



Wisconsin Elections Commission

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MEMORANDUM

DATE: For the March 7, 2025, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: WEC Staff

SUBJECT: **In re the investigation of: City of Madison
Investigation Summary and Findings**

APPENDICES: **See Full Appendix Following this Memo**

Introduction

On January 2, 2025, the Wisconsin Elections Commission (“the Commission”) voted unanimously to authorize an investigation pursuant to Wis. Stat. § 5.06(4) to determine whether City of Madison Clerk Maribeth Witzel-Behl has failed to comply with the law or abused her discretion regarding the 193 uncounted absentee ballots from Wards 56, 65, and 68 from the November 5, 2024, General Election.

Commission staff were directed to summarize the findings of the investigation for the Commission at an upcoming meeting so that the Commission can provide further direction. The primary purpose of this memo is to summarize and synthesize all of the facts that Commission staff have learned through Clerk Witzel-Behl’s written responses and documents produced, and to identify the contributing factors that staff believe led to the 193 ballots going uncounted. Commission staff have also prepared an outline of possible statewide clerk communication so that the lessons learned from this incident can be distributed beyond the City of Madison.

Part One of this memo highlights the most relevant documents that were produced, all of which are attached in full in **Appendices 1 – 43**.

Part Two of this memo synthesizes the written responses of Clerk-Witzel-Behl along with the produced documents to provide an expanded timeline of events from October 2024 through January 2025 relating to the uncounted ballots.

Part Three of this memo presents what Commission staff believe to be the contributing factors for why the uncounted ballots were not processed, and why they were not included in the final state canvass and certification of the official results.

Part Four of this memo contains an additional series of recommendations for the Commission regarding further questions or requests it may wish to ask of Clerk Witzel-Behl.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Part Five of this memo outlines a staff recommended option for statewide guidance following this incident so that all clerks can understand the Commission’s best practices for ensuring an incident like this is not repeated during a future election.

Part Six contains a conclusion and a series of possible motions for the Commission to consider with respect to next steps for this matter.

Part One – Appendices

Documents pertinent to the investigation are organized and included in the appendices that follow this memo. The appendices are organized by request from the Commission’s January 2 open records request.

For quick reference, the most significant documents are included in the following table, and have been provided as part of the printed materials. **Please refer to the table of contents that follows this memo for complete descriptions of all of the appendices.** The full appendix consists of 43 total appendices constituting 1,667 pages. Staff can provide any of the appendices that were not included upon request. All materials relating to the investigation, including every appendix, will be posted on the Commission’s website.

Appendix	Document Description
1	Response of Clerk Maribeth Witzel-Behl to Commission Questions.
1A	Letter from Scott McDonell, Dane County Clerk.
2	WisVote Data for Uncounted Ballots Wards 56, 65, and 68.
3	Absentee Carrier Seal Number Record Sheets.
14	Internal Email Communications of City Clerk’s Office Staff.
15	November 2024 Municipal Board of Canvassers Notes.
19	January 10, 2025 Madison Municipal Board of Canvassers Agenda, Statement & Vote Tally of Uncounted Ballots.
20	Ward 56 – Scans of Poll Books Provided to County Board of Canvassers.
21	Ward 65 – Scans of Poll Books Provided to County Board of Canvassers.
22	November 2024 Canvass Documents.
23	Ward 56 Poll Book (Voter Signature Version provided to MBOC).
25	Ward 65 Poll Book (Voter Signature Version provided to MBOC).
28	Opening the Polls Task Sheets Binder.
29	Closing the Polls Task Sheets Binder.
32	Blank Absentee Bundle Checklist.
36	Blank Absentee Bundle Tracking Sheet.
37	Blank Bundle Tally Sheet.
41	Absentee Sealing Procedures.
43	Blank Absentee Bundle Sheets.

Part Two – Expanded Timeline of Events

Based on the responses provided by the Clerk Witzel-Behl, along with documents produced, staff have prepared an expanded timeline of events from October 2024 through January 2025 relating to the uncounted ballots.

