

Marie Schmidt and Steven Schmidt
Complainants

Re: EL 24-108

v.

Kaitlyn Bernarde, Kody Hart and Maryanne Groat
Respondents

RESPONSE
DECEMBER 2, 2024

September 19, 2024 – Absentee ballots were mailed.

September 20, 2024 – Respondents placed the Universal Drop Box unsecured outside in front of City Hall. Ignoring ALL WEC Best Practices Guidelines.

- Re-labeled
- Box was left unsecured to the ground
- Did not have well-lit adequate lighting
- Did not have adequate video camera surveillance
- It was not exclusive for absentee ballots
- It was not labeled at all for absentee ballots , it was labeled for PAYMENTS
- It was not marked for the time of final retrieval of ballots
- it was unable to be secured/locked to prevent the submission of absentee ballots after the retrieval time if it was to be used for other drop off items
- It did not have the proper opening of the box for only a ballot to be dropped in it

September 22, 2024 – Mayor moved the box inside City Hall because it was unsecured, poor lighting, and poor security video surveillance.

September 30, 2024 – City Officials placed the drop box back outside.

- It was re-labeled
- It still did not have well-lit adequate lighting
- It still did not have adequate video camera surveillance
- It still was not exclusive for absentee ballots
- It still was not labeled at all for absentee ballots , it was labeled for PAYMENTS
- It still was not marked for the time of final retrieval of ballots
- It still was unable to be secured/locked to prevent the submission of absentee ballots after the retrieval time if it was to be used for other drop off items
- It still did not have the proper opening of the box for only a ballot to be dropped in it

October 2, 2024 – Submitted via email our strong concerns to City Clerk, Mayor, Common Council. Our concerns were completely ignored.

October 8, 2024 – Common Council meeting to address concerns regarding drop box

October 10, 2024 – Submitted complaint to Wisconsin Elections Commission

October 11, 2024 - A temporary light was installed

October 23, 2024 – City re-labeled box once again

November 5, 2024 – Respondents taped a pink note on box pertaining to final collection of ballots. The box still accepted ballots but allegedly was marked ‘returned after deadline’.

Throughout this entire Presidential Election season, these city officials have called the box:

- The Box
- Bill Box
- Drop Box
- City Hall Drop Box
- City’s Official Drop Box
- Payment Box
- Comingled Drop Box
- Collection Box
- Official Drop Box
- Universal Payment Drop Box
- Ballot Drop Box
- Absentee Ballot Drop Box

If these city officials can’t figure out what to call the box during this election season, how can they intelligently direct electors to correctly return their ballots? There is absolutely ‘ZERO’ consistency with these officials.

If it was a designated Absentee Ballot Drop Box, you can’t call it anything else because its sole purpose is for ballots.

Wausau used to have a designated Absentee Ballot Drop Box (for ballots only) used for 5 elections set up by the previous city clerk for covid precautions. There was a completely separate box for payments. Respondents decided to turn the designated absentee ballot drop box into a universal payment drop box. That has created so much controversy and confusion with the electors.

Photos of the before and after box is included in the Complaint packet and Amendment.

5.06(1)

***Whenever any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections is contrary to law, or the official has abused the discretion vested in him or her by law with respect to any such matter,** the elector may file a written sworn complaint with the commission requesting that the official be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law. The complaint shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur. The complaint may be accompanied by relevant supporting documents. The commission may conduct a hearing on the matter in the manner prescribed for treatment of contested cases under ch. 227 if it believes such action to be appropriate.*

Abuse of discretion by Respondents to follow WEC guidelines PRIOR to placing box outside City Hall, guidelines that WEC has so carefully laid out are easy to follow.

5.35 (3)

*Ballot boxes. Where the voting procedure makes it necessary, **there shall be a separate ballot box for each form of ballot** at each polling place. There shall be a suitable lock and key for each, and an opening no larger than is sufficient to receive a single ballot or a single folded ballot if the box is used for deposit of paper ballots. If the electors of more than one ward use the same polling place, there shall be separate ballot boxes provided for the electors of each ward, unless combined ballot boxes are authorized in accordance with s. 5.15 (6) (b).*

Respondents are claiming that this does not apply to Absentee Ballot Drop Boxes, We believe it does apply to all ballot boxes.

