Marquette Township	Township	Michigan
Mason	City	Michigan
Masonville	Township	Michigan
Mayfield Township	Township	Michigan
Melvindale	City	Michigan
Menominee	County	Michigan
Menominee	City	Michigan
Metamora Township	Township	Michigan
Minden	Township	Michigan
Monroe	City	Michigan
Montague	City	Michigan
Moorland	Township	Michigan
Mount Clemens	City	Michigan
Mt Pleasant	City	Michigan
Mt. Morris Township	Township	Michigan
Munising Township	Township	Michigan
Muskegon	City	Michigan
Muskegon	County	Michigan
Muskegon Charter Township	Township	Michigan
Muskegon Heights	City	Michigan
Negaunee	City	Michigan
New Baltimore	City	Michigan
New Haven Gratiot	Township	Michigan
North Branch	Township	Michigan
North Muskegon	City	Michigan
Northfield Township	Township	Michigan

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Norton Shores	City	Michigan
Novi	City	Michigan
Oak Park	City	Michigan
Ogden Township	Township	Michigan
Olive Township	Township	Michigan
Olivet	City	Michigan
Onondaga	Township	Michigan
Orange Township	Township	Michigan
Osceola Township	Township	Michigan
Otsego	City	Michigan
Ottawa	County	Michigan
Overisel	Township	Michigan
Paradise Township	Township	Michigan
Parchment	City	Michigan
Park Township	Township	Michigan
Peninsula Township	Township	Michigan
Petoskey	City	Michigan
Plainfield Charter Township	Township	Michigan
Plainwell	City	Michigan
Plymouth Township	Township	Michigan
Pontiac	City	Michigan
Port Huron	City	Michigan
Port Huron Charter Township	Township	Michigan
Port Sheldon Township	Township	Michigan
Portage	City	Michigan
Potterville	City	Michigan
Raisinville Township	Township	Michigan
Ravenna Township	Township	Michigan
Ray Township	Township	Michigan
Redford Township	Township	Michigan
Richfield Township	Township	Michigan

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Richland Township	Township	Michigan
Richmond Township	Township	Michigan
Ridgeway Township	Township	Michigan
Riverside Township	Township	Michigan
Rochester Hills	City	Michigan
Rockford	City	Michigan
Rogers City	City	Michigan
Romulus	City	Michigan
Roosevelt Park	City	Michigan
Roscommon Township	Township	Michigan
Roxand	Township	Michigan
Rubicon	Township	Michigan
Rutland Charter Township	Township	Michigan
Saginaw	City	Michigan
Saginaw Township	Township	Michigan
Saline	City	Michigan
Sands	Township	Michigan
Sandstone Charter Township	Township	Michigan
Sanilac	Township	Michigan
Schoolcraft	Township	Michigan
Scio Township	Township	Michigan
Seville Township	Township	Michigan
Shelby Township	Township	Michigan
Solon	Township	Michigan
South Haven Charter Township	Township	Michigan
Southfield	City	Michigan
Southgate	City	Michigan
Spencer Township	Township	Michigan
Spring Arbor	Township	Michigan
Spring Lake Township	Township	Michigan
Springfield	City	Michigan

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Springfield Charter Township	Township	Michigan
St Clair Shores	City	Michigan
St James	Township	Michigan
St. Clair	City	Michigan
St. Ignace Township	Township	Michigan
St. Louis	City	Michigan
Sterling Heights	City	Michigan
Sullivan Township	Township	Michigan
Summerfield	Township	Michigan
Summit Township (On Lake Michigan)	Township	Michigan
Sumner Township	Township	Michigan
Sunfield Township	Township	Michigan
Superior	Township	Michigan
Surrey Township	Township	Michigan
Swan Creek	Township	Michigan
Swartz Creek	City	Michigan
Sylvan Township	Township	Michigan
Taylor	City	Michigan
Tecumseh	City	Michigan
Thomas Township	Township	Michigan
Thornapple Township	Township	Michigan
Three Rivers	City	Michigan
Tompkins Township	Township	Michigan
Township Of Clay	Township	Michigan
Township Of Free Soil	Township	Michigan
Township Of Hamilton	Township	Michigan
Township Of Lapeer	Township	Michigan
Township Of Lima	Township	Michigan
Township Of Rives	Township	Michigan
Trenton	City	Michigan
Troy	City	Michigan

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Troy Township	Township	Michigan
Tuscola	County	Michigan
Utica	City	Michigan
Van Buren Township	Township	Michigan
Vergennes Township	Township	Michigan
Vermontville Township	Township	Michigan
Vevay Township	Township	Michigan
Vienna Township	Township	Michigan
Walker	City	Michigan
Walled Lake	City	Michigan
Warren	City	Michigan
Washington Township	Township	Michigan
Washtenaw	County	Michigan
Waterford Township	Township	Michigan
Wayland	City	Michigan
Wayne	County	Michigan
West Bloomfield	Township	Michigan
West Branch Township	Township	Michigan
Westland	City	Michigan
Wheeler Township	Township	Michigan
White Lake Township	Township	Michigan
White River Township	Township	Michigan
Whiteford	Township	Michigan
Whitehall	City	Michigan
Whitehall Township	Township	Michigan
Windsor Charter Township	Township	Michigan
Winterfield Township	Township	Michigan
Woodhaven	City	Michigan
Wyandotte	City	Michigan
Wyoming	City	Michigan
Ypsilanti	City	Michigan

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Zeeland	City	Michigan
Zilwaukee	City	Michigan
Minnesota		
Albertville	City	Minnesota
Becker	City	Minnesota
Blue Earth	County	Minnesota
Brown	County	Minnesota
Burnsville	City	Minnesota
Center City	City	Minnesota
Chaska	City	Minnesota
City Of Carver	City	Minnesota
Dakota	County	Minnesota
Hugo	City	Minnesota
Kasson	City	Minnesota
Lakeville	City	Minnesota
Moorhead	City	Minnesota
Minneapolis	City	Minnesota
Olmsted	County	Minnesota
Ramsey	County	Minnesota
Rosemount	City	Minnesota
Rushford	City	Minnesota
St. Michael	City	Minnesota
Victoria	City	Minnesota
Watertown	City	Minnesota
Winona	County	Minnesota
Pennsylvania		
Centre	County	Pennsylvania
Chester	County	Pennsylvania
Dauphin	County	Pennsylvania
Delaware	City	Pennsylvania

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Department of State	State	Pennsylvania
Erie	County	Pennsylvania
Juniata	County	Pennsylvania
Lancaster	County	Pennsylvania
Luzerne	County	Pennsylvania
Mercer	County	Pennsylvania
Mifflin	County	Pennsylvania
Monroe	County	Pennsylvania
Montgomery	County	Pennsylvania
Northumberland	County	Pennsylvania
Philadelphia	City	Pennsylvania
Pike	County	Pennsylvania
Somerset	County	Pennsylvania
Wayne	County	Pennsylvania
York	County	Pennsylvania
Wisconsin		
Altoona	City	Wisconsin
Amery	City	Wisconsin
Antigo	City	Wisconsin
Athens	Village	Wisconsin
Aztalan	Town	Wisconsin
Barron	City	Wisconsin
Beloit	City	Wisconsin
Bergen	Town	Wisconsin
Black Earth	Village	Wisconsin
Brighton, Marathon	Town	Wisconsin
Brookfield	City	Wisconsin
Brothertown	Town	Wisconsin
Calumet	Town	Wisconsin
Cambridge	Village	Wisconsin

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Campbellsport	Village	Wisconsin
Cassel	Town	Wisconsin
Chetek	City	Wisconsin
Chilton	City	Wisconsin
Chilton	Town	Wisconsin
City Of Plymouth	City	Wisconsin
Clear Lake	Village	Wisconsin
Clinton	Village	Wisconsin
Colby	City	Wisconsin
Eagle (Waukesha)	Town	Wisconsin
Eau Pleine	Town	Wisconsin
Edgerton	City	Wisconsin
Emmet, Marathon	Town	Wisconsin
Endeavor	Village	Wisconsin
Ettrick	Village	Wisconsin
Fitchburg	City	Wisconsin
Fond Du Lac	City	Wisconsin
Footville	Village	Wisconsin
Freedom	Town	Wisconsin
Friendship	Town	Wisconsin
Green Bay	City	Wisconsin
Green Valley	Town	Wisconsin
Greenbush	Town	Wisconsin
Hammond	Village	Wisconsin
Hudson	City	Wisconsin
Janesville	City	Wisconsin
Johnson	Town	Wisconsin
Kenosha	City	Wisconsin
Kewaunee	City	Wisconsin
La Prairie	Town	Wisconsin
Lisbon	Town	Wisconsin

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Little River	Town	Wisconsin
Madison	City	Wisconsin
Maine	Village	Wisconsin
Mcfarland	Village	Wisconsin
Milton	City	Wisconsin
Milwaukee	City	Wisconsin
Montfort	Village	Wisconsin
Morrison	Town	Wisconsin
Mosinee	City	Wisconsin
Oakfield	Village	Wisconsin
Of Day	Town	Wisconsin
Ontario	Village	Wisconsin
Perry	Town	Wisconsin
Pittsville	City	Wisconsin
Plover	Town	Wisconsin
Plymouth	Town	Wisconsin
Racine	City	Wisconsin
Rib Falls	Town	Wisconsin
Rib Mountain	Town	Wisconsin
Rice Lake	City	Wisconsin
River Falls	City	Wisconsin
Riverview	Town	Wisconsin
Rock	Town	Wisconsin
Rush River	Town	Wisconsin
Schofield	City	Wisconsin
Sheboygan Falls	Town	Wisconsin
Spencer	Village	Wisconsin
Stettin	Township	Wisconsin
Stratford	Village	Wisconsin
Sun Prairie	City	Wisconsin
Taycheedah	Town	Wisconsin

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Case 1:20-cv-01487-WCG Filed 10/09/20 Page 20 of 22 Document 14-4

Town Of Bevent	Town	Wisconsin
Town Of Cleveland	Town	Wisconsin
Town Of Easton	Town	Wisconsin
Town Of Fulton	Town	Wisconsin
Town Of Hamilton	Town	Wisconsin
Town Of Lake Mills	Town	Wisconsin
Town Of Marshall	Town	Wisconsin
Town Of Medina	Town	Wisconsin
Town Of Milton	Town	Wisconsin
Town Of Morgan	Town	Wisconsin
Town Of Mountain	Town	Wisconsin
Town Of Norrie	Town	Wisconsin
Town Of Onalaska	Town	Wisconsin
Town Of Palmyra	Town	Wisconsin
Town Of Pittsfield	Town	Wisconsin
Town Of Reid	Town	Wisconsin
Town Of Rhine	Town	Wisconsin
Town Of Ringle	Town	Wisconsin
Town Of Wausau	Township	Wisconsin
Town Of Wrightstown, Brown	Town	Wisconsin
Township Of Marathon	Township	Wisconsin
Troy	Township	Wisconsin
Village Of Cottage Grove	Village	Wisconsin
Village Of Kronenwetter	Village	Wisconsin
Village Of Solon Springs	Village	Wisconsin
Village Of Superior	Village	Wisconsin
Village Of Waldo	Village	Wisconsin
Village Of Weston	Village	Wisconsin
Waukesha	City	Wisconsin
Waunakee	Village	Wisconsin
Wausau	City	Wisconsin

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West Allis	City	Wisconsin
Weston	Town	Wisconsin
Wien	Township	Wisconsin
Wilton	Village	Wisconsin

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

WISCONSIN VOTERS ALLIANCE, et al.,

Plaintiffs,

v. Case No. 20-C-1487

CITY OF RACINE, et al.,

Defendants.

ORDER DENYING MOTION FOR PRELIMINARY RELIEF

Plaintiffs Wisconsin Voters Alliance and six of its members filed this action against the Cities of Green Bay, Kenosha, Madison, Milwaukee, and Racine seeking to enjoin the defendant Cities from accepting grants totaling $6,324,527 from The Center for Tech and Civic Life (CTCL), a private non-profit organization, to help pay for the upcoming November 3, 2020 election. Plaintiffs allege that the defendant Cities are prohibited from accepting and using "private federal election grants" by the Elections and Supremacy Clauses of the United States Constitutions, the National Voters Registration Act (NVRA), 52 U.S.C. §§ 20501–20511, the Help America Vote Act (HAVA), 52 U.S.C. §§ 20901–21145, and Section 12.11 of the Wisconsin Statutes, which prohibits election bribery. The case is before the Court on Plaintiffs' Motion for a Temporary Restraining Order. The defendant Cities oppose Plaintiffs' motion and have filed a motion to dismiss for lack of standing. Having reviewed the affidavits and exhibits submitted by the parties and considered the briefs and arguments of counsel, the Court concludes, whether or not Plaintiffs have standing, their Motion for a Temporary Restraining Order should be denied because Plaintiffs have failed to show a reasonable likelihood of success on the merits.

EXHIBIT F

It is important to note that Plaintiffs do not challenge any of the specific expenditures the defendant Cities have made in an effort to ensure safe and efficient elections can take place in the midst of the pandemic that has struck the nation over the last eight months. In other words, Plaintiffs do not claim that the defendant Cities are using funds to encourage only votes in favor of one party. It is the mere acceptance of funds from a private and, in their view, left-leaning organization that Plaintiffs contend is unlawful. Plaintiffs contend that CTCL's grants have been primarily directed to cities and counties in so-called "swing states" with demographics that have progressive voting patterns and are clearly intended to "skew" the outcome of statewide elections by encouraging and facilitating voting by favored demographic groups.

The defendant Cities, on the other hand, note that none of the federal laws Plaintiffs cite prohibit municipalities from accepting funds from private sources to assist them in safely conducting a national election in the midst of the public health emergency created by the COVID-19 pandemic. The defendant Cities also dispute Plaintiffs' allegations concerning their demographic make-up and the predictability of their voting patterns. The defendant Cities note that municipal governments in Wisconsin are nonpartisan and that, in addition to the five cities that are named as defendants, more than 100 other Wisconsin municipalities have been awarded grants from CTCL. The more densely populated areas face more difficult problems in conducting safe elections in the current environment, the defendant Cities contend, and this fact best explains their need for the CTCL grants.

Plaintiffs have presented at most a policy argument for prohibiting municipalities from accepting funds from private parties to help pay the increased costs of conducting safe and efficient elections. The risk of skewing an election by providing additional private funding for conducting the election in certain areas of the State may be real. The record before the Court, however, does

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not provide the support needed for the Court to make such a determination, especially in light of the fact that over 100 additional Wisconsin municipalities received grants as well. Decl. of Lindsay J. Mather, Ex. D. Plaintiffs argue that the receipt of private funds for public elections also gives an appearance of impropriety. This may be true, as well. These are all matters that may merit a legislative response but the Court finds nothing in the statutes Plaintiffs cite, either directly or indirectly, that can be fairly construed as prohibiting the defendant Cities from accepting funds from CTCL. Absent such a prohibition, the Court lacks the authority to enjoin them from accepting such assistance. To do so would also run afoul of the Supreme Court's admonition that courts should not change electoral rules close to an election date. *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020).

The Court therefore concludes that Plaintiffs have failed to show a reasonable likelihood of success on the merits. Plaintiffs' Motion for a Temporary Restraining Order and other preliminary relief is therefore **DENIED**. A decision on the defendant Cities' motion to dismiss for lack of standing will await full briefing.

SO ORDERED at Green Bay, Wisconsin this 14th day of October, 2020.

s/ William C. Griesbach
William C. Griesbach
United States District Judge

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Case 1:20-cv-01487-WCG Filed 10/14/20 Page 3 of 3 Document 27

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, Administrator; Richard Rydecki, 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.

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

- 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 are, but every 50 miles in a rural area).

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

October 23, 2020

Before

DIANE S. SYKES, *Chief Judge*
JOEL M. FLAUM, *Circuit Judge*
FRANK H. EASTERBROOK, *Circuit Judge*

No. 20-3002	WISCONSIN VOTERS ALLIANCE, et al., Plaintiffs - Appellants v. CITY OF RACINE, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:20-cv-01487-WCG Eastern District of Wisconsin District Judge William C. Griesbach	

Upon consideration of the **MOTION FOR INJUNCTION PENDING APPEAL**, filed on October 23, 2020, by counsel for the appellants,

IT IS ORDERED that the motion for injunctive relief is **DENIED**.

form name: **c7_Order_3J**(form ID: **177**)

EXHIBIT H

Resources

Clerk Resources
Contact Us
Calendar
Forms
FAQs
Laws
Legal Resources
Links
Manuals and Reviews
Public Records
Publications
Training
Voter Lists

Upcoming Elections

April Spring Election
November 4, 2025

Upcoming Events

Wisconsin Elections And Coronavirus COVID-19

Wisconsin election officials understand everyone has pressing and important concerns regarding COVID-19 and its impact on our lives and our communities. The Wisconsin Elections Commission is working with its partners to ensure we can continue to conduct elections safely and securely.

This page contains clerk communications, news releases, videos and other important information for clerks, voters, candidates and others interested in Wisconsin elections.

For information about the Wisconsin Department of Health Services response to the pandemic, visit the DHS official COVID-19 website: https://www.dhs.wisconsin.gov/covid-19. (Note: this link may redirect to a new address, but it is a safe link.)

Face Coverings On Election Day

Face coverings are highly recommended and encouraged to prevent the spread of COVID-19 in the workplace. Poll workers are essential workers for the upcoming April Election. If you are a poll worker and have concerns about wearing a mask when administering voting, We've included signage which you can use attached below.

Poll Workers Can Wear Masks and Face coverings at their polling place!

Yes, face coverings can be strongly encouraged but not required. Election officials should not ask voters to remove their face coverings, but should be looked for that impacts the civil and constitutional rights of voters. Poll workers who are not able to wear a mask or face covering for health reasons should be assigned duties that do not require face coverings.

Please read more about face coverings in our FAQ Document here:
https://elections.wi.gov/node/6985

Absentee Ballot Management

Official Absentee Ballot Application Instructions (EL-122)

Coordinated Absentee Ballot Application Certification. Service as an absentee ballot application for voters who are certified. Voters are not required to complete a separate application.

Uniform Absentee Ballot Instructions

Coordinated Uniform Absentee Voting Instructions. Voters who are Military, Overseas Voters, Please note that the ballot instructions are different than the instructions for voters who are their ballot and are returning it by mail. These instructions are provided for clerks to be handed with absentee ballots.

Drop Boxes

Clerks may also utilize drop boxes around their municipalities to allow voters to return their completed absentee ballots. Attached below are the drop boxes rules for clerks. Drop boxes must have signage that defines their and ip times and these should be called in to the local clerk's office. Clerks should, if possible, signal, drop boxes should be secure.

In-Person Absentee Voting

Voters unable to vote at their polling place on Election Day may also cast their ballots in person absentee voting. These locations must be staffed by municipal clerks and their staff. Voters must a photo proof to the clerk. Poll Absentee Voting Instructions are attached below.

