

STATE OF WISCONSIN
ELECTIONS COMMISSION

BRIAN PETERS,
Complainant,

v.

Case No. EL 23-47

JENNIFER GOERGEN,
CITY CLERK FOR THE CITY OF
GREENFIELD, WISCONSIN,

Respondent.

SWORN STATEMENT OF JENNIFER GOERGEN

STATE OF WISCONSIN)
) SS:
COUNTY OF MILWAUKEE)

I, Jennifer Goergen, being first duly sworn on oath deposes and says as follows:

1. I am the Clerk for the City of Greenfield, located in the County of Milwaukee, State of Wisconsin.
2. As the Clerk for the City of Greenfield, I acknowledge receipt of the complaint of Brian Peters in regard to this matter.
3. That I am offering this sworn statement to the Wisconsin Elections Commission (the "Commission"), as requested in correspondence dated August 17, 2023, from Angela O'Brien, Staff Attorney for the Commission, to provide a response to the Complaint filed by Brian Peters with the Commission dated August 16, 2023 (the "Complaint").
4. I agree with the factual assertions made in Paragraphs 1 and 2.
5. I deny the allegations contained in Paragraph 3. As described later in this sworn statement, I believe I have faithfully performed my duties under the State of Wisconsin's election laws and that neither I, nor the City of Greenfield, have "created additional hurdles beyond those contemplated in Wisconsin's election code for absentee voters and designated ballot return assistants delivering their ballots to their polling places on Election Day, contravening state law."

6. Upon information and belief, the first sentence of Paragraph 4 is correct. I am without personal knowledge and information sufficient to form a response to the statement contained in the second sentence of Paragraph 4.

7. I agree with the description of myself, and my office contained in Paragraph 5.

8. Upon Information and belief, the factual statements made in Paragraphs 6 through 12 are correct.

9. I deny the statement contained in Paragraph 13. The Commission's guidance of September 7, 2022, titled "Guidance on Absentee Ballot Return Options Under the Federal Voting Rights Act," provided the following: "Pursuant to the Voting Rights Act, any Wisconsin voter who requires assistance with **mailing or delivering their absentee ballot to the municipal clerk because of a disability** must be permitted to receive such assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union" (emphasis added). This guidance does not provide for the elector to return their or their designee's absentee ballot to the elector or their designee's polling place on Election Day.

10. Upon Information and belief, the factual statements made in Paragraphs 14 and 15 are correct.

11. I am without personal knowledge and information sufficient to form a response to the statement contained in Paragraph 16.

12. Upon information and belief, the information in Paragraphs 17 and 18 are correct.

13. I am without personal knowledge and information sufficient to form a response to the statement contained in Paragraph 19. The link provided in footnote 5 of the Complaint is broken and I am unable to view what Mr. Peters alleges was stated on that website.

14. I deny the allegation that "The City of Greenfield's website conflicted with WEC guidance" contained in Paragraph 20. I admit that the City of Greenfield website stated that [Absentee] ballots can be hand delivered to the Greenfield City Clerk's office... and must be received no later than 7:00 p.m. on Election Day, Tuesday, August 9, 2022, to allow for timely delivery to the polls no later than 8:00 p.m."

15. I am without personal knowledge and information sufficient to form a response to the statements contained in Paragraphs 21 through 23.

16. I admit the statements contained in Paragraphs 24 and 27. However, there were several pieces of additional correspondence between Mr. Peters, myself, and our former City Attorney, Atty. Brian Sajdak, which have not been addressed by Mr. Peters, which further investigate Mr. Peters' inquiry of August 15, as described in Paragraph 26. This correspondence has been attached as **Exhibit A**.