6.87(4)(b)1

Except as otherwise provided in s. 6.875, an elector voting absentee, other than a military elector or an overseas elector, shall make and subscribe to the certification before one witness who is an adult U.S. citizen. A military elector or an overseas elector voting absentee, regardless of whether the elector qualifies as a resident of this state under s. 6.10, shall make and subscribe to the certification before one witness who is an adult but who need not be a U.S. citizen. The absent elector, in the presence of the witness, shall mark the ballot in a manner that will not disclose how the elector's vote is cast. The elector shall then, still in the presence of the witness, fold the ballots

*so each is separate and so that the elector conceals the markings thereon and deposit them in the proper envelope. If a consolidated ballot under s. 5.655 is used, the elector shall fold the ballot so that the elector conceals the markings thereon and deposit the ballot in the proper envelope. If proof of residence under s. 6.34 is required and the document enclosed by the elector under this subdivision does not constitute proof of residence under s. 6.34, the elector shall also enclose proof of residence under s. 6.34 in the envelope. Except as provided in s. 6.34 (2m), proof of residence is required if the elector is not a military elector or an overseas elector and the elector registered by mail or by electronic application and has not voted in an election in this state. If the elector requested a ballot by means of facsimile transmission or electronic mail under s. 6.86 (1) (ac), the elector shall enclose in the envelope a copy of the request which bears an original signature of the elector. The elector may receive assistance under sub. (5). The return envelope shall then be sealed. The witness may not be a candidate. **The envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.** If the envelope is mailed from a location outside the United States, the elector shall affix sufficient postage unless the ballot qualifies for delivery free of postage under federal law. Failure to return an unused ballot in a primary does not invalidate the ballot on which the elector's votes are cast. Return of more than one marked ballot in a primary or return of a ballot prepared under s. 5.655 or a ballot used with an electronic voting system in a primary which is marked for candidates of more than one party invalidates all votes cast by the elector for candidates in the primary.*

The statute says mailed or delivered in person. There are no “other ways to vote” in this statute.

Clerk even states “mailed or in person” in the following reference.

<https://www.youtube.com/watch?v=DL8k6kEQgB4>

The purple colored flyer that accompanied each absentee ballot that was mailed stated, “Return your ballot at City Hall during these times or **in the payment box**”

See Amendment for photo of flyer.

7.21(5)

(5) The city council and county board shall provide office space in the city hall and county courthouse, respectively, pay all the necessary expenses, cooperate with the board of election commissioners, provide storage space for the election equipment and supplies and assist with the moving and conducting of the elections as necessary.

Our municipality has a city council and county board who are to assist with elections but failed to do so in regards to the controversial payment box on October 8, 2024, Common Council meeting.

12.13(2)(a)

The willful neglect or refusal by an election official to perform any of the duties prescribed under chs. 5 to 12 is a violation of this chapter.

Wausau had an official Absentee Ballot Drop Box. It was removed and re-labeled 'Payments'. Officials ignored WEC guidelines because this was a Payment box not a ballot box.

See before and after photos of box in Complaint and Amendment.

12.13(2)(b)7

No election official may:

In the course of the person's official duties or on account of the person's official position, intentionally violate or intentionally cause any other person to violate any provision of chs. 5 to 12 for which no other penalty is expressly prescribed.

We believe the electors were misled by the Respondents who insisted that absentee ballots could be placed into the city payment box.

**THE BALLOT BOX DID NOT COMPLY WITH GUIDELINES THAT WERE SET
BY STATE AND FEDERAL GOVERNMENT AGENCIES**

Election Day Manual dated August 1, 2024

https://elections.wi.gov/sites/default/files/documents/ED%20Manual-August%202024_0.pdf

From Page 15

PRE-ELECTION PREPARATIONS

Preparing to Serve

Your job as an election official is an important responsibility. Being familiar with election laws and procedures before Election Day ...

We do not believe that the Respondents were fully familiar with the current election laws and current procedures prior to election.

2. Read the Election Day Manual.

We do not believe that the Respondents fully read the revised Election Day Manual prior to election.

From Page 16

a. Election inspectors **should review this manual along with relevant election statutes before Election Day. Check the WEC website to ensure that you have the most recent version of the manual.**

The Respondents stated they followed “prior WEC guidance” not the current revised issue of the Election Day Manual, dated August 2024.

b. A copy of the Wisconsin election statutes, Chapters 5-12, can be obtained from the municipal clerk or online from the WEC website.

We do not believe that the Respondents fully reviewed the Wisconsin election statutes, Chapters 5 – 12 prior to election.

From Page 108

Drop Boxes

On July 11, 2024, the Wisconsin Elections Commission (“the Commission”) held a public meeting to review and issued the following guidance.

From Page 109

8. Do drop boxes need to be secure? What should clerks consider when examining drop box security?

Yes. The decision held that state law permits clerks to lawfully utilize secure drop boxes in an exercise of their statutorily conferred discretion. The decision did not provide guidance on what it means for a drop box to be “secure.” **The Commission recommends that clerks keep the following non-exhaustive security considerations in mind when planning to utilize drop boxes, which are consistent with guidance from the U.S. Election Assistance Commission (EAC) and the U.S. Cybersecurity and Infrastructure Security Agency (CISA). These considerations are merely a starting point—the Commission recommends that clerks thoroughly complete a security assessment for each intended drop box location prior to deployment. The Commission recommends the following best practices:**

We believe that the Respondents completely skipped this section of the Election Day Manual, August 2024.

