

Wisconsin Elections Commission

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Marie Schmidt and Steven Schmidt,

Complainants,

EL 24-108

v.

Kaitlyn Bernarde, Kody Hart  
and Maryanne Grant

Respondents.

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**VERIFIED RESPONSE TO COMPLAINTS**

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The Respondents hereby submit this verified response to the complaint submitted by Marie and Steven Schmidt to the Wisconsin Elections Commission.

**ARGUMENT**

**I. NO STATUTORY VIOLATIONS HAVE OCCURRED.**

Within the Complaint, the complainants vaguely allege various statutory violations. These statutory references are addressed as follows:

5.06(1): This statute lays out the method to file a complaint. No respondent took any action that prevented the official complaint process.

5.06(): This statute lays out the method to review a complaint. No respondent took any action that prevented the official complaint process.

5.35(3): This statute describes ballot boxes that are required to be used at polling places. The City of Wausau utilizes a DS-200 ballot box at our polling place that collects for each type of ballot used.

6.87(4)(b)1: The City of Wausau requires all absentee ballots to be returned to the municipal clerk by the elector, unless they were returning the ballot on behalf of someone due to a disability. The City did this by:

- Asking this of each elector that dropped off a ballot in person in the Clerk's Office,

- Including absentee ballot instructions sent out with the absentee ballots
- Communicating on our website and in the “Other Ways to Vote” section on myvote.wi.gov information

7.21(5): This statute applies to municipalities that have a Board of Election Commissioners. This does not apply to the City of Wausau since we do not have a Board of Election Commissioners.

12.13(2)(a): The City of Wausau had a single absentee ballot drop box located in a well-lit area with a video surveillance right in front of City Hall.

12.13(2)(b): No respondent intentionally violated or intentionally caused any other person to violate any provision of Chapters 5 or 12, in any official duties, specifically with the absentee ballot drop box.

## **II. THE BALLOT DROP BOX COMPLIED WITH LAW AND BEST PRACTICES.**

Beyond claims of statutory violations, the complainants articulated various allegations regarding the ballot drop box, which they identify as “points” and which are responded to as follows:

*Point 1: The slot of the drop box be appropriately sized so only an absentee ballot can be deposited.*

Best Practices suggest that the slot of the drop box be appropriately sized to not permit other “objects or liquids.” Other envelopes of similar or smaller size, regardless of their contents, are not “objects or liquids.” Prior WEC guidance allowed the use of the drop box for payment of utility bills and the like, so that they were secured and emptied often and recorded by appropriate staff. Many clerks still engage in this practice. The drop box in question permits far less to be inserted into it and is thus far more secure than a regular U.S. Postal mailbox, thus meeting the intended use of the drop box. The purpose of this is to reduce the risk of foreign objects (other than envelopes, regardless of their contents) being deposited in the drop box which would damage the contents.

*Point #2: Any damage to or tampering with the drop box be documented and the drop box be inspected to ensure that it remains secure for the purpose of depositing absentee ballot envelopes.*

When the box was improperly removed on September 22, 2024, before it was officially installed and opened, the tampering was documented and reported to the appropriate authorities. Before it was secured in place on September 30, 2024, the clerk inspected the drop box to ensure that it remains secure for the receipt of any absentee ballot envelope and any other same or smaller envelope containing money, checks, or other two-dimensional papers.

Point #3: The drop box be clearly marked or labeled that the drop box is for the purpose of collecting absentee ballots in return envelopes.