17. In answering the allegations made in Paragraphs 28 through 50, I certify the following:

- a. On August 3, 2022, Mrs. Peters emailed me stating that she required an accommodation for returning her absentee ballot and that her husband, Mr. Peters, would be returning her ballot for her. I sent this information along to the appropriate parties, which at that time included the Peters' assigned polling place, to ensure the ballot would be accepted.
- b. On August 5, 2022, our then City Attorney, Brian Sajdak, distributed a memo to the City of Greenfield regarding the return of all absentee ballots based on the ruling in *Tiegen v. WEC* and a strict reading of Wis. Stat. § 6.87(4)(b)(1) and Wis. Stat. § 6.87(6). In that memo, not directly applying the *Tiegen* decision as this issue was not taken up by the court, Atty. Sajdak concluded that Wis. Stat. § 6.87(6) must be read in the context of the mandate of Wis. Stat. § 6.87(4)(b)(1). Therefore, the substance of the former City Attorney's conclusion is as follows: under Wis. Stat. § 6.87(4)(b)(1), an absentee ballot is required to be returned one of two ways: (1) "mailed by the elector," or (2) "delivered in person, to the municipal clerk issuing the ballot or ballots," and it follows that the mandate of Wis. Stat. § 6.87(6), "the ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day," must be read in light of § 6.87(4)(b)(1), meaning that if the absentee ballot is delivered in person, it must be delivered to the Clerk's office and in such a way that the ballot can be delivered to the polling place no later than 8 p.m. on election day. This applies to all absentee ballots being returned.

Further, Atty. Sajdak concluded that *Tiegen* did not take away the right of a disabled voter to utilize accommodations, like the accommodation granted here for Mrs. Peters to use her husband, Mr. Peters, to return her absentee ballot to the correct location because she was unable to do so due to her disability. Atty. Sajdak corresponded with Mr. Peters on this point and gave Mr. Peters a copy of the aforementioned memo on August 16, 2022. A copy of attorney Sajdak's memo is attached as **Exhibit B**.

- c. On September 7, 2022, the WEC provided "Guidance on Absentee Ballot Return Options Under the Federal Voting Rights Act" to the Clerks in the State of Wisconsin. This guidance provided the following "Pursuant to the Voting Rights Act, **any Wisconsin voter who requires assistance with mailing or delivering their absentee ballot to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.**" This was the official stance of the WEC regarding the rights of voters with disabilities to receive accommodations, and this guidance, in part, echoes Atty. Sajdak's advice to the City of Greenfield.

- d. Mr. Peters, argues that the “assistance” required to be given to Wisconsin voters with disabilities allows the assistant to deliver the disabled individual’s absentee ballot in person to the clerk’s office or an “alternate site designated pursuant to Wis. Stat. § 6.855, which includes polling places...Wis. Stat. § 5.25(2).” However, Wis. Stat. § 6.855 requires the municipality to affirmatively elect to designate an alternate site. The designated site is not automatically created through Wis. Stat. § 5.25(2). I publish Type D and Type E Notices, regarding hours and locations of polling places and absentee voting respectively, for each election (attached as **Exhibit C**) and, as confirmed by the published Type D notice, Greenfield did not designate an alternate site for the August 2022 election. Therefore, the two options for returning the absentee ballot under Wisconsin law were to (1) mail it, or (2) return the ballot in person to the clerk’s office in such a way that the ballot could be delivered by the clerk to the elector’s respective polling place by 8 p.m. on election day.

The statutory deadline, as set forth in Wis. Stat. § 6.87(6), states that “the ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day,” and that, “[E]xcept in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector’s residence before 8 p.m.” Greenfield does not canvass ballots under Wis. Stat. § 7.52, therefore the clerk must deliver the absentee ballots to the polling place by 8 p.m. The City of Greenfield’s 7 p.m. deadline for all absentee ballots on election day has been requested so I can follow the required statutory actions of “caus[ing] the ballot to be delivered to the polling place serving the elector’s residence before 8 p.m.” and the administrative process that statutory requirement entails.

After ballot envelopes are examined, absentee ballots are accepted, and such ballot acceptances are documented in WisVote by my office, there is an extensive internal administrative process that my clerk staff and myself engage in. This internal process is required to ensure the integrity of the election process with respect to absentee ballots. This process includes sorting, alphabetizing, and counting absentee ballots by ward, certifying the number of each ward’s absentee ballots with an affidavit form EL-125, placing the ballot envelopes in a carrier envelope and attaching form EL-125 to the carrier envelope, ensuring the ballots are couriered to the appropriate polling places. Once at the polling place, an election official accepts the absentee ballot carrier envelope, form EL-125 and signs the certificate, and the worker opens the absentee ballot carrier envelope and verifies the number of ballots inside of the envelope matches the number of ballots placed inside as written on the front of the certificate, form EL-125. All of these processes must be completed before 8 p.m. on election day.