Pre-Election Day Events

- **October 23** – City of Madison prints poll books for Wards 56, 65, and 68 ahead of the November 5 election. **Appendices 20, 21, 23, 25.**
- **Between September 19 – October 29** – Clerk’s Office receives uncounted Ward 56 ballots. Most issued to in-person absentee voters, though some by mail. Exact method of return unknown. Ballots were entered into WisVote upon arrival back at the clerk’s office. The vast majority of the uncounted ballots from Ward 56 arrived back at the clerk’s office on October 28 (51) and October 29 (48). Complete WisVote data showing the return date for each of the uncounted ballots is included in **Appendix 2.**
- **Between October 21 – October 28** – Clerk’s Office receives Ward 65 and 68 ballots. Most issued to in-person absentee voters, though some by mail. Exact method of return unknown. Ballots were entered into WisVote upon arrival back at the clerk’s office. The vast majority of the uncounted ballots from Ward 65 arrived back at the clerk’s office on October 28 (56). Complete WisVote data showing the return date for each of the uncounted ballots is included in **Appendix 2.**
- **Sometime Before October 31** – Uncounted ballots were secured by Clerk’s Office in sealed courier bags inside locked rolling security carts. The uncounted ballots were secured in “green bags.” **Exhibit 1.**
- **October 31** – Uncounted ballots were delivered to polling places inside locked security carts in advance, and were already onsite when the polls opened. **Appendix 1.** Delivery schedule shows that equipment was delivered to West High School (Ward 65) between 9 a.m. and 12 p.m. **Appendix 6.** Delivery schedule shows that equipment was delivered to UW Nicholas Recreation Center (Ward 56) between 11 a.m. and 2 p.m. **Appendix 6.** The delivery schedules’ itemized lists do not mention courier bags, carrier envelopes, or absentee ballots as things included in the security cart. **Appendix 6.** The uncounted ballots were not delivered throughout the day through a poll worker courier. **Appendix 1.**
- **November 2** – Chief Inspectors pick up the Inspector’s Statements for their polling places. **Appendix 1.**
- **November 4** – Clerk’s Office emailed the turnout spreadsheet (current through November 3) to each Chief Inspector, which lists the number of absentees issued for each ward, and the number of absentee ballots returned as of the Sunday before the election. **Appendix 1.** This document is also available to Chief Inspectors during Election Day “through Teams on their iPad.” **Appendix 1.**

Election Day Events – November 5

- **Prior to Polls Opening** – Chief Inspector checklist directs poll workers to remove the ballots and other supplies from both compartments of the tabulator cart, and to remove the ExpressVote ballot cards from the emergency bin tray. This instruction is part of tabulator cart set up. **Appendix 28.**
- **Prior to Polls Opening** – Each polling location takes its absentee log (printed from WisVote) and highlights the names of voters on the poll book who should be asked if they returned their absentee ballot if they show up to vote in person. **Appendix 28.** Voters who returned an absentee ballot are highlighted in pink. **Appendices 20, 21, 23, 25.** Voters who were issued an absentee that was not yet returned to the Clerk’s Office are highlighted in orange. **Appendices 20, 21, 23, 25.** The general

highlighter instruction is provided on the Poll Book Table Opening Task sheet in the Chief inspector binder. **Appendix 28.**

- **11 a.m.** – Ward 65 informs Clerk’s Office it had processed 20 percent of absentee ballots so far. Ward 56 reported it had processed 11 percent of absentees. These numbers tracked with other wards and so were not a cause for concern at the time. **Appendix 1.**
- **4 p.m.** – Ward 56 reported it had processed 40.57 percent of absentee ballots. Ward 65 did not provide this number at its 4 p.m. check in. The figure from ward 56 tracked with other wards so was not a cause for concern at the time. **Appendix 1.**
- **8 p.m. – Close** – Chief Inspectors are supposed to use end-of-night Check List that prompts them to ensure all ballots are counted, including verifying that absentee ballot courier delivery bags and carrier envelopes are empty. **Appendix 29.** Neither Ward 56 nor Ward 65 appears to have done this. **Appendix 1.**