Inbound and Outbound Absentee Ballot Considerations

Clerks have a lot of ballots that have borrowed dramatically in years and with a certain set of challenges. Clerks found many creative solutions to deal with the increase in absentee ballots, unprecedented times. This document will cover some of the best practices from the WEC staff and the National Association for State Election Directors (NASED).

Absentee Ballot Witnesses

Insufficient Witness Information

Clerks must take corrective actions to remedy a witness address error. If clerks are able to discern the witness's address from the ballot envelope, they are not required to contact the voter before making the correction directly to the absentee certificate envelope.

Obtaining a Witness

All absentee voters must obtain a witness signature on their absentee ballot envelope. Witnesses must be at least 18 years old. A witness can be a family member, a friend, a neighbor, an family member or a stranger. The witness can be a voter who is not in the same ward as the absentee voter, but they must be a voter in the state of Wisconsin. The witness can be a resident, a friend, a relative, or an elder that lives in a care facility. The witness can be a friend, also and a nurse clerk, a ward worker, or even someone at a drive-through.

Moving A Polling Place

Establishing A New Polling Place (Guidelines)

The most pressing guidance on day-to-day implementation of changing polling places, Polling place accessibility requirements, Voting equipment, Ballot Delivery, Voter Notification, Signage, such as, Accessibility, is expansion, accessibility requirements, please fill out the attached form on the first page and email it to elections@wi.gov.

Election Day Accessibility Checklist

Referred polling places must meet all accessibility requirements, and clerks must post signage for voters for new polling places. The document covers access requirements, Signage, Voting booths, Accessible voting equipment, Ballot drop protocol, and Ballot Delivery.

Sample News Release for Municipal Clerks Moving Polling Places due to COVID-19

Municipal clerks may release that municipal clerks can use to inform the media and public about changes to polling places.

Polling Place Sanitizing Procedures

Badger Book Cleaning Procedure

As the COVID-19 situation continues to develop, the WEC staff has been working on best practices for cleaning and sanitizing your Badger Books.

Voting Equipment Cleaning Best Practices By Vendors

Equipment cleaning practices are outlined by Clear Ballot, Dominion Voting Systems, and Election Systems and Software (ES&S).

Sanitizing Supplies

The WEC endorsed disinfecting solutions, sanitizing wipes/paper towels, masks, and additional pens and pencils for voters. Clerks should disinfect pens and pencils, and clerks should determine their local need for these supplies.

Special Voting Deputies And Quarantined Electors

The Wisconsin Elections Commission directed that municipal clerks shall send Special Voting Deputies to nursing homes, care facilities, and consulting electors in areas. The Commission directed that local election officials shall instead mail ballots to electors who are quarantined, and who wish to vote ballots that are typically delivered by Special Voting Deputies, if electors are or have an active request on file. You can read more about the decision here: https://elections.wi.gov/node/6945.

Home Delivery may shift to isolating patients, or electors who are quarantined, and nursing homes, nursing measures and documents that may assist clerks in this endeavor. You can view those documents here: https://elections.wi.gov/node/6945.

The Impeded Elections process includes voters who are quarantined, and voters who are isolated, the Voters who are quarantined, and voters who are isolated, Special Voting Deputies, and Clerks. Clerks guidelines are available under Wis. Stat. § 6.86(2) and Special Voting Deputies are in the document attached below.

Attachment	Size
Hospitalized Electors.pdf	127.39 KB

General Poll Worker Training

Please training on the new election inspector and certain procedures information. All are available online.

- Election Inspector Training
  - The Learning Center (username and password required) Training for election inspectors and chief inspectors where each section of the presentation is available.
  - WEC Agency Website for convenient or general inspectors. Certification badges are not able to be issued through this website, but it is a good for reviews. Clerks should determine their local need for training.
- Voter Registration 101, 117 Training Powerpoint
- Training Administrator Training Webinar
- Training Administrator
- Election Day Manual
- Voter Registration Guidelines on a Poll Worker Video
- Voter Registration Application Video
- Poll Book Management Webinar

COVID-19 Specific Poll Worker Training

These trainings are designed for both clerks and election inspectors, and they are for new and experienced poll workers. COVID-19 specific trainings:

- Absentee Voting Information: Absentee Ballot Voter Notice, Voter Notice Form, Voter Notice Form Instructions
- Absentee Voting Information: Voter Notice Form Instructions Video, Voter Notice Form Instructions Video with Subtitles, and Video and COVID-19 Reflection Training Webinar
- Poll Worker Training: Poll Worker Training Powerpoint, Training Presentation Video
- Poll Worker Training: Poll Worker Training Powerpoint for Elections and Polling Place Materials
- Poll Worker Training: Poll Worker Training COVID-19 Poll Worker Training Presentation

Curbside Or Drive-Through Voting

Drive-through voting and curbside voting are two separate election processes. Drive-through voting is OPTIONAL and is a method of voting that municipalities may choose to implement. You can also receive polling place materials for additional guidance. Curbside voting is MANDATORY BEGINNING

Drive-through and Outdoor Voting

- Any voter can participate
- Voters must be in their vehicle
- Voters must still be an accessible voting machine available
- Voters must

Curbside Voting

- Reserved for voters with disabilities and individuals who are immunocompromised or who have active COVID-19 symptoms
- Curbside voters do not sign the poll book and instead, poll workers will record their name and address
- You should have a procedure in place for voters to tell you they are at the polling place
- We recommend having signs in place and outside the have who signs for curbside voting here
- Voters who are immunocompromised Accessibility here: polling place

Please read more about these procedures below.

Attachment	Size
Drive Thru and Curbside Voting.pdf	151.42 KB
Curbside Voting Guidance COVID.pdf	160.8 KB

Recruiting Poll Workers

Sample News Release for Poll Worker Recruitment

Municipal clerks may sample news release that clerks are encouraged to use to get out the call for election inspectors. Please feel free to customize it with your name, your, your, mayor, village president or city administrator's name. Clerks may also want to include the link to a public sign up sheet.

Poll Worker Promotion on Myvote.WI.Gov

Wisconsin is a leading election administration state, and we have received different ways you can assist your municipality with meeting staffing qualifications and the process of becoming a poll worker.

Election Worker and Volunteer Position Posting Guidance

Looking to help out at the polls on Election Day? If so, there are several different ways you can assist your municipality with meeting staffing qualifications and the process of becoming a poll worker.

Election Inspector, Greeter, and Election Registration Officer

COVID-19 Contingency Planning And Emergency Preparedness Webinar (EA)

Date: March 26, 2020 - 1:00pm

Click on the button on the video screen to view video.

Webinar Downloading Instructions

1. Click on Webinar link above which will take you to the webinar page.
2. Click the "Download" button that appears below the video screen.

3. Choose either a Standard Definition (640 Definition 203) or High Definition (1280 Definition 406).

4. Your video file will now be saved to your computer. Depending on your browser settings it will ask you for the location to save the file or it will automatically save it to your "Downloads" folder.

COVID-19 Clerk Communications

Title	Last Updated
Circulation of Nomination Papers During COVID-19	November 5, 2020 - 10:00am
Election Day & COVID-19 Poll Worker Procedures (EA)	October 22, 2020 - 10:00am
Poll Worker Recruitment Information - COVID-19	October 22, 2020 - 10:00am
Election and Coronavirus COVID-19 Webinar ■	September 1, 2020 - 10:00am
Partisan Primary Election Update Reminder Tuesday Aug. 18: 7th Circuit Court Ruling and COVID-19 Webinar ■	September 1, 2020 - 10:00am
Sample News Release for Poll Worker Recruitment - COVID-19	August 26, 2020 - 10:00am
Public Health Procedures for In-Person Absentee Voting - COVID-19	August 26, 2020 - 10:00am
Critical Cleaning Supplies/Personal Protective Equipment (PPE) for November - COVID-19	August 26, 2020 - 10:00am
Face Coverings While Voting and Conducting Elections - COVID-19	August 26, 2020 - 10:00am
Sample News Release for Municipal Clerks Moving Polling Places Due to COVID-19	July 30, 2020 - 10:00am
Top 5 Accessibility Considerations with COVID-19	July 30, 2020 - 10:00am
Update - Critical Cleaning Supplies and Poll Workers - COVID-19	July 30, 2020 - 10:00am
Elections and Coronavirus COVID-19 (EA)	July 30, 2020 - 10:00am
Poll Worker Survey and Update on Critical Cleaning & Sanitation Supplies - COVID-19	July 30, 2020 - 10:00am
No Special Voting Deputies for the August 11, 2020 and November 3, 2020 Elections - COVID-19	July 30, 2020 - 10:00am
Update on Coronavirus Actions 5/27- COVID-19	May 27, 2020 - 10:00am
WEC Recommends Extending Deadline in Support of the Congressional District 7 Special Election - COVID-19	May 14, 2020 - 10:00am
Election Day Procedures for Municipal Clerks (Updated Webinar: Q& A Session - COVID-19)	April 24, 2020 - 10:00am
Sample News Release for City/County and Municipal Clerks Encouraging Absentee Voting Due to COVID-19	April 24, 2020 - 10:00am
FAQ: Absentee Envelope Issues and Options COVID-19	April 24, 2020 - 10:00am
UPDATED - Postmark Issues and Processing Absentee Ballots - COVID-19	April 24, 2020 - 10:00am
WEC Extended Hours Today: 10am until 7:30 pm, on April 23, 2020 - COVID-19	April 23, 2020 - 10:00am
Procedures for April 13, 2020 and Municipal Canvass of Election Results - COVID-19	April 13, 2020 - 10:00am
Municipal Canvass and Central Count Canvass Meeting Notes Templates - COVID-19 Updated	April 13, 2020 - 10:00am
Updated Guidance on Election Night Procedures - COVID-19	April 13, 2020 - 10:00am
Absentee Ballot Postmark Considerations - COVID-19	April 13, 2020 - 10:00am
Updated Absentee Witness Signature Requirement Guidance - COVID-19	April 13, 2020 - 10:00am
UPDATE! - Wisconsin Supreme Court Extends Absentee Ballot Due to Continue until U.S. Supreme Court Acts Medical Facilities, Telling and Reporting Results Bill Prohibited Until April 13 - COVID-19	April 13, 2020 - 10:00am
Sen. Ron Johnson - COVID-19	April 13, 2020 - 10:00am
Webinar for County and Municipal Clerks: Federal Court Decision Updates - COVID-19	April 13, 2020 - 10:00am
Updates to Federal Court Order Affecting Spring Election - Witness Signature Required, No Notary or Photo ID Required April 13, 2020 - COVID-19	April 13, 2020 - 10:00am
Federal Court Order Affects Spring Election - Absentee Ballot Request and Receipt Deadlines Extended - COVID-19	April 13, 2020 - 10:00am
Election Day Supplies - COVID-19	April 13, 2020 - 10:00am
Polling Place Procedures COVID-19(Clerks - (EA)	April 13, 2020 - 10:00am
Election Day Procedures Q& A Sessions COVID-19	April 13, 2020 - 10:00am
Absentee Witness Signature Requirement Guidance COVID-19	April 13, 2020 - 10:00am
Voting Equipment Cleaning Best Practices for COVID-19	April 13, 2020 - 10:00am
Consolidating Polling Places and Use of Schools - COVID-19	April 13, 2020 - 10:00am
Absentee Ballot Return Options - COVID-19	April 13, 2020 - 10:00am
Absentee Ballot Processing - COVID-19	April 13, 2020 - 10:00am
Public Health Guidance for Elections - COVID-19	April 13, 2020 - 10:00am
COVID-19 Contingency Planning and Emergency Preparedness Webinar (EA)	March 26, 2020 - 10:00am
Election Official Training Resources COVID-19	March 26, 2020 - 10:00am
Guidance for Individuals Conducted Election COVID-19	March 26, 2020 - 10:00am
Emergency Order #12 Does Not Eliminate In-Person Absentee Voting - COVID-19	March 26, 2020 - 10:00am
COVID-19 FAQs and Updates - Online Voter Registration, Absentee Voting, Envelopes, Sanitizer and Poll Worker Recruitment	March 26, 2020 - 10:00am
FAQ: Special Voting Deputies and Options for COVID-19 ■	March 26, 2020 - 10:00am
UPDATE! - Federal Court Decision Orders Continuation of Ballot Registration Through March 30, 2020 - COVID-19	March 26, 2020 - 10:00am
Poll Workers - Information Needed - COVID-19	March 26, 2020 - 10:00am
Critical Cleaning & Sanitation Supplies - Information Needed COVID-19	March 26, 2020 - 10:00am
Absentee Envelope Order Status and Delivery Details COVID-19	March 26, 2020 - 10:00am
Social Media and Website Resources about Absentee Voting during COVID-19 Pandemic	March 26, 2020 - 10:00am
COVID-19 Contingency Planning and Emergency Preparedness webinar	March 26, 2020 - 10:00am
UPDATED! COVID-19 Absentee Ballot Request Deadline and Instructions or Procedures Changes to Cure Facility, Absentee Voting, and Polling Place Relocation	March 26, 2020 - 10:00am
COVID-19 Contingency Planning Webinar Added	March 26, 2020 - 10:00am
Webinar Handout: Contingency Planning and Emergency Preparedness: Responding to COVID-19	March 26, 2020 - 10:00am
Supplemental FAQ on Absentee Voting and Coronavirus - COVID-19	March 26, 2020 - 10:00am
Important Recommendations for Prevention of COVID-19 in Long Term Care Facilities and Assisted Living Facilities	March 26, 2020 - 10:00am
Guidance Regarding Election Procedures and COVID-19 to Public Health Emergency	March 26, 2020 - 10:00am

Fact check: Trump falsely claims that votes shouldn't be counted after Election Day

By Barbara Sprunt (NPR)
Nov. 2, 2020 1:43 p.m.

President Trump told supporters during a rally in Dubuque, Iowa that the results of the presidential race should be known on Election Night.
Mario Tama / Getty Images

President Trump is doubling down on claims that the results of the presidential election must be known on election night, falsely asserting "that's the way it's been and that's the way it should be."

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Speaking to reporters after arriving in North Carolina on Sunday evening during a campaign swing, Trump repeatedly called a recent Supreme Court decision on absentee ballots "terrible." The decision allows election officials in Pennsylvania to count absentee ballots received as late as Friday as long as they are postmarked by Nov. 3.

Related: OPB's 2020 election coverage, ballot guide and results

The president denied that he would try to declare victory prematurely.

But then he still raised doubts about counting votes beyond Election Day, even though in any election, it typically takes longer to count absentee ballots that by law count just the same as votes cast in person. More of those ballots are being cast this year because of the pandemic.

"I think it's a terrible thing when people or states are allowed to tabulate ballots for a long period of time after the election is over," Trump said. "I think it's terrible when we can't know the results of an election the night of the election in a modern-day age of computers."

Trump also suggested that voters should have mailed in their ballots well before the deadlines set by states, saying, "If people wanted to get their ballots in, they should have gotten their ballots in long before [Election Day]. They could have put their ballots in a month ago."

Trump has repeatedly made unfounded claims about the integrity of absentee voting and even told supporters on Sunday to "be careful" with mail-in ballots.

It isn't the first time Trump has said the winner of the contest should be known on Nov. 3. Earlier Sunday, during a campaign stop in Dubuque, Iowa, Trump bemoaned the idea of having to wait for results.

"We should know the result of the election on Nov. 3, the evening of Nov. 3. That's the way it's been and that's the way it should be," he said to cheers, repeating a sentiment he tweeted out on Friday.

Donald J. Trump
@realDonaldTrump

The Election should end on November 3rd., not weeks later!

4:48 PM · Oct 30, 2020

320.1K 87.8K people are Tweeting about this

Trump campaign senior adviser Jason Miller reiterated the argument Sunday on ABC's This Week, adding an unfounded accusation that Democrats would do something nefarious.

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"If you speak with many smart Democrats, they believe President Trump will be ahead on election night, probably getting 280 [electoral votes], somewhere in that range, and then they're going to try to steal it back after the election," Miller said.

But that's not the way voting in America works.

For starters, no state ever reports its final results on election night.

Typically, news outlets are able to declare winners the night of the election using partial counts and exit polls, which allow them to see how much of the vote is going to which candidate and calculate whether a candidate still has a path forward to win.

Each state has its own laws for when it needs to certify the election results, and none falls on Election Day.

Delaware is the only state that will certify its results within the same week as Election Day. Most states will certify their results in the last two weeks of November, with some states even extending until the second week of December.

Additionally, polls don't even close in California, Oregon, Idaho and Washington until 11 p.m. ET, and Hawaii's polls don't close until midnight on the East Coast.

As NPR's Domenico Montanaro noted, The Associated Press didn't call the 2016 presidential race until 2:30 a.m. ET the day after Election Day, and at that time, Trump was still leading in the popular vote. Hillary Clinton went on to win the popular vote by about 3 million.

Another factor to consider in the counting calculus is the surge in early voting.

Americans are breaking early-voting records, with more than 93 million votes already cast. Of that, 59 million mail-in ballots have been returned, with 32 million ballots still waiting to be mailed back, according to the U.S. Elections Project.

Election experts predicted that there would be a large increase in mail-in ballots this cycle because of concerns over the coronavirus pandemic. The increase in these absentee ballots may mean the count will take longer, particularly because election workers typically need to process each ballot by hand.

While some states, including Florida and Arizona, are able to begin processing mail-in ballots well ahead of Nov. 3, many states don't allow for that, which results in a slowing of the vote count.

Pennsylvania Secretary of State Kathy Boockvar told NBC's Meet the Press that she anticipates the count will go well beyond Tuesday.

"I expect that the overwhelming majority of ballots in Pennsylvania, that's mail-in and absentee ballots, as well as in-person ballots, will be counted within a matter of days," Boockvar said.

"The counties are staffing up, have a ton of equipment, best practices in place, and are planning, for the most part, to count 24/7 until it's done."

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Tags: Politics, Election 2020

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Debunking Trump Tweets: Biden's 143K Vote 'Dump' in Wisconsin

Voting spikes did occur in Wisconsin and other states as ballots were being counted, but for ordinary and predictable reasons.