There are 5 districts comprised of 26 wards in the City of Greenfield. Greenfield has approximately 21,100 registered voters. In order for my office of 4 staff members to ensure all elector's absentee ballots are properly handled and delivered to their respective polling places by 8 p.m., a reasonable deadline before 8 p.m. for absentee ballot drop off at the Clerk's office is necessary. Hence the 7:00 p.m. deadline.

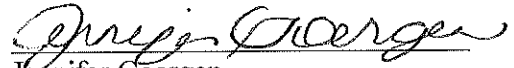
- e. In conclusion, Mrs. Peters was granted an accommodation in that her ballot was allowed to be cast for her by her husband, and her vote was counted. The accommodation that was granted was to allow her husband to deliver her absentee ballot to the statutorily prescribed location, whereas absent the accommodation only Mrs. Peters herself could have delivered her absentee ballot. The accommodation was for her and her disability, not for her non-disabled ballot assistant. Currently, the ADA and federal and state voters' rights laws do not provide for accommodations to be made for non-disabled voting assistants. Additionally, the WEC's guidance of September 7, 2022, regarding disabled voter accommodations, did not require the City to allow a ballot assistant to deliver a disabled voter's absentee ballot directly to the polling place when the statutes expressly do not provide for that.

The statutes clearly state that absentee ballots must either be (1) mailed prior to election day and within statutory timelines or (2) delivered to the Clerk's office unless an alternative location has been set under Wis. Stat. § 6.855, and, if the ballot is to be hand delivered, that the ballot must be delivered in such a way that the Clerk can deliver the absentee ballot to the electors' respective polling places by 8:00 p.m. Because Mr. or Mrs. Peters did not mail the ballot within the applicable statutory timelines, and because Greenfield did not affirmatively designate an alternative location under Wis. Stat. § 6.855 for the August 2022 election, and Greenfield also did not canvass ballots under Wis. Stat. § 7.52 for the August 2022 election, Mr. Peters' only option to return his wife's ballot on Election Day was to deliver the ballot to the Clerk's office. Again, this was an accommodation because otherwise Mr. Peters could not have returned his wife's absentee ballot at all.

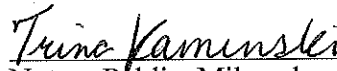
All the above being said, in the event WEC, the Milwaukee Elections Commission, or the courts provide further guidance on the issue of delivering absentee ballots to locations other than those statutorily provided, or municipalities requiring an earlier drop-off deadline so that absentee ballots can be delivered to the polling places by the statutorily required "8 p.m. on election day," or any other issues discussed in the complaint, my office will readily adhere to that guidance. In point of fact, allowing absentee ballots to be dropped off directly at each polling place would remove one of the many responsibilities placed on my office on election

days. Under current state law, however, and current WEC guidance, the drop-off of absentee ballots directly at polling places is not allowed.

17. Considering the foregoing 16 numbered paragraphs of this Response, hereby incorporated by reference, I do not believe Mr. Peters is entitled to the relief he requests under Wis. Stat. § 5.06 as stated in the Compliant.


Jennifer Goergen

Subscribed and sworn to before me this 5th day of September, 2023.


Notary Public, Milwaukee County, WI
My Commission Expires: 3/25/2025

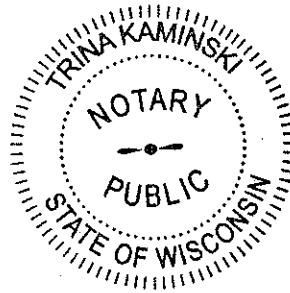


EXHIBIT A:

**JENNIFER GOERGEN AND ATTORNEY BRIAN SAJDAK'S
CORRESPONDANCE WITH BRIAN PETERS AUGUST 15-16, 2022.**

Jennifer Goergen

From: Brian Peters <BPeters@independencefirst.org>
Sent: Monday, August 15, 2022 4:39 PM
To: z GF Clerk Dept
Subject: Election Day Issues

Hi;

On Election Day, I attempted to deliver my wife's ballot (per reasonable accommodation request) to the polling site on Edgerton (Adoration Church). I was told I could not deliver it there, that I had to go to City Hall. This surprised me because it was contrary to the information I found on the WEC website. The staff person at the Clerk office told me it was due to a recent change in state law. Today, I attended a meeting for the Disability Vote Coalition where we were working on updating some information, and I mentioned that I was told I couldn't drop it off at the polling site anymore.