Post-Election Day Events

- **November 8, 9 a.m.** – Dane County Board of Canvassers convenes to begin county canvass and adjourns to finish the canvass on November 12.
- **November 8, 4 p.m.** – Convening of City of Madison Municipal Board of Canvassers
- **November 12, 9 a.m.** – Dane County Board of Canvassers reconvenes to finish county canvass.
- **November 12** – Clerk’s Office employee found sealed courier bag of ballots from Ward 65, and Clerk’s Office suspected ballots were not included in the tally. The courier bag had been returned in the security cart for Ward 65, which indicated the absentees sent to the polling place had not been counted. Clerk’s Office staff had been sorting through election materials at the Clerk’s Office storage facility, and was organizing voting booths, signage, tables, and stanchions in each security cart at the Clerk’s Office storage facility. The courier bag was found when organizing the contents of the security cart. **Appendix 1.**
- **November 12** – Clerk Witzel-Behl stated that she gave two separate instructions to two different employees to notify WEC staff but also stated “that contact never occurred.” Clerk Witzel-Behl instructed Employee D in her office to “notify the WEC that the numbers were off in [Ward 65] because these absentee ballots should have been counted.” She appears to claim that she was unaware that her instructions to contact the WEC had not been followed. In a separate conversation on November 12, Employee C asked if the uncounted ballots should be recorded as rejected. Clerk Witzel-Behl responded that the ballots should not be recorded as rejected but instead “to have the reconciliation team inform the WEC that numbers were off if ballots that should have been counted were not counted.” **Appendix 1.**
- **November 12** – Employee F of the Clerk’s Office went in person to the Dane County Clerk’s Office after the courier bag for Ward 65 was discovered. Employee F told Clerk Witzel-Behl that he would speak to the Dane County Clerk. Employee F says he does not remember what the Dane County Clerk said, but City Deputy Clerk Verbick and another Clerk’s Office employee recall a conversation with Employee F after he spoke with the Dane County Clerk, or a member of his staff. In this conversation, City Deputy Clerk Verbick and the second employee “recall a general sense that the County would not want the Ward 65 ballots for the County canvass.” **Appendix 1.**
- **November 13** – Clerk’s Office staff opened the courier bag for Ward 65 and saw a sealed carrier envelope inside. Clerk’s Office staff re-sealed the courier bag and put it in the Clerk’s Office vault to await a recount the Clerk’s Office thought was possible at the time. **Appendix 1.**
- **November 26** – Clerk’s Office discovered discrepancy in WisVote in Ward 65, indicating that the ballots were not included in the tally. **Appendix 1.**