From Page 110 - 111

Best Practices: Physical Security of the Drop Box Itself

- The drop box be securely affixed to the ground or the side of the building, or secured such that the drop box cannot be removed or tampered with.

When the Respondents placed the box outside on a Friday, September 20, 2024 in front of City Hall and just left it sitting there not attached to anything, it was obvious that it was not secured.

That's why the Mayor moved the Payment box on September 22, 2024 with a dolly back into the building. Had it been secured, there would have been no reason to move the payment box.

The Respondents claim the box was improperly removed by the Mayor. We believe the Mayor was cleaning up a mess that was caused by the Respondents due to the lack of security on the Payment box. Therefore, the Mayor did not violate anything.

- **The drop box be secured against unlawful access or emptying.**

If the Mayor had not moved the box back inside the building, who knows what could have happened to it.

Wausau has a big problem with the homeless population. The city is paying hundreds of thousands of dollars to clean up and repair damages made by these individuals every single year. We've spent millions of dollars over the last few years to try to get a handle on this problem. When the previous mayor was in office, she encountered some homeless individuals inside the basement level of City Hall who made themselves quite comfortable there. Because of that, City Hall has had recent special upgrades to security inside the building. There is now bullet proof glass separating the public from city employees work areas and there is now an A.I. kiosk that you have to deal with to see anyone in City Hall. Drastic measures? Our guess they feel they need this protection to go to work at City Hall. This leads us to our next major point, this box they put out there in front of City Hall was just left out there unsecured on a Friday! When noticed on a Sunday that it was unsecured, the Mayor took the initiative to safeguard that box until it could be secured properly. The Respondents did a poor job in securing a payment box. They should have never put it out there until the job could be done completely and correctly, securing that box so it could not be moved. The Respondents knowing full well of the problems with the homeless population should have not only met the minimum requirements guidelines but they all should have taken extra precaution measures for the safety of that payment box and the contents it was going to hold. They failed miserably at all of the security measures.

The Respondents completely ignored all of the considerations from the Wisconsin Elections Commissions (WEC), U.S. Election Assistance Commission (EAC) and the U.S. Cybersecurity and Infrastructure Security Agency (CISA). These were easy to follow and easy to do guidelines, they were supposed to be a starting point—the Commission recommended that clerks thoroughly complete a security assessment for each intended drop box location **prior to deployment**. That didn't happen with the Respondents.

- **The slot of the drop box be appropriately sized so that only an absentee ballot can be deposited and not other objects or liquids.**

This would indicate that payments and other important city requests would not be allowed to be put into a drop box intended for Absentee Voter Ballots. "Payment" is clearly at the top of the box.

Respondents claimed they followed “Prior WEC Guidance”. Which means they didn’t follow the current revised guidance as stated earlier.

- 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.***

Again, this would indicate that payments and other important city requests would not be allowed to be put into a drop box intended for Absentee Voter Ballots.

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

This drop box is not clearly marked or labeled that it is for the sole purpose of collecting absentee voter ballots in their respective return envelopes, it is labeled for ‘Payments’.

Photo of ‘Payment’ box is included in Complaint and Amendment.

- 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.

This drop box does not have the time of final retrieval of ballot return envelopes clearly marked on or near the drop box. Furthermore, if the Respondents intention is to use this box for multi-purposes, how can you secure it to prevent the submission of absentee ballot return envelopes after the final retrieval deadline?

On election day the Respondents taped a pink sheet of paper on the box stating when final collection will be. When the Respondents made the final retrieval they placed a note on the box that it was closed for absentee ballots. The box was not locked/secured to prevent the additional submission of absentee ballot return envelopes. Ballots could still be put into the box but were allegedly marked as being returned after deadline.

Also per the United States Elections Assistance Commission, after the ballot return deadline, the box is supposed to be locked so no additional ballots can be deposited.

Photo of ‘Payment’ box is included in Complaint and Amendment.

Best Practices: Security of the Drop Box Surroundings

- The drop box be located in a well-lit area.

The lights surrounding other areas of City Hall had no effect whatsoever on the visibility of the box. You cannot even see the box. If you can’t see the box, how can you see any activity at the box.

The photo that the Respondents provided of the 'Fixed Lighting' in the area of the box were indeed there and lit when the photo included in the Common Council packet on page 88 was taken. Where was the benefit of light provided by those 'Fixed Lighting' on the payment box? There was no benefit or the photo wouldn't have been nearly black.