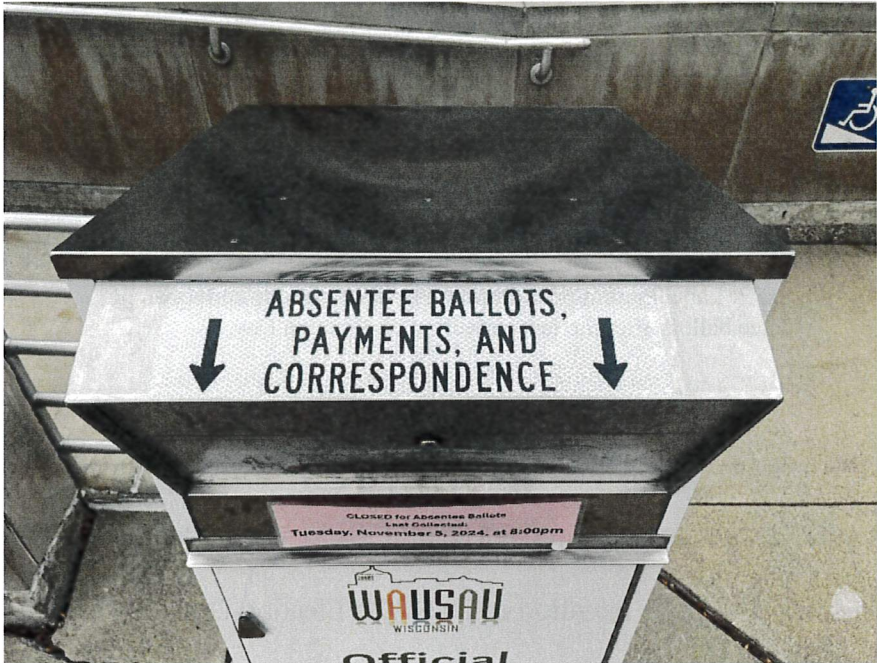


Figure 1 Label on the drop box that the drop box can collect absentee ballots with payment and correspondence that was changed out on October 23, 2024.

The City of Wausau had the drop box re-wrapped/labeled to state “Official Drop Box” with the City of Wausau logo. When the box was put in place, it stated “Payments” above the slot. On October 23<sup>rd</sup>, 2024, we re-labeled the top of the drop box to state, “Absentee Ballots, Payments and Correspondence.” This language was to stay consistent with the language that was included in the instructions that was sent out with the absentee ballots.

Point #4: The time of final retrieval of ballot return envelopes be clearly marked on or near the drop box. After the time of final retrieval, the drop box be secured to prevent the submission of absentee ballot return envelopes.



Figure 2: Label marking the drop box is closed for the collection of absentee ballots after the last collection on Election Day.

Since the City of Wausau processes all absentee ballots at Central Count at City Hall, the City’s historic practice was to have final retrieval of ballots at 8:00pm on Election Day when the polls close. This was the City’s intention in 2024. On Election Day the City Clerk put a label on the ballot box that stated, “Final Collection for Absentee Ballots will be Tuesday, November 5, 2024, at 8:00pm.” The City Clerk and Deputy City Clerk made the final retrieval of ballots at 8:00 pm on November 5<sup>th</sup> and placed a “CLOSED for Absentee Ballots – Last Collected: Tuesday, November 5, 2024, at 8:00pm” sign on the box. We are not accepting any ballots that are returned after that last collection, but are marking and recording them, Returned After Deadline.”

This is the same process the City of Wausau uses when it receives absentee ballots through the mail that are returned in the following days and weeks after an election. The final number of

absentee ballots returned was posted on the front doors of City Hall and the City of Wausau website.

Point #5: Best Practices: Security of the Drop Box Surroundings. The drop box be located in a well-lit area

The drop box is in a well-lit area, with security cameras pointed at it. At the October 8, 2024, Common Council meeting, the resolution put forth by the Mayor was actually not for drop box security funding, but was seeking the governing body’s approval of the municipal clerk’s security, lighting, and monitoring plan for the drop box (see attached resolution). The Mayor did not need Council approval for the clerk to have \$3,000 to replace a security camera. The money was already budgeted. The clerk has since requested to replace a different camera that the



Figure 3: Picture of 6 fixed and 1 temporary light near the drop box.

City/County Information Technology Commission Director informed her was at its useful life's end, but that camera is not trained directly on the drop box.