- **November 27** – Clerk’s Office staff explain internally that Clerk Witzel-Behl directed her staff to open the carrier envelope of uncounted absentee ballots from Ward 65. Staff explain that Clerk Witzel-Behl directed staff to assign voter slip numbers to them, keep them sealed, and record them as having participated absentee. **Appendix 14**. Neither the internal emails nor Clerk Witzel-Behl’s statements say so explicitly, but Commission staff assume this is the reason why the voter signature copy of the poll books have absentee voter numbers assigned. Staff assume these voter numbers were assigned after the MBOC had reviewed the poll books.
- **November 29** – Commission Chair Jacobs conducts the state-level canvass and certifies the results of the November 5 election. The Commission was not aware of the 193 uncounted ballots at the time of the state canvass.
- **December 2** – Through the reconciliation process, the Clerk’s Office noticed that there were “absentee ballots marked as returned in WisVote that were neither counted nor rejected at the polls” in Ward 56. After realizing the discrepancy, the same employee searched through Ward 56 materials and discovered a sealed courier bag in the supply tote that the Chief Inspector had returned to the Clerk’s Office on election night. The ballots were in two sealed carrier envelopes that were inside a sealed courier bag. The tote remained stored at the Clerk’s Office after it was returned on Election Night. Two employees opened the courier bag and then notified Deputy Clerk Verbick. After the uncounted ballots from Ward 56 were discovered on December 2, Clerk Witzel-Behl explained that she did not notify the CBOC because the canvass had already taken place but also because “based on the County Clerk’s response to the uncounted ballots from Ward 65, the City Clerk’s Office did not believe the County would be interested in the ballots discovered in December from Ward 56.” **Appendix 1**.
- **December 4** – Clerk’s Office confirmed that Ward 56 ballots were not included in the tally when they unsealed the courier bag and then opened the sealed carrier envelope located in the courier bag. **Appendix 1**.
- **December 17** – Carrier envelopes inside the sealed courier bag for Ward 56 were opened by Clerk’s Office staff. **Appendix 1**.
- **December 18** – Clerk’s Office staff first notify Commission staff of this incident as a reconciliation system management question. **Appendix 14**. Clerk Witzel-Behl claims that although she gave instructions on November 12 for Ward 56 to two members of her staff to contact the WEC, unbeknownst to her, “the employees working on reconciliation saved this task for the end of reconciliation instead of contacting WEC immediately.” **Appendix 1**. Clerk Witzel-Behl did not explain why her staff waited until December 18 to contact the Commission regarding the uncounted ballots from Ward 56, even though they were discovered on December 2.
- **December 23** – WEC staff direct Clerk’s Office staff to remove participation records from affected voters in WisVote. WEC staff explain that the uncounted absentee ballots will stay marked as Returned, but their participation should be removed. **Appendix 14**. Clerk’s Office later confirms on the same day that all participation records have been removed. **Appendix 14**.
- **January 2** – Clerk’s Office notified the City of Madison Municipal Board of Canvassers (“MBOC”) that 193 ballots had not been included in the tally, and requesting the MBOC schedule a meeting to tally the ballots. Clerk’s Office did not notify MBOC of uncounted ballots prior to this date because “the local canvass was complete, and the County was certifying the election results.” **Appendix 1**.
- **January 10, 4 p.m.** – The City of Madison Municipal Board of Canvassers convened again. The agenda for the meeting, relevant to the uncounted ballots, included 1) report on uncounted absentee ballots in Wards 56 and 65 on November 5, 2024; 2) tally of uncounted absentee ballots from Wards 56 and 65; and 3) discussion about improving processes and tools. The MBOC hand counted the 193

ballots at this time and also corrected the number of provisional ballots issued from 123 to 128. **Appendix 15.**

- **January 18** – Clerk’s Office provides Commission staff with a copy of the City of Madison MBOC statement from the January 10 meeting, which includes a tally of the results. A copy of the complete hand count results is included as **Appendix 15.**

A summary of the hand count tally for federal races is included in the chart below. Complete tallies for all votes cast for all races can be found in **Appendix 15.**

The uncounted ballots did not impact the result in any federal, state, or local race, nor did it impact any statewide or local referenda.

Ward	President/Vice President	U.S. Senator	U.S. Rep., District 2
Ward 56	Harris/Walz: 102 Trump/Vance: 21 Stein/Ware: 1	Tammy Baldwin: 107 Eric Hovde: 18	Mark Pocan: 103 Erik Olsen: 20
Ward 65	Harris/Walz: 58 Trump/Vance: 8 Oliver/ter Maat: 1	Tammy Baldwin: 59 Eric Hovde: 7 Phil Anderson: 1	Mark Pocan: 60 Erik Olsen: 7
Ward 68	Harris/Walz: 1	Tammy Baldwin: 1	Mark Pocan: 1

Part Three – Contributing Factors

While the purpose of this memo is not to offer legal conclusions regarding the specifics of Clerk Witzel-Behl’s procedure, staff have identified several factors that probably increased the likelihood that the 193 uncounted absentee ballots went undiscovered by anyone until November 12 and December 2, respectively, and went uncounted in the official election results. Again, at this juncture, staff are not concluding that any of the factors outlined below mean that Clerk Witzel-Behl took actions that are contrary to law or were an abuse of discretion. The purpose of this section is to provide the Commission with staff’s opinions regarding the factual circumstances of these events, as well as an assessment that these are likely some of the reasons why the uncounted ballots were not discovered in a timely manner or ultimately counted.

Lack of Completed, Ward-Specific Absentee Ballot Carrier Bag/Envelope Seal Log at Polling Place

Under the policy and practice that appeared to be in place at the November 5 election, election inspectors were trained to fill out a blank absentee ballot log chart with each courier bag they opened at the start of the day, and each one they received from couriers throughout the day. This practice creates a record of what was completed — but not of what was missed. If each polling place had a complete, ward-specific list of the total number of courier bags and envelopes, with seal numbers as unique identifiers, election officials could have noticed that their handwritten absentee ballot log was missing a courier bag that the clerk’s office said should be there for that ward and eligible for counting. Even a system that labeled each courier envelope or bag with “1 of 12” or similar could have indicated to election officials that there were a specific number of carrier bags they needed to account for while processing absentee ballots.