I was told the following information:

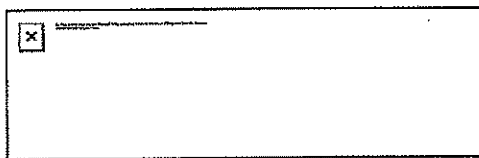
You can return an absentee ballot to your polling place. The statute is: "6.87(6) The ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day. Except in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided in this subsection may not be counted."

Additionally, I don't recall seeing any signage for curbside voting at the church polling site.

Please let me know why I was told to go to City Hall, and why there apparently was no provision for curbside voting.

Thank you,

Brian Peters (He/His) ♦ Independent Living Services Assistant Program Director
Independence First ♦ 540 S 1st Street ♦ Milwaukee, Wisconsin ♦ 53204
Direct 414-937-5912 ♦ **Office** 414-291-7520 TTY/Relay ♦ **Fax** 414-226-8155
BPeters@independencefirst.org ♦ www.independencefirst.org



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Jennifer Goergen

From: Jennifer Goergen
Sent: Tuesday, August 16, 2022 12:54 PM
To: 'BPeters@independencefirst.org'
Cc: B Sajdak; Mayor Neitzke; z GF Clerk Dept
Subject: RE: Election Day Issues
Attachments: Absentee Ballot drop off

Dear Brian:

Thank you for your email. Our City Attorney advised my office on August 5, 2022 that based upon the language of the Tiegen decision, and a strict reading of the statute, that an absentee ballot may only be returned by mail or personally delivered to the municipal clerk at the clerk's office—that there are no other options provided in the statutes, unless the ballot was for a hospitalized voter. Absentee ballots via third party drop off prearranged due to a disability also are required to be dropped off in the clerk's office. Thus, our election workers were instructed to inform voters to return absentee ballots to the Clerk's office and upon receipt our office delivered them to the polls.

With regard to curbside voting, one stall was marked at each location "for curbside voting call 329-5219." In addition there was a sign posted at each polling place entrance with regard to the ability to vote curbside, which included voters experiencing Covid symptoms.

We did receive your wife Jennifer's request prearranging for you, Brian Peters, to drop off her absentee ballot. Our records indicate her absentee ballot was accepted (documented on our log at 10:43 a.m.), and delivered to the polls and counted.

Sincerely,

Jennifer Goergen, WCMC/CMC
City Clerk
City of Greenfield
7325 W. Forest Home Ave., Room 102
Greenfield, WI 53220
Telephone: (414) 329-5215
Fax: (414) 543-0591
Email: JenniferG@Greenfieldwi.us

From: Brian Peters [mailto:BPeters@independencefirst.org]
Sent: Monday, August 15, 2022 4:39 PM
To: z GF Clerk Dept <ClerkDept@greenfieldwi.us>
Subject: Election Day Issues

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I was told the following information:

You can return an absentee ballot to your polling place. The statute is: "6.87(6) The ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day. Except in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided in this subsection may not be counted."

Additionally, I don't recall seeing any signage for curbside voting at the church polling site.

Please let me know why I was told to go to City Hall, and why there apparently was no provision for curbside voting.

Thank you,

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Jennifer Goergen

From: Brian Peters <BPeters@independencefirst.org>
Sent: Tuesday, August 16, 2022 2:41 PM
To: Jennifer Goergen
Cc: B Sajdak; Mayor Neitzke; z GF Clerk Dept
Subject: RE: Election Day Issues

The Tiegen decision has to do with early voting, not election day. This is a very restrictive interpretation of the law, and I believe, an incorrect one. I work with quite a few people who are very familiar with election law, and they were quite surprised at this interpretation.