DAVID MIKKELSON

PUBLISHED 18 NOVEMBER 2020

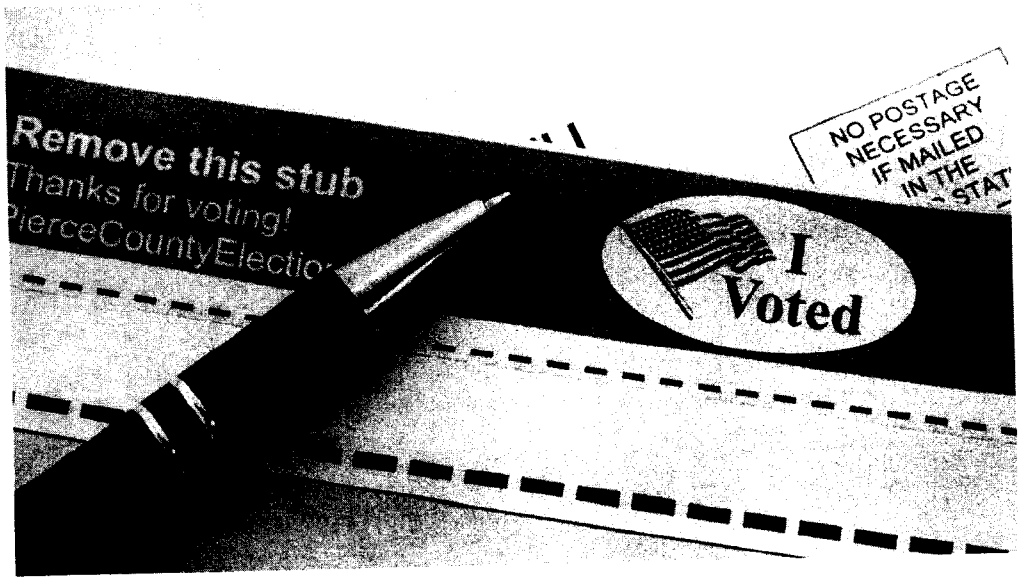

Image via Getty Images

EXHIBIT K

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Claim

Joe Biden received a fraudulent 'dump' of 143K ballots in Wisconsin in the early morning hours after Election Day 2020.

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False

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Origin

In the continuous stream of tweets alleging election fraud issued from the

Twitter account of President Donald Trump in mid-November 2020, one tweet posted in the evening of Nov. 18 claimed that victorious Democratic presidential candidate had received an "unbelievable" "dump of 143,379 votes at 3:42AM, when they learned he was losing badly":

Donald J. Trump
@realDonaldTrump

Look at this in Wisconsin! A day AFTER the election, Biden receives a dump of 143,379 votes at 3:42AM, when they learned he was losing badly. This is unbelievable!

7:22 PM · Nov 18, 2020

369.9K 192K people are Tweeting about this

It is true that Biden picked up about 149,000 votes in Wisconsin around 3:30 AM in the early morning hours following the election, thereby erasing a lead Trump had held in the in-progress vote tally up to that point:

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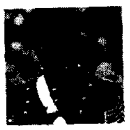
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FiveThirtyEight
@FiveThirtyEight

Parts of Brown and Kenosha counties still have to report votes, but as things stand, Biden leads by 0.22 percentage points statewide in Wisconsin, 49.25 percent to 49.03 percent, according to ABC News. 53eig.ht/386INQh

5:57 AM · Nov 4, 2020

582 150 people are Tweeting about this

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However, no fraudulent activity of furtive "dump" of ballots was behind this phenomenon. By law, Wisconsin was not allowed to begin tabulating absentee ballots (no matter how early they were sent in) until 7:00 AM on

Election Day. Biden's vote count took a big jump (while Trump's increased much more modestly) around the time in question because that was when Milwaukee County finished and reported the tabulation of its approximately 170,000 absentee ballots. That occurrence was doubly favorable for Biden, both because Democrats were **far more likely** to vote via absentee ballots, and because Milwaukee County is the most populous county in Wisconsin and is an overwhelmingly Democratic area:

County	Margin	2016 margin	Est. votes reported	▼ Total votes
Milwaukee	**Biden +40**	D+36.9	>96%	458,971
Dane	**Biden +53**	D+47.3	>96%	344,791

The Milwaukee Journal Sentinel **reported** on the bulge in Biden votes, and the reasons behind it, at the time it took place:

> Biden overtook Trump in the early morning hours when Milwaukee reported its roughly 170,000 absentee votes, which were overwhelmingly Democratic. Then early morning returns from Green Bay and Kenosha on Wednesday added to his slender lead.
>
> Trump had nurtured a lead of more than 100,000 votes before those returns came in.

By the morning after the election, even Trump had recognized (if not accepted) the phenomenon of mail-in ballots in most states being heavily Democratic, in large part because he discouraged his supporters from using that method of voting:

> **Donald J. Trump**
> @realDonaldTrump
>
> How come every time they count Mail-In ballot dumps they are so devastating in their percentage and power of destruction?
>
> 9:17 AM · Nov 4, 2020
>
> 548.6K 194.1K people are Tweeting about this

In fact, more than two months before the election, NPR had **observed** that "President Trump's campaign to discourage the use of mail-in voting this fall is raising concerns among Republicans, particularly in the key swing state of Wisconsin, that his efforts could hinder their party on election night."

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As of this writing, Biden has won Wisconsin (and its 10 electoral votes) by just over 20,000 votes out of more than 3.2M ballots cast:

Candidates	Vote %	Vote count
Joe Biden Democratic Party	49.6%	1,630,673
Donald Trump Republican Party	48.9%	1,610,065
Jo Jorgensen Libertarian Party	1.2%	38,491
Brian Carroll American Solidarity Party	0.2%	5,258
Don Blankenship Constitution Party	0.2%	5,144

PUBLISHED 18 NOVEMBER 2020

BY DAVID MIKKELSON

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At the Polling Place, an Election Observer must:

- ✓ Notify the chief election inspector she/he is at the polling place to observe
- ✓ Follow the directives of the chief election inspector or designee
- ✓ Provide photo identification
- ✓ Complete and sign an election observer log
- ✓ Wear an Election Observer tag or badge
- ✓ **Must** wear a face covering

Remember:

- The chief election inspector is in charge of the polling place. All inquiries should be made of the chief election inspector or designee
- Challenges to voters must be filed with the chief election inspector or designee. Follow the process outlined by Wisconsin Administrative Rule EL Chapter 9
- Candidates are allowed in the polling place only after it has closed at 8:00 p.m.
- Polling places in Wisconsin are open from 7:00 a.m. until 8:00 p.m.

Viewing documents

Observers are not entitled to view registration forms, proof of residence documents or the observer log on Election Day. Observers may ask the chief inspector or designee to view other documents, such as the poll list, that are available when doing so will not delay or disrupt the process, but this may not be possible when polls are busy, and they may not view confidential information. The chief inspector or designee has sole discretion to determine whether such documents may be viewed or photographed during voting hours.

Election Observers may not:

- Engage in electioneering*
- Video and still cameras are not allowed
- Handle official election documents
- Have conversations about candidates, parties or ballot questions
- Make calls / use cell phones for voice calls inside the polling area (texting or other silent usage is acceptable if it is not disruptive)
- Wear clothing or buttons related to candidates, parties or referenda that is intended to influence the election

- Interact with voters, except when requested
- View confidential information on the poll list.
- Enter vehicles of curbside voters

* *Electioneering is defined in Wisconsin law as any activity which is intended to influence voting at an Election in Wisconsin.*

Communications Media:

Observers from communications media organizations shall identify themselves and the organization they represent to the chief inspector upon arriving at the polling place. The inspector shall record the information on the EL-104, Inspectors Statement. Video and still cameras are allowed if their use is not disruptive or show how an elector has voted.

Capacity and COVID-19 Issues:

All observers are required to wear face coverings while inside the polling place, in-person absentee location or central count facility.

Due to polling place space constraints a nd public health procedures needed to address COVID-19 concerns the Chief Election Inspector may need to limit the number of observers in the voting areas at any specific time.

A rotation or schedule may be established if there are more observers than the voting area or central count location can accommodate.

EXHIBIT L

Election Observation at Other Locations:

Municipal Clerk's Office

Observers may be present during absentee voting in the clerk's office (if it's in a public location). The municipal clerk is in charge, and observers shall follow the clerk's directives. Video and still cameras are not allowed.

Residential Care Facilities & Nursing Homes

Only observers appointed by the two major political parties may be present during absentee voting in residential care facilities and nursing homes. The special voting deputies are in charge, and observers shall follow the deputies' directives. Video and still cameras are not allowed. **Please note this program is suspended for the 2020 November General Election.**

Central Count

Observers may be present during absentee voting in a centralized vote counting location. The municipal clerk is in charge, and observers shall follow the clerk's directives. Video and still cameras are allowed if their use is not disruptive or show how an elector has voted.

Recounts

Observers may be present during election recounts, including candidates and their counsel. The board of canvassers is in charge, and observers shall follow the board's directives. Video and still cameras are allowed if their use is not disruptive or show how an elector has voted.

Contact Information

Wisconsin Elections Commission

TELEPHONE/FAX

WEC Help Desk: 608-261-2028
Fax: 608-267-0500

STREET ADDRESS

212 East Washington Avenue, Third Floor
Madison, Wisconsin 53703

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Wisconsin Elections Commission
Post Office Box 7984
Madison, Wisconsin 53707-7984

INTERNET ADDRESS

http://elections.wi.gov

EMAIL ADDRESS

elections@wi.gov

Wisconsin Election Observers

Rules-at-a-Glance

The State of Wisconsin permits individuals to observe voting and the election administration process at polling places on Election Day. It also permits observers to view the absentee voting process in the municipal clerk's office, central count processes, recounts, and voting in residential care facilities and nursing homes.

These **Rules-at-a-Glance** outline the Wisconsin Elections Commission's interpretation of statutes governing the conduct of election observers.

October 2020

ELECTION RECOUNT PROCEDURES

November 2020

Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984

Phone: (608) 261-2028
FAX: (608) 267-0500
Email: elections@wi.gov
Web: http://elections.wi.gov

EXHIBIT M

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Introduction

Elections are often decided by a few votes. In many cases they are decided by one or two votes out of the several hundred or even several thousand votes that are cast. An election may even end in a tie vote. These circumstances encourage a candidate, typically the one who loses the election, to have all the ballots counted again to assure all legal votes are counted properly, any illegal votes are not counted, and the proper procedures for conducting the election were followed by the election officials.

The process of counting the ballots again is known as a recount. There is no automatic recount. The procedures for requesting and conducting a recount are spelled out in the election laws. A recount is the exclusive remedy to test in court the right of a candidate to hold office based on the number of votes cast at an election.

This manual explains the statutory requirements for requesting a recount, attempts to explain ambiguity in those statutes, expands on the statutory requirements with recommended procedures for conducting a recount, and contains sample forms for use during the recount. Additionally, the Appendix to this manual includes a Commission staff memorandum on the construction of Wisconsin's election statutes which in some cases can influence the advice rendered by Commission staff to board of canvassers conducting a recount. The advice is rendered on a case-by-case basis and is intended to "give effect to the will of the electors" when making decisions during a recount. This memorandum also outlines the discretion board of canvassers may exercise when making decisions during a recount and provides analysis of situations where the board of canvassers considers if an error in the election process was made by a voter or an election official and how that difference impacts the tallying of votes.

This information is prepared by the Wisconsin Elections Commission ("WEC" or "Commission") pursuant to the requirements of Wis. Stat. § 9.01(10). If you have any questions about the recount process, please contact Commission staff through any of the methods below:

Phone: 608-261-2028
Toll Free: 866-VOTE-WIS
Fax: 608-267-0500
Email: elections@wi.gov

Procedures for Requesting a Recount

Who May Request a Recount?

Any individual who voted at a referendum election may request a recount of the referendum results. Only an aggrieved candidate, defined as a candidate for an office whose total votes were within 1% of the winner's vote total when at least 4,000 votes were cast or within 40 votes of the winner's total if fewer than 4,000 votes were cast may request a recount of results for an office. Wis. Stat. § 9.01(1)(a)1. There is no automatic recount, even if the unofficial results are extremely close.

How is a Recount Requested?

A recount is requested by filing a sworn petition with the filing officer along with the filing fee, if required. For the office of the president, a petition for recount must be filed not earlier than the completion of the canvass and not later than 5 p.m. on the 1st business day following the day on which the WEC receives the last county board of canvassers statement. For all other offices, a petition for recount must be filed not earlier than the completion of the canvass and not later than 5 p.m. on the 3rd business day following the last meeting day of the board of canvassers determining the result for the office/referendum. Wis. Stat. § 9.01(1)(a)1.

What is a Recount Petition?

A recount petition is a sworn statement requesting that the votes at an election be counted again and setting out the reasons why the ballots should be recounted. A recount petition must be filed with the filing officer along with any applicable fee.

The recount petition must state the following information:

1. The petitioner must specifically request a recount or otherwise clearly indicate they desire a recount of particular election results. See Wis. Stat. § 9.01(1)(a)1.

2. The petitioner must indicate he or she was an aggrieved candidate for the office in question Wis. Stat. § 9.01(1)(a)5. If the results of a referendum election are at issue, the petition must state that the petitioner voted on the referendum question. Wis. Stat. § 9.01(1)(a)2.a.

3. The basis for requesting the recount. This can consist of a general statement that the petitioner believes that a mistake or fraud was committed in a specified ward or municipality in the counting and return of the votes cast for the office; or more specific grounds, such as a particular defect, irregularity, or illegality in the conduct of the election, may be listed in the petition. The petitioner shall state if this information is based on personal knowledge of the petitioner or if the petitioner believes the information to be true based on information received from other sources. Wis. Stat. § 9.01(1)(a)2.b.

4. The ward or wards to be recounted.[1] If a municipality consists of only one ward, the petition

[1] If a candidate petitions for a recount in part, but not all, of the wards or municipalities within a jurisdiction or district, the opposing candidate may file a petition for a recount in any or all of the remaining wards or municipalities. The latter petition must be filed not later than 5:00 p.m. two days after the board of canvassers completes the first recount. The board of canvassers convenes at 9:00 a.m. on the next business day to count the remaining wards or municipalities. This right also applies to a referendum election. Any elector who voted at the election may petition to recount the remaining wards or municipalities in a referendum election. Wis. Stat. § 9.01(4).

need only list the municipality in which the recount is desired. If all wards in a municipality, county or district are to be recounted, the petition may list the municipality, county or district without specifying each ward to be recounted. The petitioner may also state "all wards" if the petitioner wants the entire election recounted. If no ward specifications are indicated, the filing officer will assume that all wards are included. Wis. Stat. § 9.01(1)(a)3.

5. A verification signed under oath before a person authorized to administer oaths. The verification must state that the matters contained in the petition are known to the petitioner to be true except for allegations stated on information and belief, which the individual believes to be true. See Sample Recount Petition (EL-186 or EL-186R).

If a recount petition is not filed in the proper form, or not accompanied by the filing fee (if required) by the filing deadline, the petitioner loses his or her right to a recount of the election. See Wis. Stat. § 9.01(1)(a)2 & (ag)3. A sample recount petition (EL-186 or EL-186R) is available in the Appendix.

After filing the recount petition, the petitioner may amend the petition. This may be done to include information discovered as a result of the facts gathered and determined by the board of canvassers during the recount. If the petitioner wants to amend his or her petition, the petitioner must file a motion to amend the petition with the board of canvassers as soon as possible after the petitioner discovers, or should have reasonably discovered, the new information, and show that the petitioner was unable to include the information in the original petition. Wis. Stat. § 9.01(1)(a)4.

When is a Filing Fee Required?

Determining if a filing fee is required depends on the total votes cast for the office[2] and the difference between the total votes cast for the "leading candidate" and the total votes cast for the petitioner. The "leading candidate" is typically the candidate who won the election. However, in an election where more than one candidate is elected to the same office, or in a primary election when two or more candidates are nominated, the "leading candidate" is the person who received the fewest votes, but is still elected or nominated; not the candidate with the most votes. When more than one candidate is elected or nominated, the number and percentage of votes cast is calculated by first dividing the total votes cast by the number of candidates elected or advancing. Wis. Stat. § 9.01(1)(ag)5. Please see "Recount Fee Scenarios" in the Appendix for an example of how to determine if a filing fee is required.

If 4,000 or fewer votes are cast:
No fee is required if the difference in the total votes cast between the leading candidate and those cast for the petitioner or between the affirmative and negative votes cast at a referendum is less than 10. If the difference is at least 10 votes, a filing fee is required.

If more than 4,000 votes are cast:
No fee is required if the difference between the leading candidate and those cast for the petitioner or between the affirmative and negative votes cast at a referendum is 0.25% or less. If the difference is greater than 0.25%, a filing fee is required.

When a filing fee is required, the cost of the recount should be estimated by the filing officer

[2] In an election in which more than one office of the same type is to be filled from the same territory, the total votes cast for the office is determined by dividing the total number of votes cast for the office by the number of offices to be filled. The difference between the total votes cast for the leading candidate and the petitioner is divided by the total votes cast for the office to calculate the percentage difference to determine when a fee is required. Wis. Stat. § 9.01(1)(ag)5.

including the actual cost incurred by the Elections Commission to provide services for performing the recount, and pre-paid by the petitioner in cash or in another form of payment acceptable to the filing officer at the time of filing. Wis. Stat. § 9.01(1)(ag)2 and 3.

If the recount results in the petitioner being elected or a reversal of the outcome of a referendum or the recount results in a difference in the votes cast that is at or above the threshhold for paying the fee, the filing fee shall be refunded to the petitioner within 45 days after the board of canvassers makes its determination in the recount. If the results of the recount do not change the outcome of the election, or the recount results in a difference in the votes cast that is below the threshhold for paying the fee, the petitioner shall pay any balance owing toward the actual cost of the recount within 45 days after the filing officer provides the petitioner with a written statement of the amount due. Wis. Stat. § 9.01(1)(ag)3m.

Campaign Finance Note:

Per Wis. Stat. § 11.1104(9), "Contributions used to pay legal fees and other expenses incurred as a result of a recount under s. 9.01" are not subject to contribution limits. These contributions may be collected from the time of the initial recount petition has been filed until the recount process ends. Legislative campaign committees and political parties are not subject to contribution limits, and can give unlimited amounts to candidate committees however reporting requirements still apply. For information regarding the campaign finance laws, please contact the Wisconsin Ethics Commission (http://ethics.wi.gov/content/contact-us).

Where Does the Petitioner File the Recount Petition?

The petitioner files the recount petition with the filing officer with whom nomination papers or a declaration of candidacy are filed for that office. The filing officer for any federal or state office or referendum is the Wisconsin Elections Commission. The filing officer for any county office or referendum is the county clerk. The filing officer for a municipal office or referendum is the municipal clerk or the board of election commissioners. The filing officer for a school board office or referendum is the school district clerk. Wis. Stat. §§ 8.10(6)(d), 9.01(1)(ar)1.

When Must the Petition be Filed?

If a municipal or county board of canvassers determines the election results, the time frame for filing is not earlier than the completion of the canvass for the election and not later than 5:00 p.m. on the third business day after the last meeting day of the board of canvassers which determines the election or referendum results. Wis. Stat. § 9.01(1)(a)1.

If the Wisconsin Elections Commission Chairperson or designee determines the election or referendum result, the petition must be filed no earlier than the last meeting day of the last county board of canvassers to make a statement in the election or referendum and no later than 5:00 p.m. on the third business day after the Wisconsin Elections Commission receives the last statement from the county board of canvassers. Wis. Stat. § 9.01(1)(a)1.

For an election for President of the United States, the recount petition deadline is the 5:00 p.m. on the first business day after the Wisconsin Elections Commission receives the last statement from a county board of canvassers for the election.

What Happens When the Petition is Properly Filed?