Lack of Absentee Data Reconciliation Process as Part of Closing the Polls

None of the procedures in place on November 5 prompted election officials to confirm the number of absentee ballots received with the number of absentee ballots counted. Clerk Witzel-Behl explained in her response that this data was emailed to her Chief Inspectors the weekend before the election and was also available as an accessible file for Chief Inspectors on Teams on Election Day. **Appendix 1.** However, nothing in the end-of-night checklists, the inspector’s statement, or absentee ballot log provided the total number of absentee ballots received for election officials to consider at the end of the night.

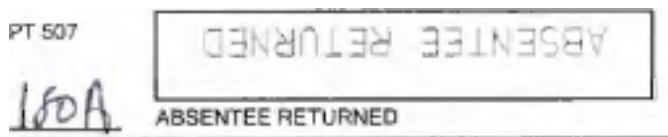
One of the most important steps of closing the polls on Election Day is for election officials to confirm that the total number of voter slips issued matches the number of ballots inserted into the tabulator. This ensures that the number of ballots counted is equal to the number of voters who cast ballots. However, uncounted ballots are obviously never assigned a voter number. This is why the end of night ballot counts matched for Ward 56 and Ward 65, and why the ballot count did not alert election officials that there were additional uncounted absentee ballots.

If Clerk Witzel-Behl had run a report at 8 p.m. on Election Night, she would have had ward-by-ward data of how many absentee ballots were recorded as received, assuming her office checked them in to WisVote as soon as they were received. Election officials then could have taken that number, added any absentee ballots that were delivered in person to the polling place, and compared it to the number of absentee voter numbers in the pollbooks. Any difference in numbers would have then prompted election officials to investigate further until they were sure that all absentee ballots that had been received were in fact processed and counted.

Early Poll Book Printing and Lack of “Absentee Returned” Watermark

Outside of finding the ballots themselves or comparing absentee data from the clerk’s office, another way someone could have discovered that not all absentee ballots were counted on Election Night was by noticing that the pollbook contained many indicators of returned absentee ballots that were not paired with voter numbers.

When a pollbook is printed, the system will automatically affix watermarks in the voter signature box designed to clearly notify an election official that an absentee ballot has been issued or returned. If the voter number, visible in the example below as 180A, was missing from a watermark like this, the election official would know that an absentee ballot was received but was not yet processed by the election officials and counted.



Clerk Witzel-Behl appeared to have printed the pollbooks for Wards 56 and 65 on October 23. She explained that her policy was to provide each polling place with a list of voters who returned absentee ballots in the subsequent 12 days prior to Election Day and instructions to highlight voters who returned their ballots. In the Opening the Polls binder, the instructions for setting up the Poll Book Table provide the following instructions to election officials on how to utilize the highlighter system: “Highlight the names of voters on the poll book who are listed on the Absentee Log. This log is in the black absentee binder. The absentee

watermarks on the poll book do not include all absentee voters. If there are too many absentee voters to highlight, we will need to ask every voter whether they returned an absentee.” **Appendix 28.**

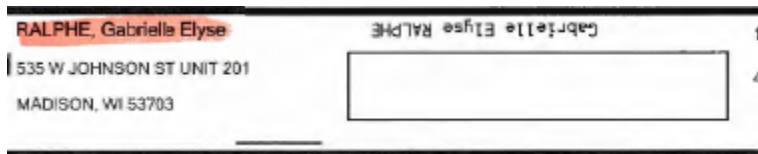
This additional instruction appears to have been provided to election inspectors in training ahead of the November 5 General Election:

“Q: What do we ask voters whose names are highlighted on the poll book? Do we ask if they received an absentee ballot, or if they returned an absentee?”