As for lighting, the photos the mayor selected for inclusion in the Council packet do not accurately represent the security lighting of the drop box. The lighting includes a main outdoor light at the steps of City Hall which is approximately 20 feet from where the drop box is affixed. There are 5 other lights on this block between the other lights on the front steps of City Hall, and the other street lights on both sides of the street.

This is the same lighting and camera that were sufficient for the drop box from 2020-2022, the previous payment box, and the blue USPS mailbox. After all the attention the drop box received after the mayor took the box, and election security briefings, I requested a work light to be added. On October 11, 2024, the City's Department of Public Works placed a temporary light on the same light pole which is directed at the drop box.

I did make a thorough security assessment before deploying a drop box. Firstly, I followed previous practice utilized from 2020-2022 with one drop box, located directly in front of City Hall, and the Clerk's Office. It is in a very high traffic area with proximity to the USPS drop box, and

the City's previous payment box. The 4-pan camera pointed at the box 24/7 provided high quality images day and night, in the event there was an incident that we needed to review.



*Figure 3:* The orange cone is in the previous location of the drop box and the new secured drop box location. The 4-pan camera mounted on City Hall is visible in the background.

The drop box that the complainants cite as being in line with the requirements is the same ballot box we are using today. We had it re-wrapped in the City's logo and color scheme to be able to have one secure collection box. The box is the same previous box with a small slit opening to collect 2D envelopes and has two unique locks. The box is in the approximate same location as when it was previously in use but is bolted to the sidewalk instead of a slab of poured concrete to make it more secure.

Prior to securing the box and opening the slot, the clerk noticed the public that the drop box was ready to accept absentee ballot envelopes, along with other payments, and performed a

security assessment. The Clerk met every recommendation of the United States Elections Assistance Commission to ensure the box was secured before opening it to accept envelopes. The Clerk met the legal requirements to place the drop box in its location, as in her capacity as a municipal clerk, she may lawfully utilize a secure drop box in an exercise of her statutorily conferred discretion, and made the decision to utilize a drop box, which she was not required to do.

The insertion of other payment envelopes does not jeopardize the integrity of the election or the absentee ballot envelopes, which are not changed by the comingling of envelopes. The envelopes themselves are inspected for multiple things before opening and counting the ballot. The envelopes are inspected for voter signatures, witness signatures, and witness addresses. It is verified that the person casting the ballot was qualified and registered to vote, that they hadn't already voted, and recorded them as having returned their absentee ballot. Only then would the vote be tabulated.

The Clerk is satisfied that the drop box was and remains secure at the time of deployment and going forward, and that the area in which it is installed has "good lighting," and is "monitored by video surveillance cameras."

None of the allegations are specified as violating any specific state statutory or federal law. There appears to be general dissatisfaction and mistrust of security measures implemented, adequate lighting and adequate surveillance, and an objection, based upon commission guidance, to the drop box accepting other similarly sized envelopes.

If there were separate collection boxes, the likelihood that someone might place an absentee ballot envelope in the wrong box increases. And the utility payment box is not required to be checked by 8:00 p.m. on election day, and the possibility exists of ballots not being counted.




Having one drop box ensures that the ballots are safe and secure and counted. The Clerk's use of a comingled drop box is reflective of the city's surrounding communities including the Village of Rib Mountain, Village of Weston, and the City of Schofield. Having multiple collection boxes creates voter confusion, and more instances of clerk staff having to contact a voter to remedy their improper ballot return.

### CONCLUSION

For the foregoing reasons, we request that the Wisconsin Elections Commission dismiss the complaint.

Dated this 15<sup>th</sup> day of November 2024.

  
Kaitlyn A. Bernarde

  
Kody Hart

  
Maryanne Grant

**VERIFICATION**

I, KAITLYN BERNARDE, being first duly sworn upon oath, state that I personally read the above Verified Response and that it is true and correct based upon my personal knowledge.