Upon receipt of a valid recount petition, the filing officer shall prepare a public notice of the recount (see Appendix for an example) pursuant to Wis. Stat. § 19.84 describing when and where the recount will be held. The filing officer shall send a copy of the notice to the board of canvassers and deliver a copy of the petition and public notice to all candidates whose names were listed on the ballot for the same office. The Wisconsin Elections Commission recommends that the filing officer also deliver the notice to any registered write-in candidates. In a partisan primary, candidates from all parties for the same office must be notified by the filing officer. A candidate or agent designated by the candidate may personally accept delivery of the copy of the petition. Upon delivery, the candidate or agent shall be required to sign a receipt (see Appendix). If a candidate or agent does not personally accept delivery, the copies shall be given promptly to the sheriff. The sheriff shall promptly serve the copies on the candidates without fee. Wis. Stat. § 9.01(2).

The petitioner and other candidates are encouraged to obtain legal counsel to represent them in any recount proceedings. Wis. Stat. § 9.01(3). The board of canvassers should also make arrangements to obtain legal advice as needed during the recount proceedings. The Commission staff may also be made available via phone during the recount upon request.

Please note that the Wisconsin Elections Commission should be notified of all recounts. In the event of a recount for state or federal office involving more than one county, the boards of canvassers shall consult with the Commission staff in order to ensure that uniform procedures are used to the extent practicable. The Commission staff will make arrangements for a teleconference through the respective county clerks prior to beginning the recount. Candidates will be invited to participate and the teleconference will be open to the public. Wis. Stat. § 9.01(10).

Procedures for Conducting the Recount

When Does the Recount Begin?

The recount begins no earlier than 9 a.m. on the day following delivery of notice to all candidates and no later than 9 a.m. on the day following the last day for filing the recount petition. Wis. Stat. § 9.01(1)(ar)3. In a recount ordered by the Wisconsin Elections Commission, the board of canvassers shall convene no later than 9 a.m. on the third day following receipt of the order by the county clerk. Wis. Stat. § 9.01(1)(b). If the following morning is a Saturday (or holiday) the Wisconsin Elections Commission recommends that the board of canvassers begin the recount on the Saturday (or holiday).

Who Conducts the Recount?

The board of canvassers that determined the original election result conducts the recount, except for state and federal elections. For state and federal elections, the county boards of canvassers for the counties in which the contested votes are cast conduct the recount. The Wisconsin Elections Commission recommends that the board of canvassers be composed of the same people who initially canvassed the election results. However, in the event one of the original members is unavailable when the recount is scheduled to begin, other qualified individuals may be appointed to fill the temporary vacancy. Wis. Stat. §§ 7.53(1)(b), (2)(a), 7.60(2). If a member of the board of canvassers is unavailable for the recount, the clerk should be notified immediately and a list of qualified replacements composed before the recount begins. The minutes of the recount should reflect any change in canvass board members and the reason for the substitution.

The board of canvassers may hire tabulators who work at the canvass board's direction and who assist in administering the recount. Tabulators may assist the board of canvassers in conducting the recount, but only members of the board of canvassers are competent to make any determination as to the validity of any vote tabulated. Wis. Stat. § 9.01(5)(b). The Wisconsin Elections Commission recommends that where possible, the election inspectors who worked the polls on Election Day serve as tabulators.

Who May Attend the Recount?

Any person may attend the recount. This includes the candidates, their representatives or legal counsel, media representatives, and any other interested persons. Wis. Stat. § 9.01(3). If there are multiple representatives from a single campaign, a single representative shall be identified as the designated primary representative to the board of canvassers. Secondary representatives may ask clarifying questions of recount staff and request that ballots be set aside for further review by the board of canvassers, but any challenges or objections for the record must be made by the designated primary representative. The recount statute does not specifically dictate how many individuals must be allowed to observe a recount, but it is clear that the ballot and materials must be available for candidates and their representatives to view and offer any objections to a ballot being counted. Wis. Stat. § 9.01(1)(b)11.

The canvass board members and the tabulators are the only persons who may handle and touch the ballots and other election materials. The board of canvassers must, however, allow the candidates and their representatives and/or legal counsel to view and identify the election materials. Wis. Stat. § 9.01(1)(b)11. Public health guidance should be considered by the board of canvassers when setting up the recount location and observation areas. Social distancing, the use of facecoverings and hand hygiene should all be clearly communicated to individuals that will be attending the recount in person to ensure the safety of everyone involved in recount. (See Public Health Guidance starting on Page 16 of the Appendix to this manual). Any challenges to the procedure established by the board of canvassers regarding observation should be decided by the board and documented in the minutes. The optional use of a live video feed to provide greater transparency and minimize the number of individuals observing in person should also be considered.

The board of canvassers shall exercise reasonable control over the conduct of the recount to assure that the canvassers and tabulators do not experience interference from any person observing the recount. All persons who are not under the supervision of the board of canvassers are considered observers and are subject to the observer guidelines established by the Wisconsin Elections Commission in this manual and the board of canvassers. To clearly identify candidate representatives, all observers shall wear badges or nametags identifying themselves and their role (candidate, media, etc.). This procedure allows individuals assisting the board of canvassers to quickly identify candidate representatives who are provided the ability to view and identify ballots and election materials for purposes of raising an objection to the counting of a ballot with the board of canvassers.

The board of canvassers may establish marked observer areas[3] and ask that observers remain within those areas unless otherwise permitted by the board of canvassers. If there is not sufficient room for all observers to view the election materials, preference shall be given to candidates or

[3] Unlike observation areas in the polling place, recount observations areas are not required to be placed at any specific distance as long as the candidates and their representatives can view and identify the election materials and the observers are not disruptive to the recount process.

their representatives. The use of video or still cameras inside the recount room is permitted unless it is disruptive or interferes with the recount. The board of canvassers may enforce reasonable restrictions on items brought into the recount room such as marking devices, food, or drink.

If any observer engages in disruptive behavior that in the opinion of the board of canvassers threatens the orderly conduct of the recount, the board of canvassers shall issue a warning and if the observer does not cease the offending conduct, order the observer's removal.

Recount Preparations

Unless a court orders otherwise, the board of canvassers may decide to either hand-count or use voting equipment to tabulate the ballots. The board of canvassers may also choose to hand-count certain wards, while using voting equipment to tabulate other wards. Wis. Stat. § 5.90(1). If voting equipment is used, it should be programmed to read and tally only the results for the contest to be recounted. Prior to the recount, the filing officer should consult individually with board of canvass members to inquire how each prefers the ballots be tabulated. Based on that informal polling, the filing officer can prepare for the recount. The formal decision on the tabulation method to be used should be made publicly when the recount begins so as to provide an opportunity for candidates or their representatives to object.

The filing officer administering the recount should ensure that all the supplies and materials needed for the recount have been acquired prior to the start of the recount. The filing officer should also acquire the necessary original election materials for each reporting unit to be recounted. A sample checklist of materials and supplies is available in the Appendix.

If the necessary materials are not on hand when the recount is scheduled to begin, the Wisconsin Elections Commission recommends that the board of canvassers convene by the deadline set by statute, document what materials are missing, what steps have been taken to procure them for the record, and adjourn until the materials are available.[4] In the event that the board of canvassers has the required materials for some, but not all the wards to be recounted at the time they are scheduled to begin the recount, the board of canvassers may begin the recount with those wards for which it has the required materials while the missing materials are being obtained.

The Wisconsin Elections Commission recommends that the board of canvassers note in the minutes if proper notice of the recount was given to all candidates. Also, the board of canvassers should note if the recount was properly noticed as a public meeting under Wis. Stat. § 19.84.

The filing officer may choose to conduct an administrative review of the recount materials prior to the recount commencing to identify possible errors or anomalies (e.g., reconciliation of poll books). If any such review was conducted by the filing officer prior to the recount, the filing officer shall publicly present a full report to the board of canvassers of any errors or anomalies identified as well as any corrective action taken. The board of canvassers may choose to adopt or reverse any decision made by the filing officer during the administrative pre-recount review.

What Does the Board of Canvassers Do?

The duty of the board of canvassers is to recount the votes cast for the office in question and to correct the errors, if any, that were made at the original determination of the election results. If necessary, the board of canvassers may also issue subpoenas to compel witnesses or documents for

[4] The Board of Canvassers may not adjourn for more than one day at a time. Wis. Stat. § 9.01(1)(ar)3.

the recount. The board of canvassers is also required to make a complete written record of the recount. Wis. Stat. § 9.01(5)(a).

Each party to a recount must be given an opportunity to object and provide offers of evidence on:

- all objections to the recount itself,
- the composition of the board of canvassers,
- the procedures followed,
- any ballot cast at the election, and
- any other issues presented to the board of canvassers during the recount.

Wis. Stat. § 9.01(5)(a).

Any objections or offers of evidence, the canvass board's decisions, and any findings of fact regarding any irregularities discovered during the recount, must be recorded in the written minutes of the recount proceedings. While a court reporter is not required, an audio recorder is recommended to ensure detailed minutes are kept. A sample format for the recount minutes can be found in the Appendix.

How Does the Board Conduct the Recount?

The board of canvassers conducts the recount by following the procedures in Wis. Stat. §§ 5.90; 7.50; 7.51; & 9.01(1)(b). Please see the Appendix for checklists specific to the use of each type of tabulation method and the Commission staff memorandum on the construction of Wisconsin's election statutes and the discretion a board of canvassers may exercise when making decisions during the recount. These procedures are conducted separately for each municipality and reporting unit within the municipality. The board of canvassers shall announce each reporting unit before beginning the recount process for that reporting unit. Please note that the board of canvassers must keep complete minutes of each step completed, any objections made, any evidence introduced, any findings of fact made, and any decisions of the board of canvassers including the reasoning behind the decision.

1. Reconcile Poll Lists – Wis. Stat. § 9.01(1)(b)1

   The board reconciles the two poll lists and any supplemental lists to confirm the lists record the same voters, the same total number of electors who voted in the ward or municipality, and that the same supplemental information is noted. The canvassers determine from the poll lists the total number of voters, the number of absentee votes recorded, and identify any irregularities appearing on these lists. The canvassers note in the minutes the total number of persons who voted, how many absentee votes were recorded, and any irregularities found on the poll lists.

2. Review Absentee Ballots and Materials – Wis. Stat. § 9.01(1)(b)2

❑ *Determine Number of Absentee Voters*

The Wisconsin Elections Commission recommends that the board of canvassers determines the number of absentee voters by reviewing the poll lists, the absentee ballot certificate envelopes, the Inspectors' Statement (EL-104), and the absentee ballot log (EL-124).

❑ *Examine Written Absentee Applications*

The board of canvassers then reviews the written applications for absentee ballots and the list of absentee voters maintained by the municipal clerk. There should be a written application for each absentee ballot envelope except those issued in-person in the clerk's office. In the case of indefinitely confined, a designation on a list prepared by the municipal clerk is sufficient if it indicates that an absentee ballot was delivered to and returned by an absentee voter.

Do not reject an absentee ballot if there is no separate written application.[5] Because of the variety of reasons that the board of canvassers may not be able to locate a specific written application, and the likelihood that a voter may be improperly disenfranchised, the board of canvassers should not reject an absentee ballot due to the lack of a written application. The board of canvassers records in the minutes the number of written absentee ballot applications on file as well as an explanation of any discrepancy, but any request to reject a ballot on this basis should be determined by a reviewing court rather than the board of canvassers.

- ❑ *Review Rejected Absentee Ballots*

The board of canvassers examines the rejected absentee ballot certificate envelopes contained in the brown carrier envelope (EL-102). Rejected absentee ballot certificate envelopes are identified by the election inspectors on election night and marked "rejected." The reason for the rejection should be noted on the Inspectors' Statement (EL-104).

The board of canvassers should make their own determination for each rejected absentee ballot certificate envelope.[6] Any improperly rejected ballots should be marked and placed into the pool of ballots to be counted. If the number of voters is increased under this procedure the change should be recorded in the minutes. Any errors by election inspectors in rejecting absentee ballots should be documented in the minutes along with the corrective action taken.

- ❑ *Examine Defective Absentee Ballot Envelopes*

The board of canvassers examines the used absentee ballot certificate envelopes (EL-122) contained in the white carrier envelope (EL-103). If the board finds any defective[7] absentee ballot certificate envelope not identified on election night they should be marked as defective, assigned a serial number, set aside, and properly preserved. A notation including a description of the defect should be made in the minutes.

The number of voters determined at the beginning of the recount is reduced by the total number of absentee ballots set aside under this procedure. This adjusted number is noted in the minutes and used whenever the number of voters is referred to during the recount. Do not remove ballots from the pool yet.

3. Examine Ballot Bag or Container – Wis. Stat. § 9.01(1)(b)3

The board of canvassers examines the ballot bag or ballot container (EL-101) to determine that it has not been tampered with, opened, or opened and resealed. The board of canvassers should verify that the tamper-evident seal matches the serial number on the Ballot Container

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[5] See Informal Opinion of Staff Attorney Re: Recount of the Town of Walworth Recall Election (11/18/02); but see also Wis. Stat. § 6.84(2); *Walter V. Lee v. David Paulson*, 2001 WI App 19.
[6] See Wis. Stat. § 6.88(3) for procedures and guidance on accepting or rejecting absentee ballot certificate envelopes.
[7] An absentee ballot is defective only if it is not witnessed, the witness did not provide an address, it is not signed by the voter, or if the certificate envelope or the certification language is missing. Wis. Stat. § 9.01(1)(b)2.

Certification (EL-101) and the Inspectors' Statement (EL-104). The Wisconsin Elections Commission recommends the board of canvassers investigate any irregularities or possible tampering with the ballots and note its findings in the minutes.

4. Reconcile Ballot Count – Wis. Stat. § 9.01(1)(b)4.

❑ *Ballot Count – 4.(a)*

The board of canvassers opens the ballot bag or ballot container and removes the contents. The canvassers or tabulators count the number of ballots in the ballot bag, excluding any ballots that were set aside and not counted by the election inspectors on election night under the provisions of Wis. Stat. § 7.51(2). These "set aside" ballots should have been marked and bundled by the election inspectors on election night.

The board of canvassers reviews all ballots marked rejected, defective, and objected to, to decide whether such ballots were correctly categorized when the ballots were first examined after the election.

❑ *Separate Probable Absentee Ballots – 4.(b)*

The board of canvassers separate all "probable absentee ballots"[8] from the other ballots. The number of probable absentee ballots should equal the number of properly completed certificate envelopes (as determined by the board of canvassers in step 2 above), the number of absentee ballots recorded on the registration list on election night, and the number of written applications. Any discrepancies should be recorded in the minutes.

❑ *Reconciling the Number of Ballots with the Number of Voters*[9]

If the number of voters is greater than or equal to the number of ballots, skip this step. Only in the situation where the number of ballots exceeds the number of voters should the board of canvassers engage in the following procedure.

If the board of canvassers previously determined that any absentee ballot certificate envelopes were defective, the board of canvassers draws at random, without inspection, from the pool of probable absentee ballots, the number of ballots equal to the number of envelopes that have been determined defective. If the board of canvassers finds more defective absentee ballot envelopes than probable absentee ballots, the board of canvassers shall set aside all probable absentee ballots. The probable absentee ballots shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The board of canvassers notes in the minutes the steps taken under this procedure and the results determined. Wis. Stat. § 9.01(1)(b)4.b.

If the number of ballots still exceeds the number of voters, the board of canvassers or the tabulators shall place all the ballots face up to check for blank ballots. Any blank ballots (ballots which have not been marked for any office) shall be marked as to the reason for their removal, set aside and properly preserved. The board of canvassers should record this action in the minutes. Wis. Stat. § 9.01(1)(b)4.c.

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[8] The board of canvassers shall presume that a ballot initialed only by the municipal clerk, executive director of the board of election commissioners, deputy clerk or secretary is an absentee ballot. Wis. Stat. § 9.01(1)(b)4.b.

[9] See Appendix pgs. 12-15 for discussion of the Board of Canvassers retaining some discretion to ensure that statutes are applied to "give effect to the will of the electors."

If the number of ballots still exceeds the number of voters after removing all blank ballots, the board of canvassers shall place all ballots face down to check for initials. Any ballots not properly initialed by two inspectors or any probable absentee ballots not properly initialed by the municipal clerk or deputy clerk are set aside. The board of canvassers must, without inspection, randomly draw from the improperly initialed ballots as many ballots as are necessary to reduce the number of ballots to equal the number of voters determined to have voted on election day less any defective absentee ballot certificate envelopes. Any ballots removed for lack of proper initials shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The board of canvassers should record this action in the minutes. Wis. Stat. § 9.01(1)(b)4.d.

If the number of ballots still exceeds the number of voters, the board of canvassers places the remaining ballots in the ballot bag and randomly draws, without inspection, the number of ballots equal to the number of excess ballots.[10] These ballots shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The actions taken under this procedure are recorded in the minutes. Wis. Stat. § 9.01(1)(b)4.e.

When the number of ballots equals the number of voters or if the number of voters exceeds the total number of ballots, the board of canvassers returns the ballots to the ballot bag or container and thoroughly mixes the ballots. Wis. Stat. § 9.01(1)(b)5.

5. Review Provisional Ballots

The board of canvassers shall examine the Inspectors' Certificate of Provisional Ballots (EL-108), Provisional Ballot Reporting Form (EL-123r), Provisional Ballot Certificate envelopes (EL-123), and Statement of the Municipal Board of Canvassers (EL-106AP) to determine if provisional ballots were correctly processed. The board of canvassers should determine if all ballots for voters providing the required information[11] have been included in the original result. The board of canvassers shall record any discrepancies in the minutes. Wis. Stat. § 6.97.

6. Count the Votes

When counting paper or optical scan ballots, questions often arise concerning the intent of the elector. Election officials have a duty to attempt to determine voter intent and give effect to that intent if it can be determined. Election officials are expected to use common sense to determine the will of an elector based on the marks made by the elector on the ballot. The decisions of the election inspectors may be reviewed by the board of canvassers conducting the recount. Wis. Stat. §§ 7.50, 7.51, 7.60.

Even if an elector has not fully complied with the provisions of the election law, votes should be counted as intended by the elector to the extent that the elector's intent can be determined. Wis. Stat. §§ 5.01(1), 7.50(2). The Wisconsin Elections Commission has a manual titled "Counting Votes," which is designed to assist election officials in determining voter intent. A copy of the "Counting Votes" manual is available on the agency website and should be reviewed by the board of canvassers prior to the recount.

The exact steps for tabulating the votes will vary depending on the method or combination of

[10] See Appendix pgs. 12-15 for discussion of the Board of Canvassers retaining some discretion in potential drawdown scenarios to ensure that statutes are applied to "give effect to the will of the electors." One factor considered, is whether an error can be determined and whether the error was committed by the voter or the election official.
[11] See Wis. Stat. § 6.97 and Wis. Admn. Code Ch. EL § 3.04.

methods of tabulation selected by the board of canvassers:

1. Hand Count

The Wisconsin Elections Commission recommends that hand counts be conducted using teams of at least two tabulators. These tabulators will double-check each other's work throughout the process to ensure that an accurate count is maintained.

