

**STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION**

SANDRA L. JUNO,

Complainant,

v.

CELESTINE JEFFREYS, in her capacity
as City Clerk of the City of Green Bay,

Respondent.

AFFIDAVIT OF LINDSAY J. MATHER

STATE OF WISCONSIN)
)
COUNTY OF BROWN)

I, Lindsay J. Mather, being first duly sworn on oath, swear and state as follows:


1. I am a licensed Wisconsin attorney and Assistant City Attorney for the City of Green Bay. I am one of the attorneys representing Celestine Jeffreys, in her official capacity as the City Clerk for the City of Green Bay, in the above-captioned matter. I have personal knowledge and belief as to the matters set forth below.

2. Attached hereto as **Exhibit A** is a true and correct copy of pages 1 and 98 through 100 of the Wisconsin Elections Commission’s *Election Administration Manual for Wisconsin Municipal Clerks*, dated September 2022, the complete version of which is available at <https://elections.wi.gov/resources/manuals/election-administration-manual>.

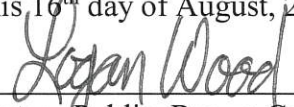
3. Attached hereto as **Exhibit B** is a true and correct copy of pages 1 and 98 through 100 of the Wisconsin Elections Commission’s *Election Day Manual for Wisconsin Election Officials*, dated September 2020, the complete version of which is available at <https://elections.wi.gov/resources/manuals/election-day-manual>.

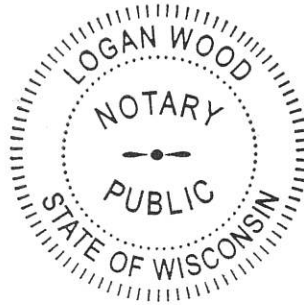
4. Attached hereto as **Exhibit C** is a true and correct copy of the October 28, 2022 memo from the Wisconsin Elections Commission to Wisconsin Municipal Clerks entitled, *Temporary Injunction for WEC concerning Spoiling Absentee Ballots (Kormanik v. Wisconsin Elections Commission, 22-CV-1395)*.

Dated this 16th day of August, 2023.


Lindsay J. Mather
Assistant City Attorney
City of Green Bay

Subscribed and sworn to before me
this 16th day of August, 2023.