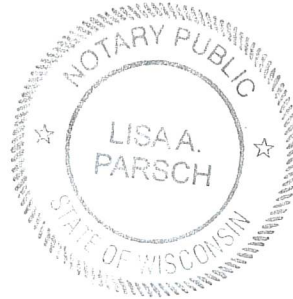
Dated this 15th day of November, 2024.

  
KAITLYN BERNARDE

Sworn and subscribed to before me  
This 15th day of November, 2024.

  
Notary Public, State of Wisconsin

My Commission Expires: 8/4/2028



**VERIFICATION**

I, KODY HART, being first duly sworn upon oath, state that I personally read the above Verified Response and that it is true and correct based upon my personal knowledge.

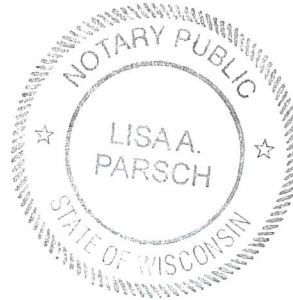
Dated this 15th day of November, 2024.

  
\_\_\_\_\_  
KODY HART

Sworn and subscribed to before me  
This 15th day of November, 2024.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission Expires: 8/4/2028



**VERIFICATION**

I, MARYANNE GROAT, being first duly sworn upon oath, state that I personally read the above Verified Response and that it is true and correct based upon my personal knowledge.

Dated this 15th day of November, 2024.

  
\_\_\_\_\_  
MARYANNE GROAT

Sworn and subscribed to before me  
This 15th day of November, 2024.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission Expires: 8/4/2028



**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

<b>RESOLUTION OF THE COMMON COUNCIL</b>	
Approving Funding for the City Hall Drop Box Security for November 2024 Election.	
Committee Action:	None
Fiscal Impact:	\$3,000.00
<b>File Number:</b>	10-1008
<b>Date Introduced:</b>	October 8, 2024

<b>FISCAL IMPACT SUMMARY</b>			
<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	\$3,000.00
	<i>Included in Budget:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Budget Source:</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount</i>
	<i>TID Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>		

**RESOLUTION**

WHEREAS, the Wisconsin Supreme Court recently ruled that city clerks may utilize secure absentee ballot drop boxes for elections, and

WHEREAS, the previously identified installation concerns have been remedied, and

WHEREAS, the Wisconsin Election Commission has determined that, to be secure, a drop box must be in a well-lit area, with a camera affixed to it, and

WHEREAS, the Mayor, consistent with duties under W. S§62.09(8)(a)&(b), reviewed video surveillance capabilities and determined inadequate nighttime lighting. Photos attached as Exhibit A (Front Door Cam), B (Quad NE View Night) and C (Quad NE view Day) show inadequate lighting and resolution and,

WHEREAS, the Front Door Camera is at the end of its service life with inadequate coverage day or night,

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Wausau, that it hereby approves the clerk’s security, lighting, and monitoring plan for the outdoor absentee ballot drop box at City Hall for the November 2024 Election and,

BE IT FURTHER RESOLVED, the Common Council authorizes up to \$3,000 for installation of temporary or permanent spot lighting on the drop box, and installation for redundancy of high-resolution

camera and video storage capacity on the front door which the clerk shall be the custodian under election best practices. The City Clerk has discretion to institute the use of any other security controls within the budget for the November 2024 election, and

Attachments:

Ballot Drop Box 2024\City Hall N Entrance - Front Door View (10\_1\_2024 07\_24\_46 PM CDT).png

Ballot Drop Box 2024\City Hall N Entrance Quad - NE View (10\_7\_2024 12\_03\_12 PM CDT).png

Ballot Drop Box 2024\City Hall N Entrance Quad - NE View Night (10\_1\_2024 07\_24\_34 PM CDT).png

Adopted:

Approved:

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Doug Diny, Mayor

DRAFT