- ❑ *Sort Ballots by Candidate*

Each tabulation team should begin by sorting the ballots into stacks: One stack for each candidate (ballots that clearly indicate a vote for a ballot candidate or a valid write-in candidate) and one stack for ballots where no vote may be counted (defective ballots, votes for invalid write-in candidates, etc). Candidate representatives should be given the opportunity to review each ballot as it is sorted, and may request that the tabulators set aside questionable ballots for closer examination and determination of voter intent by the board of canvassers.[12] The board of canvassers may consult with its legal counsel or the Wisconsin Elections Commission staff regarding any questionable ballots. The Wisconsin Elections Commission recommends that any such consultation should be recorded in the minutes.

- ❑ *Create Stacks of a Fixed Number*

Set aside the stack of ballots for which no vote can be counted. For each stack of ballots marked for a candidate, each tabulator should create sub-stacks of a fixed number (e.g., 25 ballots) with a remainder stack for any number left over from creating the full-size stacks. Each stack should be double-checked by a second tabulator to ensure the stack contains exactly the number expected.

- ❑ *Tally Stacks to Determine the Total Vote*

The board of canvassers then carefully counts the number of stacks for each candidate. The counts should be recorded separately by two individuals on two clearly-labeled tally sheets (EL-105). After all of the counts have been recorded, the two tally sheets should be compared against each other to ensure an accurate count is determined. The recount vote totals are recorded in the minutes.

A reconciliation of the ballots for which no vote could be counted should be recorded in the minutes. This documentation should list the reasons the ballots could not be counted and the number of ballots not counted for each reason.

2. Optical Scan

If an optical scan tabulator is used, the Wisconsin Elections Commission recommends that where possible the tabulator should be programmed to only tally the results for the contest to be recounted. If the tabulator is not reprogrammed to tally only the contest to be recounted, the Wisconsin Elections Commission recommends that the counts for other contests be separated, set aside and preserved. The recounted results for the other contests should not be included in the board of canvassers report of recount results.

Note: The original memory device for the voting equipment from election day cannot be cleared

[12] Please refer to the Counting Votes Manual on the WEC website for detailed rules and examples of when to count or not count a mark as a vote.

and reprogrammed for use at the recount, so an alternative memory device must be acquired for use at the recount. Wis. Stat. § 7.23(1)(g), (2).

- ❑ *Examine the optical scan tabulator*

  The board of canvassers shall make a record of the number of the tamper evident seal, protective counter, or other device, if any, before opening any of the voting equipment. The board of canvassers examines the electronic voting equipment to determine that any other tamper evident seals are intact and match the log maintained by the election inspectors and the municipal clerk. The board of canvassers notes in the minutes any irregularities or possible tampering with the device. Wis. Stat. §§ 5.90(1) & 9.01(1)(b)6.

- ❑ *Test the optical scan tabulator*

  The board of canvassers tests the automatic tabulating equipment to ensure it is programmed correctly for the recount using a pre-audited group of ballots marked to record a predetermined number of valid votes for each candidate or contest choice (test deck). The test deck should include at least one ballot with more selections than permitted (overvote) and for recounts in a partisan primary, at least one ballot with votes in more than one party primary (crossover) in order to test the ability of the tabulator to reject such ballots. The results of the test deck tabulation should be compared to the pre-audited results to ensure accuracy and a record of the test results should be noted in the minutes. Wis. Stat. §§ 5.84(1), 5.90(1). The board of canvassers may choose to test the tabulator for all reporting units at once and skip this step in subsequent reporting units if using the same memory device for all reporting units.

- ❑ *Compare Duplicate Ballots with Original Ballots*

  On election day, some ballots cannot be processed by the optical scan tabulator due to overvotes or other defects. When this happens, election officials create a duplicate ballot to honor as much of the elector's intent as possible. The duplicate ballot is then tallied by the equipment and the original is set aside and not counted. Both the duplicate and original ballots should be marked as such and contain identical serial numbers so they can be matched up.

  The board of canvassers compares any duplicate ballots with their respective originals to determine the correctness of the duplicates. If any duplicate ballots were remade incorrectly, the board of canvassers should set aside the incorrectly remade duplicate ballot, mark it with the reason for its removal, create a new duplicate ballot, and mark it as such. Wis. Stat. § 5.90(1).

- ❑ *Insert Ballots Into the Optical Scan Tabulator*

  Each ballot shall be reviewed by the board of canvassers and may be inspected by the candidates or their representatives before being inserted into the tabulator. If it appears the ballot may not be recorded correctly by the tabulator, or if the ballot is objected to, the ballot is set aside to be examined by the board of canvassers for voter intent and counted separately by hand.

- ❑ *Generate Results*

  The board of canvassers places the optical scan tabulator into post-election mode and generates a results tape for the reporting unit. The board of canvassers adds in any votes counted

separately by hand using new tally sheets and records the total results as part of the revised canvass statement, see Step #9.

If the equipment needs to be used for another reporting unit, the board of canvassers shall ensure that all ballots have been removed from the tabulator and re-secured in ballot bags or containers before proceeding to reset the equipment for use with the next reporting unit.

3. Direct Record Electronic (DRE)

In many polling places across the state direct record electronic (DRE) voting equipment is used in conjunction with paper ballots or optical scan ballots to enable indivduals with disabilities to vote privately and independently. As a result, the paper ballots and optical scan ballots should be counted first by following the steps described above, if applicable.

❑ *Separate the Voter Verified Paper Audit Trail into Individual Ballots*

DRE equipment records votes two separate ways: electronically and on a paper tape that the voter can view to verify the equipment is recording their votes correctly before casting their ballot. In a recount, the board of canvassers is required to use the paper record. Wis. Stat. § 5.90(1). The paper tape consists of a pre-election readiness report, a zero-report showing that no votes are currently in the memory of the machine, individual ballot records, and a closing results report.

To facilitate counting of the individual ballot records and to preserve the confidentiality of an individual's vote, the board of canvassers may cut the paper record to separate the individual voter records and then further cut the paper tape into the individual ballots, which would then be randomized. When cutting the paper tape be careful that only the section of the tape covering election day is used. When separating the tape into individual ballots, watch for "voided" ballots which appear the same as other ballot entries except they will be followed by a "void" entry on the tape. The "void" entry may appear far below the record of votes cast on the tape. These "voided" ballots should not be counted as they were not cast.

As an alternative to cutting the paper tape, the boards of canvassers may retain the paper record in its original format and simply scroll through the tape to count each individual ballot. However, if the tape is not cut, the board of canvassers must take the appropriate precautions to ensure the confidentiality of votes as the entries on the paper record will be in the order that the voters used the equipment.

If due to a paper jam or misprint some individual ballot records are not available, the board of canvassers may consult with the voting equipment vendor to determine if the missing records can be recreated. The board of canvassers may be able to obtain records from the vendor, such as cast ballot records, that will allow them to tally votes from the missing ballot records. Any such tallying should be documented in the recount minutes.

❑ *Tally Individual Ballots to Determine the Total Vote*

The board of canvassers carefully counts each individual ballot record as recorded on the tape. The counts should be recorded by two individuals on clearly labeled tally sheets (EL-105). After all of the counts have been recorded, the two tally sheets should be compared against each other to ensure an accurate count is determined. The recount vote totals should be compared against the original results as generated by the DRE and any discrepancies shall be recorded in the

minutes.

7. Secure Original Materials

After concluding the recount for a particular reporting unit, the board of canvassers shall gather and account for all original election materials. All ballots shall be placed into a ballot bag or container and resealed. The board of canvassers shall document in the minutes the serial number of any new security seals or tags used.

All election materials should be accounted for before proceeding to the next reporting unit to prevent the accidental mixing of materials from different reporting units.

8. Prepare New Canvass Statement

If any corrections were made to the results, the board of canvassers shall prepare a statement of revised election results using the canvass reporting form (EL-106). Wis. Stat. § 9.01(1)(b)9.

After the Recount

What does the board of canvassers do after completing the recount?

- If the recount is for a municipal election, the board of canvassers promptly forwards the results and minutes to the municipal clerk.
- If the recount is for a school board election, the board of canvassers promptly forwards the results and minutes to the school board clerk.
- If the recount is for a county election, the county board of canvassers promptly forwards the results and minutes to the county clerk.
- If the recount is for a state or federal election, the results and minutes of the recount are to be forwarded immediately to the Wisconsin Elections Commission and should be received no later than 13 days after the recount is ordered. Wis. Stat. § 9.01(1)(ar)3.

A copy of the minutes of any recount should be sent to the Wisconsin Elections Commission. For federal, state, and county elections, the board of canvassers should also send copies of the minutes to the chief officers of the state or county committee for any registered political party who ran candidates for that office. Wis. Stat. § 9.01(5)(bm).

No certificate of election may be issued by the filing officer until the deadline for filing all appeals has passed and the election results are final.

How Does a Candidate or Petitioner Challenge the Recount Results?

The candidate or petitioner has a right to appeal the recount determination in circuit court. The appeal must be filed with the circuit court within five (5) business days of the completion of the recount in all counties concerned. Notice must also be served in person or by certified mail on all other candidates and persons who filed a written notice of appearance before the board of canvassers. If the recount affects a state or federal office or referendum, notice of the appeal must be served on the Wisconsin Elections Commission. See Wis. Stat. §§ 9.01(6), (7), (8), & 9.

The recount process and the subsequent judicial appeals is the exclusive 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).

Conclusion

This information is prepared pursuant to Wis. Stat. § 9.01(10). Petitioners, candidates, and filing officers should seek legal counsel when they are involved in a recount. If you have any questions, concerns, suggestions or recommendations about the recount process, please contact the:

Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984
Phone: 608-261-2028 Fax: 608-267-0500
Email: elections@wi.gov
Website: http://elections.wi.gov

Appendix

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SAMPLE RECOUNT PETITION

In Re: The Election for (specify office)	Verified Petition for Recount

Petitioner (name of petitioner) alleges and shows to (specify the clerk or body with whom nomination papers are filed for that office):

1. That Petitioner was a candidate for the office of (specify office) in an election held on (specify date of election);

2. The Petitioner is an aggreived party as defined in Wis. Stat. § 9.01(1)(a)5.

3. That Petitioner is informed and believes that a (mistake or fraud) has been committed in (specify each ward or municipality) in the counting and return of votes cast for the office of (specify office); and/or

4. That Petitioner (is informed and believes) or (knows of his/her own knowledge) that:

   (Specify other defects, irregularities or illegalities in the conduct of the election).

Wherefore: Petitioner requests a recount of (specify each ward or municipality in which a recount is desired; each ward need not be specified if a recount is requested for all wards within a jurisdiction).

Dated this _____ day of _____, _____.

_____
Petitioner

I, (name of petitioner), being first duly sworn, on oath, state that the matters contained in the above petition are known to me to be true except for those allegations stated on information and belief, which I believe to be true.

_____
Petitioner

Subscribed and sworn to before me this _____ day of _____, _____.

_____
Notary Public (or other person authorized to administer oaths)

My Commission Expires _____
(specify expiration date)

The information on this form is required by Wis. Stat. § 9.01. This form is prescribed by the Wisconsin Elections Commission, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, WI 53707-7984, (608) 261-2028
EL-186 (Rev.4/18)

SAMPLE RECOUNT PETITION FOR REFERENDUM

In Re: The Election for (specify referendum)	Verified Petition for Recount

Petitioner (name of petitioner) alleges and shows to (specify the clerk or body with whom the referendum was filed):

1. That Petitioner was an elector who voted upon the referendum in the election held on (specify date of election);

2. That Petitioner is informed and believes that a (mistake or fraud) has been committed in (specify each ward or municipality) in the counting and return of votes cast for the referendum of (specify referendum); and/or

3. That Petitioner (is informed and believes) or (knows of his/her own knowledge) that:

   (Specify other defects, irregularities or illegalities in the conduct of the election).

Wherefore: Petitioner requests a recount of (specify each ward or municipality in which a recount is desired; each ward need not be specified if a recount is requested for all wards within a jurisdiction).

Dated this _____ day of _____, _____.

_____
Petitioner

I, (name of petitioner), being first duly sworn, on oath, state that the matters contained in the above petition are known to me to be true except for those allegations stated on information and belief, which I believe to be true.

_____
Petitioner

Subscribed and sworn to before me this _____ day of _____, _____.

_____
Notary Public (or other person authorized to administer oaths)

My Commission Expires _____
(specify expiration date)

The information on this form is required by Wis. Stat. § 9.01. This form is prescribed by the Wisconsin Elections Commission, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, WI 53707-7984, (608) 261-2028
EL-186R (Rev.11/09/16)

SAMPLE ORDER FOR RECOUNT

STATE OF WISCONSIN – (County)

In the matter of:	)	
	)	**ORDER FOR RECOUNT**
A Recount of the (Election)	)	
for (Title of Office)	)	
for the (District), held	)	
on (Date)	)	

On (Date Recount Petition was filed), a recount petition was filed by (Petitioner's Name), a candidate for the office of (Office Title) for the (District), at the (Election) held on (Date).

The petition requests a recount of (list specific wards or municipalities) for the office of (Office Title).

The filing officer has reviewed the petition. The petition is sufficient. Any applicable fee has been received and accepted.

Pursuant to Wis. Stat. § 9.01:

IT IS ORDERED THAT:

1. A recount be conducted of all the votes cast for the office of (Office Title) for the (District) at the (Election) held on (Election Date) in (list of specific wards or municipalities).

2. The boards of canvassers convene at (Time) on (Date) at (Location), to begin the recount.

3. The recount be completed by the board of canvassers immediately.

4. The clerk transmit a certified canvass report of the result of the recount and a copy of the minutes of the recount proceedings to the Wisconsin Elections Commission immediately after the completion of the recount.

Dated: _____

_____
(Clerk's Name)
(Clerk's Title)

SAMPLE PUBLIC NOTICE

Notice of Recount for the Office of (Office Title) for the (District) in the (Election)

TO: All Candidates On The Ballot For The Office of (Office Title) for the (District) and Other Interested Persons

FROM: (Clerk)

SUBJECT: Recount of the Votes Cast for the Office of (Office Title) for the (District) in the (Election)

DATE: (Date)

A recount of the votes cast at the (Election Date) (Election) for the office of (Office Title) for the (District) will begin at the time and location set forth below:

(Municipality) – 9:00 a.m. on (Date), at (Location).

A copy of the recount petition is attached. This notice is given pursuant to Wis. Stat. § 9.01(2).

You have the right to be present and to be represented by counsel to observe and challenge the votes cast and the board of canvassers' decisions at the election.

Attachment

Sample Acceptance of Service

MEMORANDUM

DATE: (Date)

TO: (Clerk)

FROM: Candidate for (Office)

SUBJECT: Service of Recount Petition

Pursuant to Wis. Stat. § 9.01(2) on this day, I have personally received delivery of copies of the notice of recount, recount petition, and order for recount for the office of (office) at the (election date) (election name). I agree to waive service and accept delivery.

_____

(Signature of Candidate)

_____

(Print Name)

Sample Recount Minutes

Date of Recount: County:

Office to be Recounted: *(Include District Number)*

Original Result: *(Candidates' Names and Votes for Each Candidate. If there was a tie, explain how it was broken.)*

Canvass Board Members: *(If substitute, give reason for substitution.)*

Other Personnel: *(Tabulators, Corporation Counsel, Clerical Support)*

Others Present:

Notification: *(Were candidates notified and was public notice given?)*

Electronic Voting Equipment Test Results:

For Each Reporting Unit:

Name of Municipality:

Reporting Unit:

Original Vote Totals for Reporting Unit:

Number of Voters from Registration List:

Number of Absentee Ballot Applications:

Number of Absentee Ballots:

Notes: (Include a description of any discrepancies, irregularities, errors, problems, objections raised by observers. Record any decision of the board of canvassers. Identify any exhibits by description and number.)

Recount Vote Totals for Reporting Unit:

Recount Results:

An electronic or hard copy of the minutes from any recount must be sent to:

Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984
elections@wi.gov

Recount Fee Scenarios

Scenario #1: Village President

Candidate	Votes
A	4,500
B	4,410

In this scenario, candidate A would currently be elected to office. If a recount was requested, the fee is determined by first calculating the total votes cast for the office (4,500+4,410 = 8,910). The difference between the leading candidate and the petitioner (90 votes) is divided by the total votes cast (8,910) and then multiplied by 100 to get the percentage difference (1.01%).

Candidate B would be required to pay a filing fee as the percentage difference is greater than .25%. However, the vote difference between the leading candidate and the petitioner is more than 1% so the contest is not eligible for a recount.

Scenario #2: School Board (vote for up to 3)

Candidates	Votes
A	3,500
B	3,000
C	2,920
D	2,910
E	2,900
F	2,800

In this scenario, candidates A-C would currently be elected to office. If a recount was requested, the fee is determined by adding up all the votes cast for the office (18,030 total) and dividing it by the number of offices to be filled (3 in this scenario) to get a total of 6,010. The difference between the leading candidate (C, as he or she is the candidate with the lowest number of votes still being elected to office) and the petitioner is divided by 6,010 and multiplied by 100 to get the percentage difference.

So in this case:

- If Candidate D requested a recount, there would be no fee required as the difference is .17%, which is not greater than .25%
- If Candidate E requested a recount, a filing fee would be required as the difference is .33%, which is greater than .25%
- If Candidate F requested a recount, the difference would be 2% so the contest is not eligible for recount.

General Checklist of Supplies and Materials Needed for the Recount:

- ❑ Paper and Pens (To record the minutes of the recount!)
- ❑ Tape Recorder (Optional)
- ❑ Speaker Phone (for consultation with WEC staff or counsel)
- ❑ Test Deck for Electronic Voting Equipment Test
- ❑ New *Tally Sheets* (EL-105)
- ❑ New *Canvass Reports* (EL-106)
- ❑ Copies of any informational memoranda relating to the election and the recount prepared by the Wisconsin Elections Commission staff and sent to county and municipal clerks.
- ❑ Recount checklists and the *Elections Recount Procedures Manual* available from the Wisconsin Elections Commission

Election Materials from Each Reporting Unit:

- ❑ All ballots to be recounted, contained in the original ballot bag or ballot container (EL-101), including any provisional ballots processed after Election Day;
- ❑ All paper audit trails from direct record electronic (DRE) voting devices;
- ❑ All logs of security seals for ballot boxes or electronic voting equipment;
- ❑ Both copies of the original poll lists, including any supplemental voter lists;
- ❑ All absentee ballot applications (See page 7);
- ❑ Any rejected absentee ballots, contained in the original brown carrier envelope (EL-102);
- ❑ Any used absentee ballot certificate envelopes, contained in the white carrier envelope (EL-103);
- ❑ The original Inspectors' Statement (EL-104);
- ❑ The MBOC Record of Activity (EL-104P) created during the processing of provisional ballots, if any;
- ❑ The original tally sheets (EL-105) and any results tapes generated by electronic voting and tabulating devices;
- ❑ The original canvass report of the election results (EL-106);
- ❑ The amended canvass report of the election results created after any provisional ballots were tabulated (EL-106P);
- ❑ Any provisional ballot documentation (EL-108 & EL-123);
- ❑ The absentee ballot log (EL-124); and
- ❑ The test deck for any electronic voting equipment.