Notary Public, Brown County, WI
My commission expires permanent



Election Administration Manual

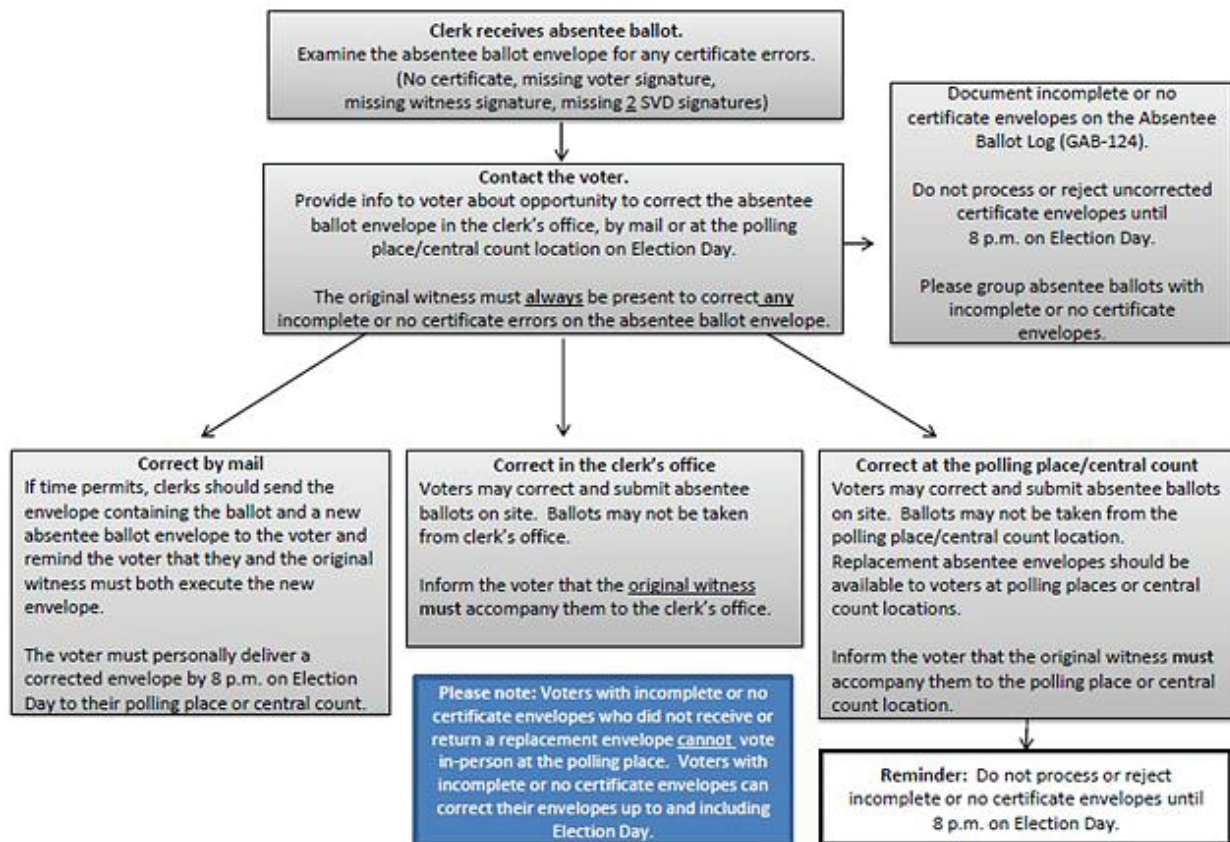
for
Wisconsin Municipal Clerks



Wisconsin Elections
Commission

September 2022

Correcting Defective Absentee Certificate Envelopes



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

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

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

Election Day Manual

for
Wisconsin Election Officials



Wisconsin Elections
Commission

September 2020

BALLOTS

Absentee Ballots

Any registered elector in the state of Wisconsin has the right to cast an absentee ballot. Absentee voting provides an opportunity for a voter who is unable or unwilling to appear at the polling place to cast their ballot. For this reason, special procedures are in place to protect the elector and the integrity of the process.

On Election Day, the municipal clerk delivers absentee ballots to the polling place or alternate absentee canvassing site. The ballots are delivered in a sealed envelope or container that bears the name and official title of the clerk and the language found in Wis. Stat. § 6.88(1). (EL-125 Absentee Ballot Carrier). The establishment of alternate absentee canvassing sites (also known as Central Count Absentee) requires approval by the municipalities governing body and the Wisconsin Elections Commission

All absentee ballots must be processed in the same room votes are cast or at an alternate absentee canvassing location so that any interested observer is able to hear the public announcement of the names of the absentee electors.

Any observer who is a qualified elector of Wisconsin, including an election inspector can challenge an absentee elector's ballot the same as if the elector were voting in person. The procedures for challenging an elector's ballot are the same as the challenge procedure in person. See the "Challenging Electors" section of this manual for the complete challenge procedure.

Procedure

Election inspectors may process absentee ballots at any time between the opening and closing hours of the polling place, except absentee certificate envelopes marked "To Be Rejected." "To Be Rejected" absentee certificate envelopes feature one or more of the following errors: no voter signature, no witness signature, no witness address, both special voting deputies failed to sign, or no certification language. Set these aside and process them after 8 p.m. on Election Day to give the voter an opportunity to correct these errors. Wis. Stat. § 6.88(3).

Absentee ballots may not be counted until after the polls close.

Processed absentee ballots are placed in the ballot box or optical scan equipment and are counted when all the other ballots are counted. Ballots are considered

- d. The certificate contains the signature of one witness who is an adult U.S. citizen. The witness must include their address and it can be an address outside of the United States. Wis. Stat. § 6.87(4)(b).

Note: If the envelope has been opened or resealed, the signature of either the elector or the witness is missing or the witness' address is missing, the absentee ballot certificate envelope is insufficient, and the absentee ballot must be rejected. If there are no clerk initials on the envelope do not reject the ballot but note the omission on the EL-104 and process normally.