I am asking that your office reconsider your position on this. I asked a Wisconsin Election Commission staff person about this, and that person told me the same thing – that polling sites are an eligible place to return absentee ballots on election day.

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Sent: Tuesday, August 16, 2022 12:54 PM
To: Brian Peters <BPeters@independencefirst.org>
Cc: B Sajdak <brian@wrslegal.net>; Mayor Neitzke <MayorNeitzke@GreenfieldWI.US>; z GF Clerk Dept <ClerkDept@greenfieldwi.us>
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7325 W. Forest Home Ave., Room 102

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Telephone: (414) 329-5215
Fax: (414) 543-0591
Email: JenniferG@Greenfieldwi.us

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Sent: Monday, August 15, 2022 4:39 PM
To: z GF Clerk Dept <ClerkDept@greenfieldwi.us>
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I was told the following information:

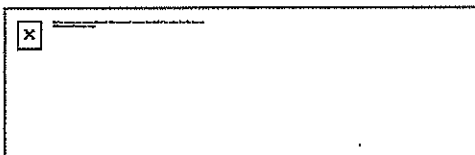
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Jennifer Goergen

From: Brian Sajdak <brian@wrslegal.net>
Sent: Tuesday, August 16, 2022 3:02 PM
To: Brian Peters
Cc: Jennifer Goergen; Mayor Neitzke; z GF Clerk Dept
Subject: Re: Election Day Issues
Attachments: Memo re Acceptance of Absentee Ballots on Election Day.pdf

Brian:

I disagree with the characterization that the Tiegen case involved early voting (vs. Election Day voting). The Tiegen decision centered solely on voting by absentee ballot, and specifically how those ballots must be returned. While I do not disagree that my interpretation is a fairly strict interpretation, I believe that the statutes and the Tiegen decision ultimately leads me to the conclusion that it is the correct interpretation. And, to that end, that WEC's interpretation is incorrect. I have attached the memo that I provided to the Clerk's office which explains my interpretation. You will note that in the middle of page 2 of this memo, I quote the same statutory language you did below. The next paragraph then explains why I do not believe this language allows for the return of an absentee ballot to the polling location.

As it relates to voters with a disability, and the question of reasonable accommodations, as Jennifer noted the City does offer curbside voting for these voters. For those voters with disabilities who seek an accommodation by having a third party deliver their ballot, as you likely know this question is presently being litigated. Perhaps the Courts will weigh in before November's election such that we will have better guidance. Until then, however, I do not believe that requiring a designated third party to deliver the ballot to Clerk's office is unreasonable. The accommodation is to allow for the voter to utilize the third party, and additional accommodation to allow that third party to return the ballot anywhere they wish is not reasonable.

Should you have any questions, do not hesitate to reach out.

Brian

--
Brian C. Sajdak
Wesolowski, Reidenbach & Sajdak, S.C.
11402 W. Church St.
Franklin, WI 53132
(414) 529-8900
(414) 529-2121 - Fax

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On Aug 16, 2022, at 2:41 PM, Brian Peters <BPeters@independencefirst.org> wrote:

The Tiegen decision has to do with early voting, not election day. This is a very restrictive interpretation of the law, and I believe, an incorrect one. I work with quite a few people who are very familiar with election law, and they were quite surprised at this interpretation.

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I was told the following information:

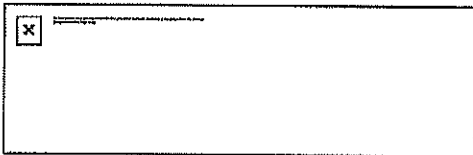
You can return an absentee ballot to your polling place. The statute is: "6.87(6) The ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day. Except in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided in this subsection may not be counted."

Additionally, I don't recall seeing any signage for curbside voting at the church polling site.

Please let me know why I was told to go to City Hall, and why there apparently was no provision for curbside voting.

Thank you,

Brian Peters (He/His) ♦ Independent Living Services Assistant Program Director
Independence First ♦ 540 S 1st Street ♦ Milwaukee, Wisconsin ♦ 53204
Direct 414-937-5912 ♦ **Office** 414-291-7520 TTY/Relay ♦ **Fax** 414-226-8155
BPeters@independencefirst.org ♦ www.independencefirst.org



The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this message with any third party, without written consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such a mistake does not occur in the future.