Recount Checklist

Hand Counted Paper Ballots

Municipality_____Date_____
Reporting unit _____Contest_____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- ❑ Compare and reconcile poll lists.
- ❑ Absentee ballot review: number, applications, rejected, defective envelopes.
- ❑ Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EL-104) and Ballot Container Certification (EL-101).
- ❑ Ballot count.
  - o Review ballots marked "rejected," "defective," or "objected to."
  - o Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes).*
  - o Reconcile the number of ballots with the number of voters.
  - o Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.)*
- ❑ Review provisional ballots.
- ❑ Hand count paper ballots.
  - o Sort ballots by candidate.
  - o Create stacks of a fixed number.
  - o Tally the stacks using duplicate original tally sheets (EL-105).
- ❑ Add in any votes counted separately by other methods.
- ❑ Secure the original election materials.
- ❑ Prepare canvass statement.
- ❑ Prepare minutes for each reporting unit and attach completed checklist to minutes.

Recount Checklist

Optical Scan Voting Equipment

Municipality_____Date_____
Reporting unit _____Contest_____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- ❑ Compare and reconcile poll lists.
- ❑ Absentee ballot review: number, applications, rejected, defective envelopes.
- ❑ Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EL-104) and Ballot Container Certification (EL-101).
- ❑ Ballot count.
  - o Review ballots marked "rejected," "defective," or "objected to."
  - o Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes).*
  - o Reconcile the number of ballots with the number of voters.
  - o Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.)*
- ❑ Review provisional ballots.
- ❑ Verify voting equipment tamper evident serial number seal number written on Inspectors' Statement (EL-104) contains Chief Inspector's initials for pre-election and post-election verification.
- ❑ Test the automatic tabulator (*The Board of Canvassers may choose to test the tabulator for all reporting units at once and skip this step in subsequent reporting units if using the same memory device for all reporting units.)*
- ❑ Compare duplicate ballots with original ballots.
- ❑ Feed ballots into the optical scan tabulator.
- ❑ Generate results.
- ❑ Add in any votes counted separately by other methods.
- ❑ Secure the original election materials.
- ❑ Prepare canvass statement.
- ❑ Prepare minutes for each reporting unit and attach checklist to minutes.

Recount Checklist

Direct Recording Electronic (DRE)/Touch Screen Voting Equipment

Municipality_____Date_____
Reporting unit _____Contest_____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- ❑ Compare and reconcile poll lists.
- ❑ Absentee ballot review: number, applications, rejected, defective envelopes.
- ❑ Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EL-104) and Ballot Container Certification (EL-101).
- ❑ Ballot count.
  - o Review ballots marked "rejected," "defective," or "objected to."
  - o Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes).*
  - o Reconcile the number of ballots with the number of voters.
  - o Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.)*
- ❑ Review provisional ballots.
- ❑ Verify voting equipment tamper evident serial number seal number written on Inspectors' Statement (EL-104) contains Chief Inspector's initials for pre-election and post-election verification.
- ❑ Separate voter-verified paper audit trail into individual ballots (may be skipped if canvass board members take appropriate precautions to ensure the confidentiality of individual electors' votes)
- ❑ Hand count permanent paper record of votes generated by DRE and record on duplicate tally sheets (EL-105).
- ❑ Add in any votes counted by other methods.
- ❑ Secure the original election materials.
- ❑ Prepare canvass statement.
- ❑ Prepare minutes for each reporting unit and attach checklist to minutes.

Wisconsin Elections Commission

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
(608) 261-2028
elections@wi.gov
elections.wi.gov

Interim Administrator Meagan Wolfe

COMMISSIONERS

Beverly R. Gill
Julie M. Glancey
Ann S. Jacobs
Jodi Jensen
Dean Knudson
Mark L. Thomsen, Chair

MEMORANDUM

DATE: For the May 24, 2018 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Interim Administrator

Prepared and Presented by:
Michael Haas, Staff Counsel
Nathan Judnic, Senior Elections Specialist

SUBJECT: Commission Recount Manual

The information contained in the Commission's Recount Manual is prepared pursuant to Wis. Stat. § 9.10(10) to ensure that uniform procedures for boards of canvassers conducting recounts are followed when possible. The purpose of the Recount Manual, and other manuals and guidance documents prepared by the Commission staff, is to help explain statutory requirements, offer guidance on ambiguous provisions of the statutes, if necessary, and when needed, expand upon statutory requirements with recommended best practices and procedures.

Unlike laws governing other topic areas, the construction and application of election laws is somewhat unique.

> 5.01 **Scope. (1)** Construction of Chs. 5 to 12. Except as otherwise provided, chs. 5 to 12 shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.

Wis. Stat. § 5.01(1). The Legislature's decision to construct Wisconsin's election statutes in this manner affects how the courts have interpreted these statutes which in turn influences advice provided by Commission staff when fact specific scenarios are presented, usually on a case by case basis. The construction of statutes to "give effect to the will of the electors" has resulted in three general concepts which provide the framework for advice rendered by Commission staff: 1) directory vs. mandatory application of election statutes, 2) election official error vs. voter error, and 3) board of canvassers decision-making discretion.

Directory vs. Mandatory Application of Statutes to "give effect to the will of the electors"

Based on Wis. Stat. § 5.01(1) (and its identical predecessor statute), Wisconsin courts view the election statutes with an eye towards a voter's ballot being counted as cast when possible, versus a ballot being set aside and not counted if the will of the elector can be determined, even if a statute directs – but does not mandate – a ballot to be set aside in certain circumstances. Especially during a recount, this construct can be important in reviewing ballots that may or may not have been issued, cast or counted in compliance with every specific step of the election statutes. The consistent application of this concept is illustrated by the following statements of the Wisconsin Supreme Court:

> The difference between mandatory and directory provisions of election statutes lies in the consequences of nonobservance: An act done in violation of a mandatory provision is void, whereas

> an act done in violation of a directory provision, while improper, may nevertheless be valid. Deviations from directory provisions of election statutes are usually termed 'irregularities,' and, as has been showing in the preceding subdivision, such irregularities do not vitiate an election. Statutes giving directions as to the mode and manner of conducting elections will be construed by the courts as directory, unless a noncompliance with their terms is expressly declared to be fatal, or will change or render doubtful the result, as where the statute merely provides that certain things shall be done in a given manner and time without declaring that conformity to such provisions is essential to the validity of the election. *Sommerfeld v. Board of Canvassers*, 269 Wis. 299, 69 N.W.2d 235 (1955), *Olson v. Lindberg*, 2 Wis.2d 229, 85 N.W.2d 775 (1957).
>
> In keeping with sec. 5.011, Stats. (which is now sec. 5.01(1)), this court has quite consistently construed the provisions of election statutes as directory rather than mandatory so as to preserve the will of the elector. *Grandinjan v. Boho*, 29 Wis.2d 674, 139 N.W.2d 557 (1966).
>
> …We have held that the word 'shall' can be construed to mean 'may.' *George Williams College v. Williams Bay*, 242 Wis. 311, 7 N.W.2d 891 (1943).
>
> In passing upon statutes regulating absentee voting, the court should look to the whole and every part of the election laws, the intent of the entire plan, the reasons and spirit for their adoption, and try and give effect to every portion thereof. *Sommerfeld*, 269 Wis.2d at 238.
>
> The Court has consistently sought to preserve the will of the electors by construing election provisions as directory if there has been substantial compliance with their terms. *Grandinjan*, 29 Wis.2d at 682.
>
> Throughout the statutes with reference to elections the intent of the legislature is apparent. It is to encourage and assist qualified electors to cast their ballots for candidates of their choice. To prevent fraud the legislature in some instance has specifically stated that there must be strict compliance with a statute or a ballot cannot be counted. In so far as we have been called upon to construe that statutes we have held that where the legislature has provided in explicit language that absentee ballots shall not be counted unless certain provisions of the statute are complied with, compliance with those provisions is mandatory. Where it has not done so expressly and in clear language we have held that provisions regulating absentee voting are directory, and that strict compliance therewith is not required. *Petition of Anderson*, 12 Wis.2d 530, 533 (1961).

See also additional cases in which the Court has determined that election statutes shall be interpreted as directory and not mandatory as to give effect to the will of the electors: *State ex rel. Tank v. Anderson*, 191 Wis. 538, 211 N.W. 938 (1927), *State ex rel. Bancroft v. Stumpf*, 21 Wis. 586 (1867), *Ollman v. Kowalewski*, 238 Wis. 574, 300 N.W. 183 (1941), *State ex rel. Graves v. Wiegand*, 212 Wis. 286, 249 N.W. 537 (1933), *State ex rel. Oaks v. Brown*, 211 Wis. 571, 249 N.W. 50 (1933), *Lanser v. Koconis*, 62 Wis.2d 86, 214 N.W.2d 425 (1974), *McNally v. Tollander*, 302 N.W.2d 440, 100 Wis.2d 490 (1981).

One area of the election statutes that the Legislature has determined should be read as mandatory, are some provisions related to the absentee voting process – Wis. Stat. §§ 6.86, 6.87(3) to (7) - and how absentee ballots should be treated at a recount – Wis. Stat. § 9.01 (1)(b)2. and 4. See Wis. Stat. § 6.84(1) and (2). In those instances, for example, when an absentee ballot certificate envelope is unsigned by the voter or the witness, those ballots cannot be counted. If absentee ballots were originally counted by the local board of canvassers in contravention of the absentee ballot procedures, those ballots during a recount "may not be included in the certified result of any election." This is the basis for separating probable absentee ballots from regularly cast ballots during a recount – the mandatory versus directory treatment of ballots cast in contravention of an absentee procedure contained in §§ 6.86 or 6.87(3) to (7).

With the noted exception above for certain absentee ballot procedures, the Commission staff (as well as the former State Elections Board staff and the former Government Accountability Board staff) provides guidance that is intended to give effect to the will of the electors which may apply a directory reading of the statutes, given a specific-fact scenario. This may happen when, for example, a question is received as to whether a drawdown should occur when the election officials can identify the issue, it was no fault of the voter that more ballots exist than voters, the total number of ballots issued at a polling place reconciles with the total number of voters (but not within the reporting unit, meaning incorrect ballots were likely issued), and there is no evidence of any fraud or malfeasance. In such cases Commission staff often advise that a draw down is not the best practice, although the final decision is

up to the board of canvassers. Drawing down requires the removal of a ballot, or ballots, at random and is generally viewed as a last resort option because the result will likely disenfranchise a random voter – something that the Legislature was arguably trying to avoid by inserting the language contained in Wis. Stat. § 5.01(1).

Election Official Error vs. Voter Error

Another line of cases which factors into advice provided by Commission staff, especially during a recount, concerns the identity of the individual that committed an error. The error is magnified when it results in the number of voters and ballots failing to reconcile which could trigger a random draw down of ballots prior to the counting of ballots at the recount. The question becomes whether a voter and their properly cast ballot should be subject to random removal and potential disenfranchisement if an error was committed by an election official and not the voter. Removing ballots through the draw down procedure when an election official issued a voter the wrong ballot or failed to initial a ballot does not seem to agree with the Legislature's construction of election statutes set forth in Wis. Stat. § 5.01(1) and caselaw below.

The Wisconsin Supreme Court has stated:

> …The voter's constitutional right to vote cannot be baffled by latent official failure or defect. *Ollmann,* 238 Wis. at 579.
>
> In *State ex rel. Symmonds v. Barnett*, 182 Wis. 114, 195 N.W. 707 (1923), the ballot of certain voters were not counted, because the voter's names did not appear on the voter registration list. These voters were, however, duly registered voters who had voted in the preceding primary election. Only the failure of the registration board to update the registration list explained the omission of their names. This Court ordered that votes of these voters must be counted, stating: As a general rule a voter is not to be deprived of his constitutional right of suffrage through the failure of election officers to perform their duty, where the elector himself is not delinquent in the duty which the law imposes on him. *State ex rel. Wood v. Baker*, 38 Wis. 171 (1875); *Barnett*, 182 Wis. at 127.
>
> Because the right to vote is so central to our system of government, this Court has consistently sought to protect its free exercise. *McNally v. Tollander*, 302 N.W.2d 440, 100 Wis.2d 490 (1981). In the *Ollmann* case, ballots were initialed by only one election official, rather than being initialed by two election officials per the statutory requirement. The Wisconsin Supreme Court held that the ballots with only one set of initials were properly counted, stating that: "The voter would not knowingly be doing wrong. And not to count his vote for no fault of his own would deprive him of his constitutional right to vote…A statute purporting so to operate would be void, rather than the ballots." *McNally*, 100 Wis.2d at 502 citing *Ollmann*.

When questions are asked by local officials regarding how to treat a ballot, especially in recount situations, who made the error is a factor that is considered when rendering advice based on the decisions issued in these cases. Without considering this factor, election officials with ill intentions could potentially manipulate election results by purposefully committing errors (issue wrong ballots, fail to apply required election official notations to the ballot), knowing that ballots will automatically be drawn down or a new election potentially ordered if errors are discovered and the statute requiring a draw down is applied in a mandatory fashion without considering the source of error.

In such cases, where it is clear that an error has been committed by an election official, the voter is not at fault and there is no evidence of fraud or malfeasance, Commission staff often advise that a draw down is not the best practice, although the final decision is up to the board of canvassers. Drawing down requires the removal of a ballot, or ballots, at random and is generally viewed as a last resort option because the result will likely disenfranchise a random voter – something that the Legislature was arguably trying to avoid by inserting the language contained in Wis. Stat. § 5.01(1).

Board of Canvassers Discretion

Despite advice provided by Commission staff when asked by a board of canvassers, ultimately that statutory body retains the authority and discretion to make decisions it deems appropriate. Statutes specifically provide the board of canvassers the authority to count and recount ballots and correct errors that may have occurred during the initial canvassing of ballots and certification of results. See Wis. Stat. §§ 7.51, 7.52, 7.53, 7.60 and 9.01(1) and (5). The board of canvassers is comprised of an odd number of individuals and takes into account party balance when

possible in its composition. Courts rely on the determination and reasoning of the board of canvass when determining if a decision on appeal was properly decided and gave effect to the will of the electorate. See *DeBroux v. Board of Canvassers for the City of Appleton* (Three Cases), 557 N.W.2d 423, 206 Wis.2d 321 (Wis. App., 1996) ("As the SEB notes in its brief, the statutory scheme for a recount 'places a premium' on the Board's judgment to give effect to the will of the electorate.")

The Commission's procedures set forth in the Recount Manual, as well as the advice provided when a local election official or member of the board of canvassers asks a specific question on the treatment of a ballot, many times in the context of a recount, strives to be consistent with the intent of the election statutes and the supporting caselaw.

While the draw down procedure for example, is effective at creating ballot and voter totals that reconcile, it is not an effective tool for determining and removing the exact offending ballot or ballots, which caused the number of ballots to not match the number of voters. Rather than recommend a procedure that will likely disenfranchise a random voter due to an error made by an election official, the Commission staff's approach has been to advise a board of canvassers that they have some discretion to avoid a draw down if they can identify an explanation as to why the discrepancy occurred, considering the factors discussed above.

Ultimately, the decision of the board of canvassers is what is challenged in court, not the advice rendered by the Commission staff. The Commission staff, however, believes the board of canvassers should be provided with advice that considers the cases discussing the "directory vs. mandatory" application of election statutes as well as considering who made the error that has generated the question in the first place. Any decisions made should consider "the will of the electors, if that will can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions."

Wisconsin Elections Commission

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DATE: For the November 18, 2020 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator; Richard Rydecki, Deputy Administrator

SUBJECT: Public Health Guidance for Recount Proceedings

In preparation for a statewide recount Wisconsin Elections Commission (WEC) staff has worked with a public health professional from the Wisconsin Department of Health Services to develop suggested procedures for counties to apply to recount planning and setup efforts. These procedures follow the same concepts we have stressed throughout the 2020 elections that have been conducted during the COVID-19 pandemic. Public health considerations such as hand hygiene, face coverings, social distancing and COVID-19 symptom screenings should be incorporated into any recount setup. New considerations must be made to account for how recounts differ from administering voting at polling places or during the in-person absentee period.

Conducting a recount requires a significant number of people to be present in the same room or facility, including Board of Canvass members, tabulators, candidate representatives, public observers and other staff to assist with administrative and security-related tasks. The recount timeline also requires participants to be present in enclosed areas for long periods of time until the recount is complete. State law requires any recount to be completed within 13 days of the issuance of the recount order and several counties have expressed they will need the majority of that time to complete all required procedures before the deadline. In addition, a recount requires tabulators and Board of Canvass members to work within close proximity of one another and allows candidate representatives to be close enough to review each ballot before it is tabulated. All of these factors were presented to the public health official who assisted with the development of this guidance and have been considered in the procedures outlined below.

Space Considerations

In order to keep all participants and observers spaced out appropriately during the recount, counties have had to consider securing a larger space during their planning process. Additional space provides the ability to space out tables where tabulators are working while still allowing for multiple reporting units or municipalities to be recounted at the same time. WEC staff has discussed this option on several calls with county clerks in preparation for the recount and many indicated they identified and reserved larger spaces to conduct the recount.

The use of a larger space was confirmed as a recommended option by DHS as the larger space will allow for increased airflow that prevent aerosols from building up throughout the day. Any practices that increase the percentage of outdoor air in the recount space are recommended, such as opening windows and propping open doors, if possible. You may be able to work with the vendor or owner of the recount space to increase total airflow supply to occupied spaces, if possible. This can be done by disabling or changing the settings of demand-control ventilation (DCV) controls that reduce air supply based on temperature or occupancy.

Because of the prolonged nature of the recount, county officials may also consider the use of UV sanitation lights and additional ventilation, such as fans, where practicable. Some of these additional efforts may help to combat accumulation of aerosol particles. However, care should be taken in regard to where these items are utilized. For example, additional fans would not be appropriate directed at a table of paper, election materials, but a portable UV

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

Administrator
Meagan Wolfe

light may be.

Setup Considerations

The recount space should be set up so that there is adequate space between all participants and observers but allows for transparency and efficiency throughout the process. Signs, tape marks, or other visual cues such as decals or colored tape should be used on the floor, placed six feet apart, to keep the recount area organized and to ensure space between all parties when physical barriers are not possible.

Tabulators are required to work in pairs when hand counting ballots and candidate representatives have the ability to review (but not touch) ballots before they are tabulated. For those that must work closely together, it is recommended some physical barriers (e.g., plexiglass shields) are used to provide protection between participants. These barriers can be the tabletop shields that many municipal clerks used on election day at polling places or in their offices during in-person absentee voting. Counties can coordinate with their municipal clerks to borrow excess shields that can be used during the recount.

Tables used for the recount should be arranged in a way that ensures adequate distance between participants and observers. The number of people assigned to each table should also be limited. Arrange chairs in seating areas by turning, draping (covering chair with tape or fabric so seats cannot be used), spacing, or removing chairs to maintain social distancing. Identifying chairs that should not be used will be essential if rooms are used during the recount that have permanent seating, such as county board meeting rooms.