5. If the Absentee Certificate Envelope (EL-122) is found to be **insufficient**:
 - a. Do not open the envelope.
 - b. Do not issue a voter number.
 - c. Mark the envelope “Rejected ballot #_” (beginning with the number 1). Write the reason for rejection on the envelope.
 - d. List the elector’s name, identifying serial number of the rejected ballot (see “b.” above), and the reason for rejection on the Inspectors' Statement (EL-104).
 - e. Record the reason for rejection next to the elector’s name on the Absentee Ballot Log.
 - f. Record the ballot as not counted on the Absentee Ballot Log (EL-124).
 - g. Place the unopened certificate envelope in the Certificate of Rejected Absentee Ballots (EL-102) brown carrier envelope.

Wis. Stat. § 6.88(3)(b).

6. If the Absentee Certificate Envelope indicates that proof of identification or the Certification of Authorized Care Facility Representative is required, it is the responsibility of the election inspector to ensure that the elector included proof of identification along with the absentee ballot or completed the appropriate certification section before the ballot may be counted. In these cases, the certificate envelope will be an EL-122sp, which contains the Authorized Care Facility Representative section. Follow these procedures:

1. Issue a voter number and record the voter number on the voter list. Document that this was an absentee ballot (red “A” next to voter number). Also, record on the Absentee Ballot Log that the ballot was counted.
2. Place the ballot in the ballot box.
3. Place the used certificate envelope in the Used Certificate Envelopes of Absentee Electors (EL-103) white carrier envelope.
4. Record on the Inspectors’ Statement (EL-104) that clerk’s initials were missing.
5. Record as counted on the Absentee Ballot Log (EL-124).

NOTE: Elections inspectors do not need to stand in line and go through the motions of a voter in order to process absentee ballots.

9. If the Absentee Certificate Envelope (EL-122) is determined “to be rejected,” because the signature of elector or witness is missing, the witness address is missing or if the envelope is open or appears to have been resealed, a voter may correct the certificate envelope at the polling place/central count absentee site.

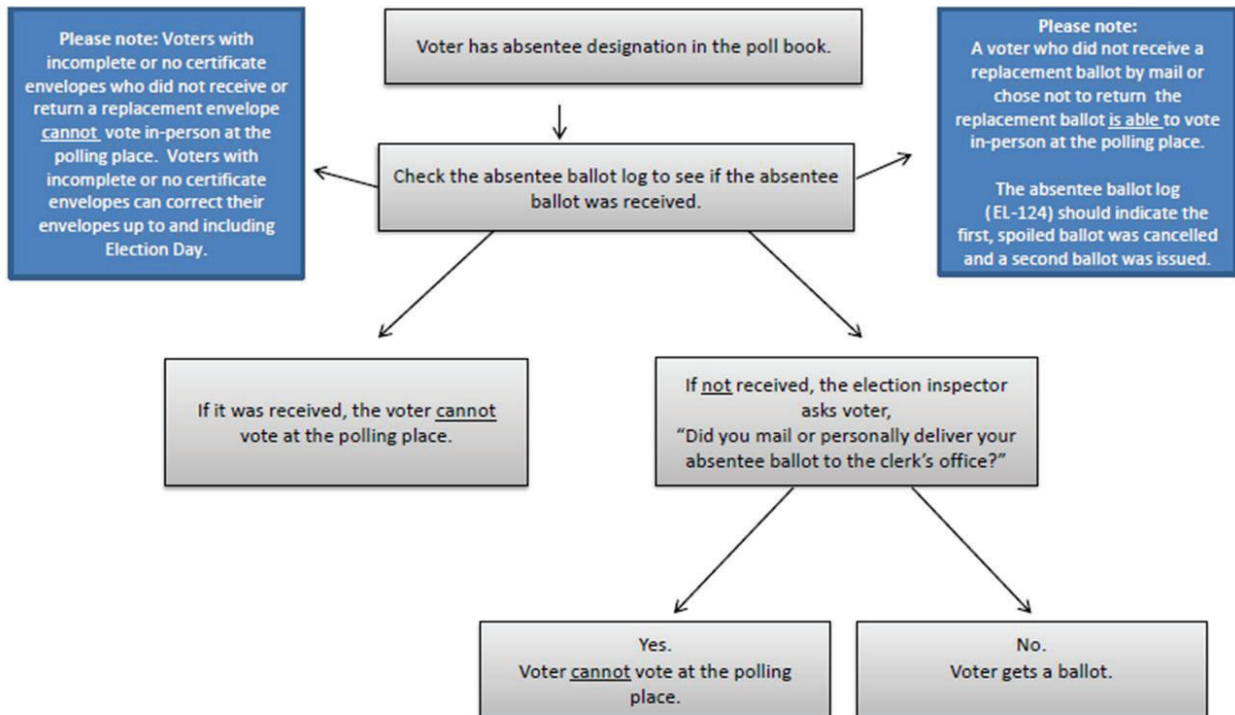
If a voter appears to correct their absentee certificate envelope:

- a. The election inspectors shall issue a new certificate envelope to the voter.
- b. The voter must open the original certificate envelope, verify their ballot, and seal the ballot in the new certificate envelope.
 - i. The voter may NOT remove the ballot from the voting area.
 - ii. The original witness must be present.
 - iii. The elector and witness sign the certificate envelope and the witness provides his or her address.
 - iv. An election inspector may NOT serve as the witness.

- c. The original certificate envelope is then destroyed.
- d. The election inspector documents that a correction was made, and the ballot accepted on the Absentee Ballot Log (EL-124).

Wis. Stat. § 6.88(3)(b).

Absentee Voters at the Polling Place



Election inspectors should follow these procedures if a voter with an absentee designation in the poll book comes to the polling place to vote on Election Day, in addition to the procedures outlined in the Electors section.

Municipalities must track absentee ballots on the pre-printed poll list. The clerk shall also provide each polling place an Absentee Ballot Log (EL-124).

The absentee notation on the pre-printed poll list indicates that an absentee ballot was issued to the voter. This does not indicate that the absentee ballot was returned.

1. If an individual noted as “absentee” appears at the polling place, the inspectors should check the Absentee Ballot Log (EL-124) to determine if the ballot has been returned.
 - a. If the absentee ballot has been returned and there are no errors that would cause the ballot to be rejected, the voter may not vote at the polling place.
 - b. If it has been returned and there are errors that would cause the ballot to be rejected, the voter may only correct the error. The voter may NOT vote a new ballot at the polling place.
 - i. The election inspectors shall issue a new certificate envelope to the voter.
 - ii. The voter must open the original certificate envelope, verify their ballot, and seal the ballot in the new certificate envelope.
 - iii. The voter may NOT remove the ballot from the voting area.
 - iv. The original witness must be present.
 - v. The elector and witness sign the certificate envelope and the witness provides his or her address.
 - vi. The election inspectors may NOT serve as the witness (the original witness must be present).
 - vii. The original certificate envelope is then destroyed.
 - viii. The election inspector should document that a correction was made, and the ballot accepted on the Absentee Ballot Log (EL-124).
 - c. If the absentee ballot has not been returned, the election inspectors ask the voter “Did you mail or personally deliver your absentee ballot to the clerk’s office?”
 - i. If “yes,” the voter cannot vote at the polling place.
 - ii. If “no,” the voter is issued a ballot if otherwise qualified.



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: October 28, 2022

TO: Wisconsin Municipal Clerks
City of Milwaukee Elections Commission
Wisconsin County Clerks
Milwaukee County Elections Commission

FROM: Wisconsin Elections Commission

SUBJECT: Temporary Injunction for WEC concerning Spoiling Absentee Ballots
(*Kormanik v. Wisconsin Elections Commission, 22-CV-1395*)

On October 7, 2022, the Honorable Judge Brad D. Schimel of the Waukesha County Circuit Court issued an order for a Temporary Injunction in *Kormanik v. Wisconsin Elections Commission* concerning information about spoiling absentee ballots or returning absentee ballots to electors. The Temporary Injunction is attached to this memorandum. This order was stayed by the Court of Appeals until it made a decision to lift the stay on October 27, 2022, and the order will now go into effect starting at 3 p.m. on October 28, 2022.

The order enjoins and prohibits the Commission from “advising, guiding, instructing, publishing, or otherwise communicating information related to spoiling absentee ballots and/or returning absentee ballots to electors that contravenes Wis. Stat. §§ 6.84, 6.86(1)(ar), 6.86(5) and 6.86(6), except as otherwise provided in Wis. Stat. § 6.87(9).”