EXHIBIT B:

ATTORNEY BRIAN SAJDAK'S MEMO OF AUGUST 5, 2022.

WESOLOWSKI, REIDENBACH & SAJDAK, S.C.
ATTORNEYS AT LAW
11402 WEST CHURCH STREET
FRANKLIN, WISCONSIN 53132

MEMORANDUM

To: Client Municipal Clerks
From: Brian C. Sajdak
Date: August 5, 2022
Re: Delivery of Absentee Ballots on Election Day

Question Presented

The recently issued Supreme Court decision in Teigen v. Wisconsin Elections Comm'n, 2022 WI 64, ¶ 4, ___ Wis. 2d ___, 976 N.W.2d 519, ruled that drop boxes cannot be utilized to accept absentee ballots, holding that “[a]n absentee ballot must be returned by mail or the voter must personally deliver it to the municipal clerk at the clerk’s office or a designated alternate site.” With this holding in mind, the question has been raised whether an elector may return their absentee ballot to their designated polling location on election day.

Short Answer

Based upon the language of the Teigen decision, and a strict reading of the statute, an elector may not generally return their absentee ballot to their polling location on election day unless they are a hospitalized voter. Any elector seeking to return their ballot to a poll location should be directed to return their ballot to the office of the municipal clerk. Alternatively (and especially after the clerk’s office is closed for the day), the elector could choose to not return the absentee ballot issued to them and request a new ballot in person on election day. However, if they have already returned (placed in the mail or hand delivered) their ballot, even if it hasn’t been processed yet, that elector may not get a new ballot on election day.

Discussion

Generally, election statutes are “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). Despite this general rule, and in response to the line of cases finding that election statutes are not mandatory, the Legislature enacted Wis. Stat. § 6.84(2), which provides that “[n]otwithstanding s. 5.01(1), with respect to matters relating to the absentee ballot process, ss. 6.86, 6.87 (3) to (7) and 9.01 (1) (b) 2. and 4. shall be construed as mandatory.” These mandatory requirements “must be strictly adhered to and strictly observed.” Teigen at § 53 (quoting State ex rel. Ahlgrimm v. State Elections Bd., 82 Wis. 2d 585, 592–93, 263 N.W.2d 152 (1978))(internal quotation marks omitted).

When interpreting a statute, “[i]f the language chosen is clear and unambiguous, we stop the inquiry and apply the plain meaning of those words. Important to the meaning of a statute is the context in which it occurs, and we interpret statutes to reasonably give effect to every word.”

Jefferson v. Dane Cnty., 2020 WI 90, ¶ 21, 394 Wis. 2d 602, 951 N.W.2d 556. Further, “statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” State ex rel. Kalal v. Cir. Ct. for Dane Cnty., 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124. “[W]here the legislature uses similar but different terms in a statute, particularly within the same section, it is presumed that the legislature intended such terms to have different meanings.” Nelson v. McLaughlin, 211 Wis. 2d 487, 496, 565 N.W.2d 123, 128 (1997).

Applying these cardinal rules of statutory construction to the relevant statutes here, it is clear that an absentee ballot may not be returned to a polling location on election day. Under Wis. Stat. § 6.87(4)(b)1, an absentee ballot “shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” “This subparagraph contemplates only two ways to vote absentee: by mail and at “the office of the municipal clerk” or “an alternate site” as statutorily described. No third option exists.” Teigen at ¶ 59. “Municipal clerk, however, denotes a public office, held by a public official acting in an official capacity when performing statutory duties such as accepting ballots. The statutes do not authorize the municipal clerk to perform any official duties related to the acceptance of ballots at any location beyond those statutorily prescribed.” Id. at ¶ 61.

The statutes provide additional support for this interpretation. Section 6.87(6), for example, provides:

The ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day. Except in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided in this subsection may not be counted.