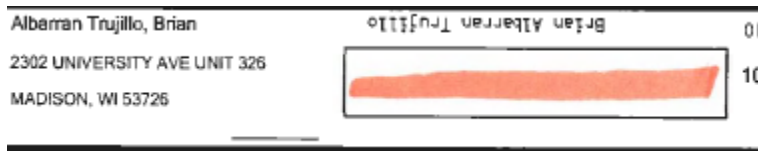
A: If a voter’s name is highlighted on the poll book, we ask if they returned their absentee. We note their answer in the margin of the poll book. If they did return their absentee, they may not vote at the polls.”

Appendix 42.

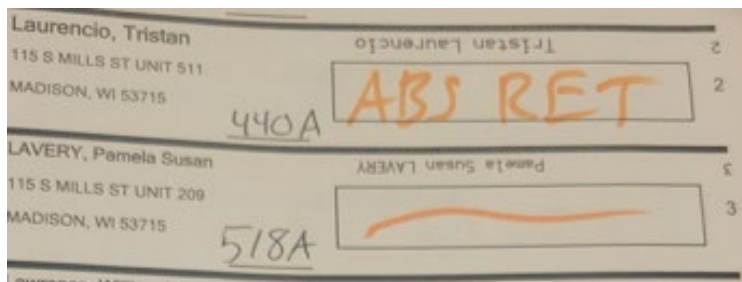
Unlike the watermark, the highlighter system is dependent on every election inspector knowing and remembering what the highlights mean. Below are three examples of how election officials followed the highlighter procedure in Wards 56, 65, and 68.



Ward 56 – Orange Highlighter on Voter Name



Ward 65 – Orange Highlighter in Voter Signature Box



Ward 68 – “Abs Ret” Written in Orange and Orange Line in Voter Signature Box

Commission staff do not know whether the orange highlighter system caused confusion for election inspectors in these wards, nor do staff know or claim that any election inspectors did not know what the orange highlighting in the pollbook meant. However, it is the opinion of Commission staff that the “Absentee Returned” watermark would have clearly denoted to every election inspector who looked at the pollbook that the voter in question had returned an absentee ballot. It is also the opinion of Commission staff that the “Absentee Returned” watermark is both easier to notice and more official looking such that an election inspector reconciling the pollbook at the end of the night may have questioned why so many returned watermarks did not have assigned voter numbers. Finally, it is likely that the “Absentee Returned”

watermark would have also been more noticeable to city and county canvassers, some of whom may not have known what the orange highlights in the pollbooks denoted.

Clerk Witzel-Behl's decision to print the pollbooks for Wards 56 and 65 on October 23 meant that election inspectors at those wards likely spent time before 7 a.m. on Election Day highlighting at least 524 names in Ward 56 and 1,052 names in Ward 65.

While Commission staff understand that printing poll books for 134 wards takes time, printing them closer to Election Day would have ensured that more "Absentee Returned" watermarks appeared, and that poll workers would have needed to highlight fewer names.

No Canvass Confirmation of Absentee Data

From what Commission staff understand, Clerk Witzel-Behl provided the following documents to the Municipal Board of Canvass (MBOC) and County Board of Canvass (CBOC): 1) pollbooks; 2) tally sheets; 3) inspectors' statements, absentee logs, observer logs; and 4) results tapes. From the MBOC notes provided in **Appendix 15**, it appears as if the MBOC was reviewing the work that was completed by the election inspectors, and the results that were reported.

There do not appear to be policies in place whereby the MBOC or CBOC were prompted to check to see if the election officials had missed anything or had overlooked batches of absentee ballots. Again, it seems as if the existing policies are extensive with respect to checking what *was* completed, but were not designed to check what was completed against what *should* have been completed.

Organization of Election Day Materials & Post-Election Organizing

The uncounted ballots were discovered on November 12 as one of Clerk Witzel-Behl's staff members was organizing the locked security cart from that ward, but the 125 uncounted absentee ballots from Ward 56 sat undiscovered in a supply tote until a staff member went looking for them on December 2. Had Clerk Witzel-Behl's office checked all carts and totes in the first two days after the election for any uncounted absentee ballots, the uncounted ballots could have been tallied during the Municipal Board of Canvassers meeting along with provisional ballots and could have been included in the final vote totals. Clerk Witzel-Behl's written policies do instruct election inspectors how to properly store and return ballot materials after an election, and returning a courier bag in a supply tote is not consistent with that policy.