Designated candidate representatives should be able to review a ballot during the recount proceedings. This will require the implementation of a system for the representative to safely examine the ballot without violating social distancing standards. Clear tabletop barriers can be used for this purpose, but other methods may be used depending on the set up and needs of each recount site.

Additional observers, beyond the party representatives who need to be allowed access to see voting materials, may be asked to remain in an area designated by the county officials that accounts for social distancing. Current public health guidance is that a six-foot distance should be maintained meaning that non-party representative observers should expect that they will be asked to stay at least six feet from recount workers and other observers.

Screener Questions

All individuals entering the recount facility or room should be screened to determine if they are exhibiting symptoms of COVID-19. Symptomatic individuals should not be allowed to participate in or observe the recount proceedings until they are free from symptoms. These questions were developed with the assistance of public health officials from the Wisconsin Department of Health Services.

1. Have you come in contact with a person known or suspected to have COVID-19?
2. Have you had a fever or chills in the last 24 hours?
3. Have you had a cough in the last 24 hours?
4. Have you had any shortness of breath or difficulty breathing in the last 24 hours?
5. Have you had any unexplained muscle or body aches in the last 24 hours?
6. Have you experienced a loss of taste or smell within the last 24 hours?
7. Have you had a sore throat within the last 24 hours?

   If you answered “yes” to any of the seven questions, you should not participate in or observe at the recount today.

Face Coverings

Face coverings should be required of all people inside the recount space to help prevent the spread of COVID-19 among participants. Larger spaces and workstations that are spread out to account for social distancing will help minimize potential transmission of the virus but recount procedures still require tabulators and observers to be in close

proximity to one another and face coverings should be required to increase the safety of all involved in the recount. The Executive Order requiring face coverings is still in effect while legal challenges to that order are settled by the courts and other counties may have local public health orders that also require face coverings. The Board of Canvassers conducting the recount should clearly communicate with those attending the recount about social distancing, face coverings and hand hygiene health guidance prior to the start of the recount to ensure all individuals participating are aware of the role they play in keeping the location safe. It is recommended that County Clerks have additional disposable face coverings available for tabulators and observers who do not have their own upon arrival at the recount facility.

Hand Hygiene and Surface Cleaning

Strict hand hygiene and surface cleaning procedures should also be incorporated into the protocols at recount sites to minimize potential surface transmission of the virus. These procedures are familiar to election officials and have been recommended since the onset of the pandemic earlier this year. Participants and observers should be required to wash or sanitize their hands upon entry to the recount facility. In addition, tabulators should wash or sanitize their hands regularly throughout the day. If gloves are used, recount participants should take care when removing those gloves so as to not contaminate their bare hands in the process. After gloves have been removed, hands should be washed or sanitized to minimize the chance for COVID-19 transmission.

Surfaces such as tables and voting equipment should also be disinfected regularly throughout the day. Information on recommendations for election specific cleaning and disinfection are available on the Centers for Disease Control and Prevention webpage. In addition, approved cleaning procedures provided by your voting equipment vendor should be used to clean any voting equipment at regular intervals during the day. Best practices for cleaning different models of voting equipment can be found here: https://elections.wi.gov/node/6723.

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December 3, 2020

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*Address list continued on page 9.

You are hereby notified that the Court has entered the following order:

No. 2020AP1971-OA Trump v. Evers

A petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70, a supporting legal memorandum, and an appendix have been filed on behalf of petitioners, Donald J. Trump, et al. Responses to the petition have been filed by (1) Governor Tony Evers; (2) the Wisconsin Elections Commission and its Chair, Ann S. Jacobs; (3) Scott McDonell, Dane County Clerk, and Alan A. Arnsten and Joyce Waldrop, members of the Dane County Board of Canvassers; and (4) George L. Christensen, Milwaukee County Clerk, and Timothy H. Posnanski, Richard Baas, and Dawn Martin, members of the Milwaukee County Board of Canvassers. A non-party brief in support of the petition has been filed by the Liberty Justice Center. A motion to intervene, a proposed response of proposed respondents-intervenors, and an appendix have been filed by the Democratic National Committee (DNC) and Margaret J. Andrietsch, Sheila Stubbs,

EXHIBIT N

Ronald Martin, Mandela Barnes, Khary Penebaker, Mary Arnold, Patty Schachtner, Shannon Holsey, and Benjamin Wikler (collectively, "the Biden electors"). The court having considered all of the filings,

IT IS ORDERED that the petition for leave to commence an original action is denied. One or more appeals from the determination(s) of one or more boards of canvassers or from the determination of the chairperson of the Wisconsin Elections Commission may be filed by an aggrieved candidate in circuit court. Wis. Stat. § 9.01(6); and

IT IS FURTHER ORDERED that the motion to intervene is denied as moot.

BRIAN HAGEDORN, J. (*concurring).* I understand the impulse to immediately address the legal questions presented by this petition to ensure the recently completed election was conducted in accordance with the law. But challenges to election results are also governed by law. All parties seem to agree that Wis. Stat. § 9.01 (2017–18)[1] constitutes the "exclusive judicial remedy" applicable to this claim. § 9.01(11). After all, that is what the statute says. This section provides that these actions should be filed in the circuit court, and spells out detailed procedures for ensuring their orderly and swift disposition. See § 9.01(6)–(8). Following this law is not disregarding our duty, as some of my colleagues suggest. It is following the law.

Even if this court has constitutional authority to hear the case straightaway, notwithstanding the statutory text, the briefing reveals important factual disputes that are best managed by a circuit court.[2] The parties clearly disagree on some basic factual issues, supported at times by competing affidavits. I do not know how we could address all the legal issues raised in the petition without sorting through these matters, a task we are neither well-positioned nor institutionally designed to do. The statutory process assigns this responsibility to the circuit court. Wis. Stat. § 9.01(8)(b) ("The [circuit] court shall separately treat disputed issues of procedure, interpretations of law, and findings of fact.").

We do well as a judicial body to abide by time-tested judicial norms, even—and maybe especially—in high-profile cases. Following the law governing challenges to election results is no threat to the rule of law. I join the court's denial of the petition for original action so that the petitioners may promptly exercise their right to pursue these claims in the manner prescribed by the legislature.

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[1] All subsequent references to the Wisconsin Statutes are to the 2017–18 version.

[2] The legislature generally can and does set deadlines and define procedures that circumscribe a court's competence to act in a given case. Village of Trempealeau v. Mikrut, 2004 WI 79, ¶9–10, 273 Wis. 2d 76, 681 N.W.2d 190. The constitution would obviously override these legislative choices where the two conflict.

PATIENCE DRAKE ROGGENSACK, C.J. *(dissenting).* Before us is an emergency petition for leave to commence an original action brought by President Trump, Vice President Pence and Donald Trump for President, Inc., against Governor Evers, the Wisconsin Elections Commission (WEC), its members and members of both the Milwaukee County Board of Canvassers and the Dane County Board of Canvassers. The Petitioners allege that the WEC and election officials caused voters to violate various statutes in conducting Wisconsin's recent presidential election. The Petitioners raised their concerns during recount proceedings in Dane County and Milwaukee County. Their objections were overruled in both counties.

The Respondents argue, in part, that we lack subject matter jurisdiction because of the "exclusive judicial remedy" provision found in Wis. Stat. § 9.01(11) (2017-18).[3] Alternatively, the Respondents assert that we should deny this petition because fact-finding is required, and we are not a fact-finding tribunal.

I conclude that we have subject matter jurisdiction that enables us to grant the petition for original action pending before us. Our jurisdiction arises from the Wisconsin Constitution and cannot be impeded by statute. Wis. Const., art. VII, Section 3(2); City of Eau Claire v. Booth, 2016 WI 65, ¶7, 370 Wis. 2d 595, 882 N.W.2d 738. Furthermore, time is of the essence.

However, fact-finding may be central to our evaluation of some of the questions presented. I agree that the circuit court should examine the record presented during the canvasses to make factual findings where legal challenges to the vote turn on questions of fact. However, I dissent because I would grant the petition for original action, refer for necessary factual findings to the circuit court, who would then report its factual findings to us, and we would decide the important legal questions presented.

I also write separately to emphasize that by denying this petition, and requiring both the factual questions and legal questions be resolved first by a circuit court, four justices of this court are ignoring that there are significant time constraints that may preclude our deciding significant legal issues that cry out for resolution by the Wisconsin Supreme Court.

I. DISCUSSION

The Petitioners set out four categories of absentee votes that they allege should not have been counted because they were not lawfully cast: (1) votes cast during the 14-day period for in-person absentee voting at a clerk's office with what are alleged to be insufficient written requests for absentee ballots, pursuant to Wis. Stat. § 6.86(1)(b); (2) votes cast when a clerk has completed information missing from the ballot envelope, contrary to Wis. Stat. § 6.87(6d); (3) votes cast by those who obtained an absentee ballot after March 25, 2020 by alleging that they were indefinitely

[3] All subsequent references to the Wisconsin Statutes are to the 2017–18 version.

confined; and (4) votes cast in Madison at "Democracy in the Park" events on September 26 and October 3, in advance of the 14-day period before the election, contrary to Wis. Stat. § 6.87.

Some of the Respondents have asserted that WEC has been advising clerks to add missing information to ballot envelopes for years, so the voters should not be punished for following WEC's advice. They make similar claims for the collection of votes more than 14 days before the November 3 election.

If WEC has been giving advice contrary to statute, those acts do not make the advice lawful. WEC must follow the law. We, as the law declaring court, owe it to the public to declare whether WEC's advice is incorrect. However, doing so does not necessarily lead to striking absentee ballots that were cast by following incorrect WEC advice. The remedy Petitioners seek may be out of reach for a number of reasons.

Procedures by which Wisconsin elections are conducted must be fair to all voters. This is an important election, but it is not the last election in which WEC will be giving advice. If we do not shoulder our responsibilities, we leave future elections to flounder and potentially result in the public's perception that Wisconsin elections are unfair. The Wisconsin Supreme Court can uphold elections by examining the procedures for which complaint was made here and explaining to all where the WEC was correct and where it was not.

I also am concerned that the public will misunderstand what our denial of the petition means. Occasionally, members of the public seem to believe that a denial of our acceptance of a case signals that the petition's allegations are either false or not serious. Nothing could be further from the truth. Indeed, sometimes, we deny petitions even when it appears that a law has been violated. Hawkins v. Wis. Elec. Comm'n, 2020 WI 75, ¶¶14–16, 393 Wis. 2d 629, 948 N.W.2d 877 (Roggensack, C.J., dissenting).

II. CONCLUSION

I conclude that we have subject matter jurisdiction that enables us to grant the petition for original action pending before us. Our jurisdiction arises from the Wisconsin Constitution and cannot be impeded by statute. Wis. Const., art. VII, Section 3(2); City of Eau Claire, 370 Wis. 2d 595, ¶7. Furthermore, time is of the essence.

However, fact-finding may be central to our evaluation of some of the questions presented. I agree that the circuit court should examine the record presented during the canvasses to make factual findings where legal challenges to the vote turn on questions of fact. However, I dissent because I would grant the petition for original action, refer for necessary factual findings to the circuit court, who would then report its factual findings to us, and we would decide the important legal questions presented.

I am authorized to state that Justice ANNETTE KINGSLAND ZIEGLER joins this dissent.

REBECCA GRASSL BRADLEY, J. (*dissenting*). "It is emphatically the province and duty of the Judicial Department to say what the law is." Marbury v. Madison, 5 U.S. 137, 177 (1803). The Wisconsin Supreme Court forsakes its duty to the people of Wisconsin in declining to decide whether election officials complied with Wisconsin's election laws in administering the November 3, 2020 election. Instead, a majority of this court passively permits the Wisconsin Elections Commission (WEC) to decree its own election rules, thereby overriding the will of the people as expressed in the election laws enacted by the people's elected representatives. Allowing six unelected commissioners to make the law governing elections, without the consent of the governed, deals a death blow to democracy. I dissent.

The President of the United States challenges the legality of the manner in which certain Wisconsin election officials directed the casting of absentee ballots, asserting they adopted and implemented particular procedures in violation of Wisconsin law. The respondents implore this court to reject the challenge because, they argue, declaring the law at this point would "retroactively change the rules" after the election. It is THE LAW that constitutes "the rules" of the election and election officials are bound to follow the law, if we are to be governed by the rule of law, and not of men.

Under the Wisconsin Constitution, "all governmental power derives 'from the consent of the governed' and government officials may act only within the confines of the authority the people give them. Wis. Const. art. I, § 1." Wisconsin Legislature v. Palm, 2020 WI 42, ¶66, 391 Wis. 2d 497, 942 N.W.2d 900 (Rebecca Grassl Bradley, J., concurring). The Founders designed our "republic to be a government of laws, and not of men . . . bound by fixed laws, which the people have a voice in making, and a right to defend." John Adams, Novanglus: A History of the Dispute with America, from Its Origin, in 1754, to the Present Time, in Revolutionary Writings of John Adams (C. Bradley Thompson ed. 2000) (emphasis in original). Allowing any person, or unelected commission of six, to be "bound by no law or limitation but his own will" defies the will of the people. Id.

The importance of having the State's highest court resolve the significant legal issues presented by the petitioners warrants the exercise of this court's constitutional authority to hear this case as an original action. See Wis. Const. Art. VII, § 3. "The purity and integrity of elections is a matter of such prime importance, and affects so many important interests, that the courts ought never to hesitate, when the opportunity is offered, to test them by the strictest legal standards." State v. Conness, 106 Wis. 425, 82 N.W. 288, 289 (1900). While the court reserves this exercise of its jurisdiction for those original actions of statewide significance, it is beyond dispute that "[e]lections are the foundation of American government and their integrity is of such monumental importance that any threat to their validity should trigger not only our concern but our prompt action." State ex rel. Zignego v. Wis. Elec. Comm'n, 2020AP123-W (S. Ct. Order issued June 1, 2020 (Rebecca Grassl Bradley, J., dissenting)).

The majority notes that an action "may be filed by an aggrieved candidate in circuit court. Wis. Stat. § 9.01(6)." Justice Hagedorn goes so far as to suggest that § 9.01 "constitutes the 'exclusive judicial remedy' applicable to this claim." No statute, however, can circumscribe the

constitutional jurisdiction of the Wisconsin Supreme Court to hear this (or any) case as an original action. "The Wisconsin Constitution IS the law—and it reigns supreme over any statute." Wisconsin Legislature v. Palm, 391 Wis. 2d 497, ¶67 n.3 (Rebecca Grassl Bradley, J., concurring). "The Constitution's supremacy over legislation bears repeating: 'the Constitution is to be considered in court as a paramount law' and 'a law repugnant to the Constitution is void, and . . . courts, as well as other departments, are bound by that instrument.' See Marbury [v. Madison], 5 U.S. (1 Cranch) [137] at 178, 180 [1803])." Mayo v. Wis. Injured Patients and Families Comp. Fund, 2018 WI 78, ¶91, 383 Wis. 2d 1, 914 N.W.2d 678 (Rebecca Grassl Bradley, J., concurring). Wisconsin Statute § 9.01 is compatible with the constitution. While it provides an avenue for aggrieved candidates to pursue an appeal to a circuit court after completion of the recount determination, it does not foreclose the candidate's option to ask this court to grant his petition for an original action. Any contrary reading would render the law in conflict with the constitution and therefore void. Under the constitutional-doubt canon of statutory interpretation, "[a] statute should be interpreted in a way that avoids placing its constitutionality in doubt." Antonin Scalia & Brian A. Garner, Reading Law: The Interpretation of Legal Texts 247. See also Wisconsin Legislature v. Palm, 391 Wis. 2d 497, ¶31 ("[W]e disfavor statutory interpretations that unnecessarily raise serious constitutional questions about the statute under consideration.").

While some will either celebrate or decry the court's inaction based upon the impact on their preferred candidate, the importance of this case transcends the results of this particular election. "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." Purcell v. Gonzalez, 549 U.S. 1, 4 (2006). The majority takes a pass on resolving the important questions presented by the petitioners in this case, thereby undermining the public's confidence in the integrity of Wisconsin's electoral processes not only during this election, but in every future election. Alarmingly, the court's inaction also signals to the WEC that it may continue to administer elections in whatever manner it chooses, knowing that the court has repeatedly declined to scrutinize its conduct. Regardless of whether the WEC's actions affect election outcomes, the integrity of every election will be tarnished by the public's mistrust until the Wisconsin Supreme Court accepts its responsibility to declare what the election laws say. "Only . . . the supreme court can provide the necessary clarity to guide all election officials in this state on how to conform their procedures to the law" going forward. State ex rel. Zignego v. Wis. Elec. Comm'n, 2020AP123-W (S. Ct. Order issued January 13, 2020 (Rebecca Grassl Bradley, J., dissenting)).

The majority's recent pattern of deferring or altogether dodging decisions on election law controversies[4] cannot be reconciled with its lengthy history of promptly hearing cases involving

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[4] Hawkins v. Wis. Elec. Comm'n, 2020 WI 75, ¶¶84, 86, 393 Wis. 2d 629, 948 N.W.2d 877 (Rebecca Grassl Bradley, J., dissenting) ("The majority upholds the Wisconsin Elections Commission's violation of Wisconsin law, which irrefutably entitles Howie Hawkins and Angela Walker to appear on Wisconsin's November 2020 general election ballot as candidates for President and Vice President of the United States . . . . In dodging its responsibility to uphold the rule of law, the majority ratifies a grave threat to our republic, suppresses the votes of

voting rights and election processes under the court's original jurisdiction or by bypassing the court of appeals.[5] While the United States Supreme Court has recognized that "a state indisputably has a compelling interest in preserving the integrity of its election process[,]" Burson v. Freeman, 504 U.S. 191, 199 (1992), the majority of this court repeatedly demonstrates a lack of any interest in doing so, offering purely discretionary excuses or no reasoning at all. This year, the majority in Hawkins v. Wis. Elec. Comm'n declined to hear a claim that the WEC unlawfully kept the Green Party's candidates for President and Vice President off of the ballot, ostensibly because the majority felt the candidates' claims were brought "too late."[6] But when litigants have filed cases involving voting rights well in advance of Wisconsin elections, the court has "take[n] a pass,"

Wisconsin citizens, irreparably impairs the integrity of Wisconsin's elections, and undermines the confidence of American citizens in the outcome of a presidential election"); State ex rel. Zignego v. Wis. Elec. Comm'n, 2020AP123-W (S. Ct. Order issued January 13, 2020 (Rebecca Grassl Bradley, J., dissenting)) ("In declining to hear a case presenting issues of first impression immediately impacting the voting rights of Wisconsin citizens and the integrity of impending elections, the court shirks its institutional responsibilities to the people who elected us to make important decisions, thereby signaling the issues are not worthy of our prompt attention."); State ex rel. Zignego v. Wis. Elec. Comm'n, 2020AP123-W (S. Ct. Order issued June 1, 2020 (Rebecca Grassl Bradley, J., dissenting)) ("A majority of this court disregards its duty to the people we serve by inexplicably delaying the final resolution of a critically important and time-sensitive case involving voting rights and the integrity of Wisconsin's elections.").