While an argument could be made that the first sentence of that section would allow hand delivery by the elector to the polling location, such an interpretation ignores the context of subsection (4)(b)1 which requires delivery by mail or to the clerk’s office. Similarly, when dealing with absentee ballots for sequestered jurors, the municipal clerk is directed to “deliver it to the polling place.” Wis. Stat. § 6.86(1)(b). Furthermore, the legislature expressly allows an absentee ballot to be returned directly to the polling location when dealing with hospitalized electors. See Wis. Stat. § 6.86(3)(c) (“if the ballot is returned on the day of the election, the agent shall make personal delivery to the polling place serving the hospitalized elector's residence before the closing hour or, in municipalities where absentee ballots are canvassed under s. 7.52, to the municipal clerk no later than 8 p.m. on election day.”). By expressly allowing for the return of an absentee ballot to the polls in this circumstance, the legislature’s intent is clearly to not allow an absentee ballot to be returned to the polls under any other circumstance where the express language is not found.

Having established that an elector cannot generally return their ballot to the polls except where they are hospitalized, the question becomes how to handle someone who appears at the polls with their absentee ballot. It is clear that an absentee elector who “mails or personally delivers an absentee ballot to the municipal clerk at an election is not permitted to vote in person at the same

election on election day.” Wis. Stat. § 6.87(6). The converse is also true — an absentee elector who has not returned their ballot is eligible to vote in person. We assume, for the purposes of this discussion, that the elector has their ballot because they are looking to return it. Accordingly, we know that they have not yet returned their ballot and would be eligible to vote in person. It is also clear that this absentee elector cannot spoil the ballot they are looking to return. Section 6.87(5) requires that any request for a replacement ballot “must be made within the applicable time limits under subs. (1) and (3) (c).” In other words, the request to spoil an absentee ballot must be made before the day of the election.

Based on the foregoing, there are two clear options for the absentee elector who appears at the polls with their ballot. First, they could be directed to deliver their ballot to the municipal clerk’s office (assuming that it is still open). Second, they could choose to not return their absentee ballot, indicate to the poll worker that they have not returned their absentee ballot and then be issued a new ballot that would be voted in person. The first option creates the fewest potential issues (see the discussion below) and is the option that the elector should be encouraged to use. However, there will be electors who will complain about having to go to the clerk’s office and should option two will be used.

Choosing the second option does, of course, raise the issue of how to address the absentee ballot they have brought to the poll. On August 1, 2022, WEC staff issued a communication to Wisconsin clerks entitled “Spoiling Absentee Guidance for the 2022 Partisan Primary.” A review of this document reveals that it appears to be consistent with the applicable statutes, however I take one exception with their guidance. Within this document, WEC staff states that “Poll workers should not take the unvoted absentee ballot from the voter.” I believe that this is probably correct based upon their prior guidance, the forms and poll logs that WEC has promulgated for use in elections, and perhaps even most consistent with the statutes. The statutes do not state how this situation should be handled. But, if the poll worker accepts the ballot, haven’t they effectively spoiled their ballot contrary to § 6.87(5)? On the other hand, the same could also be argued even where the unvoted ballot is not accepted. How the Courts might rule on this point is uncertain, and for that reason I have no problem following WEC’s guidance on this point should you choose to do so.

However, we also know that elections are under more scrutiny than perhaps at any point in history. I do have concerns that a voter taking their unvoted absentee ballot with them raises a host of additional concerns:

- The absentee elector could remove their absentee ballot from the envelope and vote that ballot in the place of the ballot they received at the poll. This would mean that they have returned a ballot contrary to law. It also creates an opportunity for them to provide that blank ballot to a third party for them to vote.
- The absentee elector could vote both ballots at the poll.
- The absentee elector could take their absentee ballot, walk down the hall of the polling location, and throw that ballot in the trash, which could then be discovered by a third party (either on election day or in the days that follow) who might then make public complaints of election fraud (“The government is throwing away your ballots and not counting them!”)

Of course, in all of these circumstances the checks and balances within our election system would allow for a fairly quick identification of the issue and an explanation. But at what cost? That initial claim of fraud will have legs among those who believe in conspiracies that will far outlast the legitimate explanation. For that reason, I also have no problem with the poll workers collecting the unvoted ballot. However, the poll work must take great care with that unvoted ballot:

- The envelope should not be opened.
- A notation should be made on the face of the envelope that it is an “Unvoted Absentee Ballot Returned to the Polls – New In-Person Ballot Issued.”
- The envelope should be kept separate from the spoiled ballots.
- A clear explanation should be included in the log (even if an additional sheet of paper needs to be included).