Commission staff understands that sorting through and putting away materials from 134 wards takes time. However, if Clerk Witzel-Behl had looked through everything to check for courier bags, carrier envelopes, or sealed absentee certificate envelopes before November 29, all 193 uncounted absentee ballots could have been included in the final vote totals for the City of Madison.

Notification of Ward 65 Ballots to Canvassers

Canvass boards have the statutory power to review the work of election inspectors and make any necessary corrections to the vote totals. The uncounted ballots for Ward 65 were discovered by Clerk Witzel-Behl's staff on November 12, the day of the Dane County Canvass. Clerk Witzel-Behl in her response explained that members of her staff attempted to alert the Dane County Clerk, or his staff, in person on November 12 that there were additional ballots that needed to be canvassed. Clerk Witzel-Behl stated that her deputy

recalled a conversation with the staff member who spoke with either the Dane County clerk or his staff, in which the staff member “[recalled] a general sense that the County would not want the Ward 65 ballots for the County canvass.”

Commission staff do not know why neither the Dane County Clerk (if aware of the situation on November 12), Clerk Witzel-Behl, or their staff, did not notify the Dane County Board of Canvassers that the City of Madison had discovered absentee ballots that had not been counted. Notifying the County Board of Canvassers could have at least ensured that the Ward 65 ballots were tallied and included in the official results of the election.

Direct Communication to Canvassers and the Commission

In her written responses, Clerk Witzel-Behl explains that she gave instructions for her staff members to contact the Dane County Clerk, as well as the Commission, to notify them of the uncounted ballots. It appears that she did not herself attempt to contact the County Clerk or the Commission. She does not explain when she knew or discovered that her directions had not been fully followed and does not explain why she did not follow up with the County Clerk or Commission if she knew or suspected that her directives had not been carried out.

Part Four – Possible Additional Areas of Inquiry

Clerk Witzel-Behl has provided a lot of information and documentation in response to the Commission’s questions and open records requests. As outlined in the prior section of this memo, Commission staff understand many of the contributing factors that led to the ballots going undiscovered and uncounted.

What happened at these polling places?

There is one large area of inquiry that Commission staff still do not have answers to, even after reviewing all of the written responses and provided documents. Although Clerk Witzel-Behl provided many pages of training materials, polling place guides, instructions, examples, and explanations of policy, she did not provide any explanation or overview of what exactly happened at these polling places. Commission staff still do not know:

- How the absentee ballot carrier bags containing the uncounted ballots went unnoticed all day by election inspectors.
- Where the absentee courier bags in question were located in the polling place on Election Day.
- Whether there were other absentee carrier bags of ballots delivered with those specific security carts that *were* counted.
- How a carrier bag ended up in a supply tote without any of the election inspectors noticing it still contained absentee ballots.
- Whether election inspectors knew to look for green carrier bags, which is what were used for the uncounted ballots in question, in addition to the red carrier bags.

Clerk Witzel-Behl does not specify in her response if she spoke to the Chief Election Inspectors responsible for Ward 56 and Ward 65, and if she did, she did not include any additional detail of those conversations in her responses. Commission staff believe this is an important, outstanding area of inquiry to understand specifically how potential gaps in procedure occurred. In other words, neither the Commission nor Clerk

Witzel-Behl can provide updated training or guidance to election officials without understanding exactly how the uncounted ballots were overlooked by the election officials working at those polling places.

Commission staff recommend that the Commission consider issuing additional questions to Clerk Witzel-Behl, such as it did during the January 2 meeting, in order to fully understand how these ballots went unnoticed and uncounted all day at the polling places.

Why the uncounted ballots from Ward 65 were not reported to the County Canvass?

Clerk Witzel-Behl asserts that an employee from her office notified either the Dane County Clerk or someone in his office about the uncounted ballots from Ward 65 on November 12. On February 12, 2025, Dane County Clerk Scott McDonell affirmatively provided the letter in **Appendix 1A** in which he states that he had no knowledge of the uncounted ballots until it was reported in the media in mid-December.

Commission staff do not know why the Dane County Canvass was not notified of the uncounted ballots.