[5] See, e.g., NAACP v. Walker, 2014 WI 98, ¶¶1, 18, 357 Wis. 2d 469, 851 N.W.2d 262 (2014) (this court took jurisdiction of appeal on its own motion in order to decide constitutionality of the voter identification act enjoined by lower court); Elections Bd. of Wisconsin v. Wisconsin Mfrs. & Commerce, 227 Wis. 2d 650, 653, 670, 597 N.W.2d 721 (1999) (this court granted bypass petition to decide whether express advocacy advertisements advocating the defeat or reelection of incumbent legislators violated campaign finance laws, in absence of cases interpreting applicable statutes); State ex rel. La Follette v. Democratic Party of United States, 93 Wis. 2d 473, 480-81, 287 N.W.2d 519 (1980) (original action deciding whether Wisconsin open primary system was binding on national political parties or infringed their freedom of association), rev'd, Democratic Party of United States v. Wisconsin ex rel. La Follette, 450 U.S. 107 (1981); State ex rel. Reynolds v. Zimmerman, 22 Wis. 2d 544, 548, 126 N.W.2d 551 (1964) (original action seeking to enjoin state from holding elections pursuant to legislative apportionment alleged to violate constitutional rights); State ex rel. Broughton v. Zimmerman, 261 Wis. 398, 400, 52 N.W.2d 903 (1952) (original action to restrain the state from holding elections based on districts as defined prior to enactment of reapportionment law), overruled in part by Reynolds, 22 Wis. 2d 544; State ex rel. Conlin v. Zimmerman, 245 Wis. 475, 476, 15 N.W.2d 32 (1944) (original action to interpret statutes in determining whether candidate for Governor timely filed papers to appear on primary election ballot).

[6] Hawkins v. Wis. Elec. Comm'n, 2020 WI 75, ¶5, 393 Wis. 2d 629, 948 N.W.2d 877 (denying the petition for leave to commence an original action).

thereby "irreparably den[ying] the citizens of Wisconsin a timely resolution of issues that impact voter rights and the integrity of our elections." State ex rel. Zignego v. Wis. Elec. Comm'n, 2020AP123-W (S. Ct. Order issued January 13, 2020 (Rebecca Grassl Bradley, J., dissenting)). Having neglected to identify any principles guiding its decisions, the majority leaves Wisconsin's voters and candidates guessing as to when, exactly, they should file their cases in order for the majority to deem them worthy of the court's attention.

The consequence of the majority operating by whim rather than rule is to leave the interpretation of multiple election laws in flux—or worse yet, in the hands of the unelected members of the WEC. "To be free is to live under a government by law . . . . Miserable is the condition of individuals, danger is the condition of the state, if there is no certain law, or, which is the same thing, no certain administration of the law . . . ." Judgment in Rex vs. Shipley, 21 St Tr 847 (K.B. 1784) (Lord Mansfield presiding). The Wisconsin Supreme Court has an institutional responsibility to decide important questions of law—not for the benefit of particular litigants, but for citizens we were elected to serve. Justice for the people of Wisconsin means ensuring the integrity of Wisconsin's elections. A majority of this court disregards its duty to the people of Wisconsin, denying them justice.

"No aspect of the judicial power is more fundamental than the judiciary's exclusive responsibility to exercise judgment in cases and controversies arising under the law." Gabler v. Crime Victims Rights Bd., 2017 WI 67, ¶37, 376 Wis. 2d 147, 897 N.W.2d 384. Once again, a majority of this court instead "chooses to sit idly by,"[7] in a nationally important and time-sensitive case involving voting rights and the integrity of Wisconsin's elections, depriving the people of Wisconsin of answers to questions of statutory law that only the state's highest court may resolve. The majority's "refusal to hear this case shows insufficient respect to the State of [Wisconsin], its voters,"[8] and its elections.

"This great source of free government, popular election, should be perfectly pure." Alexander Hamilton, Speech at New York Ratifying Convention (June 21, 1788), in Debates on the Federal Constitution 257 (J. Elliot ed. 1876). The majority's failure to act leaves an indelible stain on our most recent election. It will also profoundly and perhaps irreparably impact all local, statewide, and national elections going forward, with grave consequence to the State of Wisconsin and significant harm to the rule of law. Petitioners assert troubling allegations of noncompliance with Wisconsin's election laws by public officials on whom the voters rely to ensure free and fair elections. It is not "impulse"[9] but our solemn judicial duty to say what the law is that compels the exercise of our original jurisdiction in this case. The majority's failure to embrace its duty (or even

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[7] United Student Aid Funds, Inc. v. Bible, 136 S. Ct. 1607, 1609 (2016) (Thomas, J., dissenting from the denial of certiorari).

[8] County of Maricopa, Arizona v. Lopez-Valenzuela, 135 S. Ct. 2046, 2046 (2015) (Thomas, J., dissenting from the denial of certiorari).

[9] See Justice Hagedorn's concurrence.

an impulse) to decide this case risks perpetuating violations of the law by those entrusted to follow it. I dissent.

I am authorized to state that Chief Justice PATIENCE DRAKE ROGGENSACK and Justice ANNETTE KINGSLAND ZIEGLER join this dissent.

Sheila T. Reiff
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December 4, 2020

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You are hereby notified that the Court has entered the following order:

No. 2020AP1930-OA Wisconsin Voters Alliance v. Wisconsin Elections Commission

A petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70 and a supplement thereto, a supporting legal memorandum, and supporting expert reports have been filed on behalf of petitioners, Wisconsin Voters Alliance, et al. A response to the petition has been filed by respondents, Wisconsin Elections Commission, Ann S. Jacobs, Mark L. Thomsen, Marge Bostelman, Julie M. Glancey, Dean Knudsen, and Robert F. Spindell, and a separate response has been filed by respondent Governor Tony Evers. Amicus briefs regarding the issue of whether to grant leave to commence an original action have been filed by (1) Christine Todd Whitman, et al; (2) the City of Milwaukee; (3) Wisconsin State Conference NAACP, et al.; and (4) the Center for Tech and Civic Life. In addition, a motion to intervene has been filed by proposed intervenor-respondent, Democratic National Committee.

After considering all of the filings, we conclude that this petition does not satisfy our standards for granting leave to commence an original action. Although the petition raises time-

EXHIBIT O

sensitive questions of statewide significance, "issues of material fact [would] prevent the court from addressing the legal issues presented." State ex rel. Ozanne v. Fitzgerald, 2011 WI 43, ¶19, 334 Wis. 2d 70, 798 N.W.2d 436 (Prosser, J., concurring). It is therefore not an appropriate case in which to exercise our original jurisdiction. Accordingly,

IT IS ORDERED that the petition for leave to commence an original action is denied; and

IT IS FURTHER ORDERED that the motion to intervene is denied as moot.

BRIAN HAGEDORN, J., (*concurring*). The Wisconsin Voters Alliance and a group of Wisconsin voters bring a petition for an original action raising a variety of questions about the operation of the November 3, 2020 presidential election. Some of these legal issues may, under other circumstances, be subject to further judicial consideration. But the real stunner here is the sought-after remedy. We are invited to invalidate the entire presidential election in Wisconsin by declaring it "null"—yes, the whole thing. And there's more. We should, we are told, enjoin the Wisconsin Elections Commission from certifying the election so that Wisconsin's presidential electors can be chosen by the legislature instead, and then compel the Governor to certify those electors. At least no one can accuse the petitioners of timidity.

Such a move would appear to be unprecedented in American history. One might expect that this solemn request would be paired with evidence of serious errors tied to a substantial and demonstrated set of illegal votes. Instead, the evidentiary support rests almost entirely on the unsworn expert report[1] of a former campaign employee that offers statistical estimates based on call center samples and social media research.

This petition falls far short of the kind of compelling evidence and legal support we would undoubtedly need to countenance the court-ordered disenfranchisement of every Wisconsin voter. The petition does not even justify the exercise of our original jurisdiction.

As an initial matter, the Wisconsin Supreme Court is not a fact-finding tribunal. Yet the petition depends upon disputed factual claims. In other words, we couldn't just accept one side's description of the facts or one side's expert report even if we were inclined to believe them.[2] That alone means this case is not well-suited for an original action. The petition's legal support is no less wanting. For example, it does not explain why its challenge to various election processes

[1] After filing their petition for original action, the Petitioners submitted a second expert report. But the second report only provides additional computations based on the assumptions and calculations in the initial expert report.

[2] The Attorney General and Governor offer legitimate arguments that this report would not even be admissible evidence under Wis. Stat. § 907.02 (2017-18).

All subsequent references to the Wisconsin Statutes are to the 2017-18 version.

comes after the election, and not before. Nor does it grapple with how voiding the presidential election results would impact every other race on the ballot, or consider the import of election statutes that may provide the "exclusive remedy."[3] These are just a few of the glaring flaws that render the petition woefully deficient. I therefore join the court's order denying the original action.

Nonetheless, I feel compelled to share a further observation. Something far more fundamental than the winner of Wisconsin's electoral votes is implicated in this case. At stake, in some measure, is faith in our system of free and fair elections, a feature central to the enduring strength of our constitutional republic. It can be easy to blithely move on to the next case with a petition so obviously lacking, but this is sobering. The relief being sought by the petitioners is the most dramatic invocation of judicial power I have ever seen. Judicial acquiescence to such entreaties built on so flimsy a foundation would do indelible damage to every future election. Once the door is opened to judicial invalidation of presidential election results, it will be awfully hard to close that door again. This is a dangerous path we are being asked to tread. The loss of public trust in our constitutional order resulting from the exercise of this kind of judicial power would be incalculable.

I do not mean to suggest this court should look the other way no matter what. But if there is a sufficient basis to invalidate an election, it must be established with evidence and arguments commensurate with the scale of the claims and the relief sought. These petitioners have come nowhere close. While the rough and tumble world of electoral politics may be the prism through which many view this litigation, it cannot be so for us. In these hallowed halls, the law must rule.

Our disposal of this case should not be understood as a determination or comment on the merits of the underlying legal issues; judicial review of certain Wisconsin election practices may be appropriate. But this petition does not merit further consideration by this court, much less grant us a license to invalidate every single vote cast in Wisconsin's 2020 presidential election.

I am authorized to state that Justices ANN WALSH BRADLEY, REBECCA FRANK DALLET, and JILL J. KAROFSKY join this concurrence.

ROGGENSACK, C.J. (*dissenting*). It is critical that voting in Wisconsin elections not only be fair, but that the public also perceives voting as having been fairly conducted.

This is the third time that a case filed in this court raised allegations about purely legal questions that concern Wisconsin Elections Commission (WEC) conduct during the November 3,

[3] See Wis. Stat. § 9.01(11) (providing that § 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. § 5.05(2m)(k) (describing "[t]he commission's power to initiate civil actions" under § 5.05(2m) as the "exclusive remedy for alleged civil violations of chs. 5 to 10 or 12").

2020, presidential election.[4] This is the third time that a majority of this court has turned its back on pleas from the public to address a matter of statewide concern that requires a declaration of what the statutes require for absentee voting. I dissent and write separately because I have concluded that the court has not meet its institutional responsibilities by repeatedly refusing to address legal issues presented in all three cases.

I agree with Justice Hagedorn that we are not a circuit court, and therefore, generally, we do not take cases for which fact-finding is required. Green for Wisconsin v. State Elections Bd., 2006 WI 120, 297 Wis. 2d 300, 301, 723 N.W.2d 418. However, when the legal issue that we wish to address requires it, we have taken cases that do require factual development, referring any necessary factual determinations to a referee or to a circuit court. State ex rel. LeFebre v. Israel, 109 Wis. 2d 337, 339, 325 N.W.2d 899 (1982); State ex rel White v. Gray, 58 Wis. 2d 285, 286, 206 N.W.163 (1973).

We also have taken cases where the issues we wish to address are purely legal questions for which no factual development is required in order to state what the law requires. Wisconsin Legislature v. Palm, 2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900. The statutory authority of WEC is a purely legal question. There is no factual development required for us to declare what the law requires in absentee voting.

Justice Hagedorn is concerned about some of the relief that Petitioners request. He begins his concurrence saying, "the real stunner here is the sought after remedy." He next relates, "The relief being sought by the petitioners is the most dramatic invocation of judicial power I have ever seen." Then, he concludes with, "this petition does not merit further consideration by this court, much less grant us a license to invalidate every single vote cast in Wisconsin's 2020 presidential election."[5]

Those are scary thoughts, but Justice Hagedorn has the cart before the horse in regard to our consideration of this petition for an original action. We grant petitions to exercise our jurisdiction based on whether the legal issues presented are of state wide concern, not based on the remedies requested. Petition of Heil, 230 Wis. 428, 284 N.W.42 (1938).

Granting a petition does not carry with it the court's view that the remedy sought is appropriate for the legal issues raised. Historically, we often do not provide all the relief requested. Bartlett v. Evers, 2020 WI 68, ¶9, 393 Wis. 2d 172, 945 N.W.2d 685 (upholding some but not all partial vetoes). There have been occasions when we have provided none of the relief requested by the petitioner, but nevertheless declared the law. See Sands v. Menard, Inc., 2010 WI 96, ¶46, 328 Wis. 2d 647, 787 N.W.2d 384 (concluding that while reinstatement is the preferred remedy under

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[4] Trump v. Evers, No. 2020AP1971-OA, unpublished order (Wis. S. Ct. Dec. 3, 2020); Mueller v. WEC, No. 2020AP1958-OA, unpublished order (Wis. S. Ct. Dec. 3, 2020) and Wisconsin Voters Alliance v. WEC, No. 2020AP193-OA.

[5] Justice Hagedorn forgets to mention that one form of relief sought by Petitioners is, "Any other relief the Court deems appropriate."

Title VII, it is an equitable remedy that may or may not be appropriate); Coleman v. Percy, 96 Wis. 2d 578, 588-89, 292 N.W.2d 615 (1980) (concluding that the remedy Coleman sought was precluded).

We have broad subject matter jurisdiction that enables us to grant the petition for original action pending before us. Our jurisdiction is grounded in the Wisconsin Constitution. Wis. Const., art. VII, Section 3(2); City of Eau Claire v. Booth, 2016 WI 65, ¶7, 370 Wis. 2d 595, 882 N.W.2d 738.

I dissent because I would grant the petition and address the people of Wisconsin's concerns about whether WEC's conduct during the 2020 presidential election violated Wisconsin statutes. As I said as I began, it is critical that voting in Wisconsin elections not only be fair, but that the public also perceives voting as having been fairly conducted. The Wisconsin Supreme Court should not walk away from its constitutional obligation to the people of Wisconsin for a third time.

I am authorized to state that Justices ANNETTE KINGSLAND ZIEGLER and REBECCA GRASSL BRADLEY join this dissent.

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You are hereby notified that the Court has entered the following order:

2020AP557-OA Jefferson v. Dane County

On March 27, 2020, petitioners, Mark Jefferson and the Republican Party of Wisconsin, filed a petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70, a supporting legal memorandum, and a motion for temporary injunctive relief. On that same date, the court ordered the named respondents, Dane County and Scott McDonell, in his official capacity as Dane County Clerk, to file a response to the original action petition and the motion for temporary injunctive relief by 1:00 on March 30, 2020. The court has reviewed the filings of the parties and now addresses the motion for temporary injunctive relief.

When we have considered whether to grant temporary injunctive relief, we have required a movant to show (1) a reasonable probability of success on the merits; (2) a lack of an adequate remedy at law; (3) that the movant will suffer irreparable harm in the absence of an injunction; and (4) that a balancing of the equities favors issuing the injunction. See, e.g., Pure Milk Products Coop. v. National Farmers Org., 90 Wis. 2d 781, 800, 280 N.W.2d 691 (1979); Werner v. A.L. Grootemaat & Sons, Inc., 80 Wis. 2d 513, 520, 259 N.W.2d 310 (1977). The decision whether to grant an injunction is a discretionary one, although injunctions are not to be issued lightly. Werner, 80 Wis. 2d at 520.

The temporary injunction the petitioners seek would order respondent, Scott McDonell, the Dane County Clerk, to remove a March 25, 2020 Facebook post in which he indicated, inter alia, that all Dane County voters could declare themselves to be "indefinitely confined" under Wis. Stat. § 6.86(2) due to illness solely because of the Wisconsin Department of Health Services Emergency Order #12 (the Safer at Home Order) and difficulties in presenting or uploading a valid proof of identification, thereby avoiding the legal requirement to present or upload a copy of the voter's proof of identification when requesting an absentee ballot.[1] The petitioners further ask this court to order respondent McDonell and respondent Dane County to issue new statements setting forth the statutory interpretation proposed by the petitioners.

Although respondents do not represent that McDonell's original March 25, 2020 post has been removed, they argue that McDonell's later posting renders the petitioners' motion moot because McDonell has now posted the Wisconsin Elections Commission's (WEC) guidance on his Facebook page. They also argue that the petitioners' petition and motion for temporary relief cannot go forward in this court because they have not exhausted their administrative remedies by first filing a complaint with the WEC under Wis. Stat. § 5.06(1) and (2).

McDonell's March 25, 2020, advice was legally incorrect. In addition, McDonell's subsequent Facebook posting does not preclude McDonell's future posting of the same erroneous advice. Furthermore, his erroneous March 25, 2020 Facebook posting continues distribution on the internet.

Accordingly, we conclude that clarification of the purpose and proper use of the indefinitely confined status pursuant to Wis. Stat. § 6.86(2) as well as a temporary injunction are warranted.

In regard to clarification, the WEC has met and has issued guidance on the proper use of indefinitely confined status under Wis. Stat. § 6.86(2) in its March 29, 2020 publication, "Guidance for Indefinitely Confined Electors COVID-19." The WEC guidance states as follows:

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.

We conclude that the WEC's guidance quoted above provides the clarification on the purpose and proper use of the indefinitely confined status that is required at this time.

We further determine that the petitioners have demonstrated a reasonable probability of success on the merits, at least with respect to certain statements in McDonell's March 25th

[1] Petitioners note that the Milwaukee County Clerk issued nearly identical advice.

Facebook post. Voters may be misled to exercise their right to vote in ways that are inconsistent with Wis. Stat. § 6.86(2). Namely, McDonell appeared to assert that all voters are automatically, indefinitely confined solely due to the emergency and the Safer at Home Order and that voters could therefore declare themselves to be indefinitely confined when requesting an absentee ballot, which would allow them to skip the step of presenting or uploading a valid proof of identification. Indeed, we do not see how the respondents could prevail with an argument that such statements in the March 25th post constitute an accurate statement of the relevant statutory provisions.

NOW THEREFORE, IT IS ORDERED that the petitioners' motion for temporary injunctive relief is granted and we order McDonell to refrain from posting advice as the County Clerk for Dane County inconsistent with the above quote from the WEC guidance.

DANIEL KELLY, J., did not participate.

Sheila T. Reiff
Clerk of Supreme Court