BCS

EXHIBIT C:

**TYPE D AND E NOTICE PUBLISHED BY THE
CITY OF GREENFIELD FOR THE AUGUST 2022 ELECTION.**

City of Greenfield
Partisan Primary

At the Partisan Primary to be held on Tuesday, August 9, 2022, in the City of Greenfield, the following polling place locations will be used for the wards indicated:

Wards	Voting Locations
Wards 1-12	Greenfield Community Center, 7215 W. Cold Spring Road
Wards 13-16	Whitnall High School, 5000 S. 116 th Street
Wards 17-21	Greenfield Public Library, 5310 W. Layton Avenue
Wards 22-26	Adoration Lutheran Church, 3840 W. Edgerton Avenue

All polling places will be open at 7:00 a.m. and will close at 8:00 p.m. All polling places are accessible to elderly and disabled voters.

If you have questions concerning your polling place, contact the City Clerk:

Jennifer Goergen, City Clerk
7325 West Forest Home Avenue
Greenfield, Wisconsin 53220
(414) 329-5219
Email: JenniferG@Greenfieldwi.us
Office Hours: 8:00 a.m.-5:00 p.m. – Monday-Friday

Notice of Meeting of the Local Board of Canvassers

At the close of voting on Election Day, pursuant to the provisions of Wis. Stat. §19.84, the Election Inspectors at each polling place will convene as the Local Canvassing Board for the purpose of conducting the local canvass pursuant to Wis. Stats. §7.51. This meeting will be open to the public pursuant to Wis. Stat. §§19.81-89.

Published: August 3, 2022

Elections/TypeD220809.doc

CITY OF GREENFIELD
OFFICIAL NOTICE

Voting By Absentee Ballot

Any qualified elector who is unable or unwilling to appear at the polling place on Election Day may request to vote an absentee ballot. A qualified elector is any U.S. citizen, who will be 18 years of age or older on Election Day, who has resided in the ward or municipality where he or she wishes to vote for at least 28 consecutive days before the election. The elector must also be registered in order to receive an absentee ballot. Proof of identification must be provided before an absentee ballot may be issued.

YOU MUST MAKE A REQUEST FOR ABSENTEE BALLOT IN WRITING OR ONLINE AT MYVOTE.WI.GOV.

Contact your municipal clerk and request that an application for an absentee ballot be sent to you for the August 9, 2022 Partisan Primary. You may also submit a written request in the form of a letter or you may apply for an absentee ballot online at myvote.wi.gov. Your written request must list your voting address within the municipality where you wish to vote, the address where the absentee ballot should be sent, if different, and your signature. You may make application for an absentee ballot in person, by mail, by fax, by email, or at myvote.wi.gov.

MAKING APPLICATION TO RECEIVE AN ABSENTEE BALLOT BY MAIL

The deadline for making application to receive an absentee ballot by mail is 5:00 p.m. on Thursday, August 4 2022.

NOTE: Special absentee voting application provisions apply to electors who are indefinitely confined to home or a care facility, in the military, hospitalized, or serving as a sequestered juror. If this applies to you, contact the municipal clerk regarding deadlines for requesting and submitting an absentee ballot.

VOTING AN ABSENTEE BALLOT IN PERSON

You may also request and vote an absentee ballot in the clerk's office or other specified location during the days and hours specified for casting an absentee ballot in person.

Jennifer Goergen, City Clerk
7325 West Forest Home Avenue
Greenfield, WI 53220
(414) 329-5219
Office Hours: 8:00 a.m.-5:00 p.m. - Monday-Friday

The first day to vote an absentee ballot in the clerk's office is Tuesday, July 26, 2022.

The last day to vote an absentee ballot in the clerk's office is Friday, August 5, 2022.

No in-person absentee voting may occur on the day before the election.

The municipal clerk will deliver voted ballots returned on or before Election Day to the proper polling place before the polls close on Tuesday, August 9, 2022. Any ballots received after the polls close will not be counted.