Specifically, the order enjoins and prohibits the Commission from “publicly displaying, applying, or disseminating” its August 1, 2022, memorandum called *Spoiling Absentee Guidance for the 2022 Partisan Primary*, an accompanying August 2, 2022, press release called *Rules about ‘Spoiling’ Your Ballot*, and “any other publication that communicates information contrary to Wis. Stat. §§ 6.86(5) and 6.86(6).” Further, the Commission is prohibited from disseminating or publishing any information stating 1. “that a municipal clerk or local election official may return a previously completed and submitted absentee ballot to an elector, except as otherwise provided in Wis. Stat. § 6.87(9)” or 2. “that a municipal clerk or local election official is authorized to spoil an absentee ballot on behalf of an elector.” The Commission may not otherwise provide or publicly display information contrary to Wis. Stat. §§ 6.86(5) and 6.86(6), except as provided in Wis. Stat. § 6.87(9).

Pursuant to the temporary injunction of October 7, 2022, this communication gives notice that the August 1, 2022, memo and the August 2, 2022, press release have been withdrawn by the Commission, subject to further appeals and a final determination.

Please review this notice and the attached Temporary Injunction with your municipal attorney to determine if any changes to your procedures are required. Please contact the WEC Help Desk at elections@wi.gov or by phone at (608) 261-2028 if you have any questions. Thank you for your prompt attention to this matter.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

FILED
10-10-2022
Clerk of Circuit Court
Waukesha County
2022CV001395

DATE SIGNED: October 7, 2022

Electronically signed by Brad D. Schimel
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

NANCY KORMANIK

Plaintiff,

v.

Case No.: 22-CV-1395

Case Code: 30701

WISCONSIN ELECTIONS COMMISSION

Defendant,

and

RISE, INC. and the DEMOCRATIC NATIONAL
COMMITTEE,

Intervenors-Defendants.

ORDER FOR TEMPORARY INJUNCTION

The above-captioned matter having come before the Court, the Honorable Brad D. Schimel, presiding, for a hearing on Plaintiff's Motion for Temporary Restraining Order and Temporary Injunction on October 5, 2022. The Court, having reviewed the briefs submitted by Counsel and having heard arguments of counsel, and making findings and conclusions on the record, which is hereby incorporated by reference, hereby enters the following:

IT IS HEREBY ORDERED:

1. That Defendant, Wisconsin Elections Commission (“WEC”), is temporarily enjoined and prohibited from advising, guiding, instructing, publishing, or otherwise communicating information related to spoiling absentee ballots and/or returning absentee ballots to electors that contravenes Wis. Stat. §§ 6.84, 6.86(1)(ar), 6.86(5) and 6.86(6), except as otherwise provided in Wis. Stat. § 6.87(9).

2. That Defendant WEC is temporarily enjoined and prohibited from publicly displaying, applying, or disseminating certain published guidance, including its August 1, 2022 memorandum titled “Spoiling Absentee Guidance for the 2022 Partisan Primary” (“August 1st Published Memorandum”), its August 2, 2022 publication titled “Rules about ‘Spoiling’ Your Ballot” (“August 2nd Published Memorandum”), or any other publication that communicates information contrary to Wis. Stat. §§ 6.86(5) and 6.86(6), including prohibiting the dissemination or publication of the following information: (i) that a municipal clerk or local election official may return a previously completed and submitted absentee ballot to an elector, except as otherwise provided in Wis. Stat. §6.87(9); or (ii) that a municipal clerk or local election official is authorized to spoil an absentee ballot on behalf of an elector. WEC shall withdraw the aforementioned publications by or before 7 p.m. on Monday, October 10, 2022.

3. That Defendant WEC is temporarily enjoined and prohibited from providing or publicly displaying information contrary to Wis. Stat. §§ 6.86(5) and 6.86(6), except as otherwise provided in Wis. Stat. § 6.87(9), and that WEC shall comply with the foregoing by or before 7 p.m. on Monday, October 10, 2022.

4. That Defendant WEC shall notify all Wisconsin municipal clerks and local election officials that the August 1st Published Memorandum and August 2nd Published Memorandum have been withdrawn, consistent with the relief set forth herein, and shall provide the

aforementioned notice to all Wisconsin municipal clerks and local election officials by or before 7 p.m. on Monday, October 10, 2022.

5. That the foregoing temporary injunction against Defendant WEC shall remain in effect until further notified by the Court.