See photo on page 88 of the Council packet dated 10/8/24 provided in the Complaint and the Amendment.

The Commission recommends that clerks review the following resources from the EAC and CISA as a starting point for procedures on the secure administration of drop boxes:

- EAC Quick Start Guide on Drop Boxes (PDF)

o

[https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Ballot Drop Boxes EAC Quick Start Guide 508.pdf](https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Ballot_Drop_Boxes_EAC_Quick_Start_Guide_508.pdf)

The box was not locked/secured to prevent the additional submission of absentee ballot return envelopes. Ballots could still be put into the box but were allegedly marked as being returned after deadline.

Ballot Return Deadline
Election officials must ensure teams are present at each drop box as the ballot return deadline passes. Teams must allow any voters in line by the deadline to deposit their ballots, then collect all ballots, and lock the box so no additional ballots can be deposited.

- EAC Election Management Guidelines, Pages 53, 80, 100 (PDF)

o [https://www.eac.gov/sites/default/files/electionofficials/EMG/EAC Election Management Guidelines 508.pdf](https://www.eac.gov/sites/default/files/electionofficials/EMG/EAC_Election_Management_Guidelines_508.pdf)

- EAC Sample FAQ Language for How Drop Boxes Work that Can be Adapted for Wisconsin

o <https://www.eac.gov/how-do-drop-boxes-work>

- CISA Drop Box Considerations

o [https://www.cisa.gov/sites/default/files/2023-07/Ballot Drop Box.pdf](https://www.cisa.gov/sites/default/files/2023-07/Ballot_Drop_Box.pdf)

We believe that the Respondents completely skipped this section of the Election Day Manual entirely.

Additional notes:

Per Respondents: camera they had was at its useful life's end and not trained on the drop box. So much for quality video surveillance on the box...

By providing a multi-use comingled box, the Respondents took the easiest and most convenient shortcut to provide a so-called absentee ballot drop box. While doing so, they did not meet the guidelines recommended.

We still believe the respondents ignored all of the best practices as laid out in the WEC guidelines. If having an official absentee ballot drop box was (red, white, and blue) confusing to electors, why was such a box placed in front of city hall to begin with? At that time there existed a payment box and a USPS box. So three boxes to choose from with to my knowledge there existed no confusion on behalf of the electors.

The Respondents certainly had to be aware of the ongoing concerns over unmanned Absentee Ballot Drop Boxes. Given that the Wisconsin Supreme Court has addressed this topic twice now in the last two years. Yet in spite of this and ignoring all Best Practices concerning Absentee Ballot Drop Boxes went ahead with the decision to place an unsecured box outside of city hall and hope for the best! This is most certainly unacceptable behavior from the Respondents who have been running elections in the past. This was not their first. We believe they should have been more thorough.

Respondents had a deadline of November 11, 2024 to respond, yet they submitted on November 15, 2024. Four days after the deadline. Interesting.

CONCLUSION

For the above mentioned reasons, we are requesting that the Wisconsin Elections Commission review the complaint and evidence presented and rule in favor of our complaint.

Steven & Marie Schmidt

SWORN STATEMENT VERIFICATION

I, MARIE SCHMIDT, being first duly sworn, on oath, state that I personally read the above verified response and is true and correct based on my personal knowledge and belief.

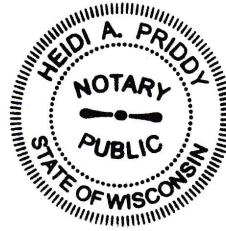
Dated this 2nd day of December, 2024.

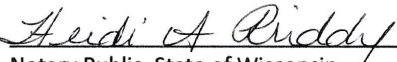


MARIE SCHMIDT

STATE OF WISCONSIN
County of Marathon

Sworn and subscribed to before me
This 2nd day of December, 2024.





Notary Public, State of Wisconsin

My Commission Expires: 6-26-2028

SWORN STATEMENT VERIFICATION

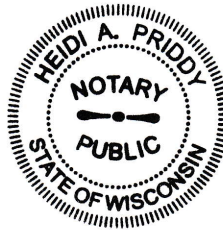
I, STEVEN SCHMIDT, being first duly sworn, on oath, state that I personally read the above verified response and is true and correct based on my personal knowledge and belief.

Dated this 2nd day of December, 2024.

Steven Schmidt
STEVEN SCHMIDT

STATE OF WISCONSIN
County of Marathon

Sworn and subscribed to before me
This 2nd day of December, 2024.



Heidi A Priddy
Notary Public, State of Wisconsin

My Commission Expires: *6-26-2028*