Open Records Requests Production:

Clerk Witzel-Behl has provided many pages of records in response to the Commission's open records requests for this investigation. Those documents are all included in the materials in Appendices 1-43.

There were two files that Clerk Witzel-Behl attempted to send that were too large to transmit electronically. The two documents were the log sheets of the daily number of absentee ballots picked up from either a drop box or an in-person absentee voting site. Since these records are not pertinent to how the uncounted ballots were transported to the polling places and likely would not yield any new information pertinent to the investigation, Commission staff determined they were likely not responsive to the Commission's requests.

Additionally, the Clerk's Office produced 36 pages of internal communication records relating to this incident, the vast majority of which were created and sent on or after December 17. The records custodian explained that while the Clerk's Office does use Microsoft Teams, the City only has a retention period of 24 hours for messages. The records custodian did not confirm or deny whether responsive Teams message records existed at one point. Additionally, the earliest emails provided were from November 26. The Clerk's Office did not produce any emails from November 12 to November 26.

Part Five – Best Practices for Training and Guidance

In addition to the decision letter that will be specific to the City of Madison, the Commission should also consider whether to issue a statewide clerk communication so that all Wisconsin clerks have a checklist of best practices to ensure that a similar situation does not arise during a future election. This would be a useful guidance document for clerks to evaluate their current procedures for any potential issues or inefficiencies that could cause absentee ballots to be overlooked. Commission staff could also expand upon the clerk communication to offer specific training so that the lessons learned from this incident can be shared with other jurisdictions.

The clerk communication would consist of a summary of best practices relating to absentee ballot handling and processing for the following topics:

- **Pre-Election Procedure** – These best practices would be focused on steps clerks should take to ensure that their election inspectors at the polling places are equipped to verify that all absentee ballots are received and accounted for from the clerk’s office.
- **Polling Place Procedure** – These best practices would be focused on specific steps election inspector should take to check that all absentee ballots have been located and counted, with an emphasis on end-of-night procedures to check the number of absentee ballots counted against the number of absentee ballots received by the clerk.
- **Post-Election Procedure** – These best practices would be focused on prioritizing the organization of election materials before the convening of the municipal canvass to ensure no unprocessed absentee ballots were missed.
- **Reconciliation Procedure** – These best practices would be focused on early entry of voter participation data after the election so that clerks could verify that the number of absentee ballots returned matches the total number of absentee ballots counted or properly rejected for all wards in their jurisdictions.
- **Canvass** – These best practices would be focused on the types of data and documents clerks should prepare for their municipal boards of canvass so that the canvassers can double check to ensure nothing was missed. This section would also include guidance for county boards of canvass so they can serve as a further check to ensure that the election data makes sense.
- **Response Planning** – These best practices would be focused on how clerks should respond if they discover uncounted ballots after the close of polls. It will provide information on how to contact their boards of canvassers, as well as how to properly document the ballots in WisVote. It will also provide best practices for what clerks should do if unprocessed ballots are discovered after the Commission has certified the election.

Additionally, the Commission should consider whether to direct staff to prepare a press release at the conclusion of the investigation so the media and the public can be briefed on the outcome.

Part Six – Summary and Possible Motions

After this first stage of the investigation, Commission staff have a much clearer understanding of how the events unfolded surrounding the 193 uncounted absentee ballots. However, some questions do remain.

In conclusion, the purpose of this memo was to summarize the additional facts provided by the Clerk's Office in their written responses and document productions, and to identify the likely factors that contributed to the situation. Having considered the additional information learned, the Commission should now decide how it wishes to proceed with this matter, as outlined in the possible motions below. The Commission could decide to seek further facts or information from Clerk Witzel-Behl, or it could decide that it has enough information before it to issue a decision letter. The Commission could also decide whether to instruct staff to prepare a statewide clerk communication so that all Wisconsin clerks can understand the lessons learned from this matter in order to ensure that it does not occur at a future election.

Possible Motion 1: The Wisconsin Elections Commission (“the Commission”) directs staff to continue the investigation authorized on January 2, 2025, into whether City of Madison Clerk Maribeth Witzel-Behl has failed to comply with the law or abused her discretion regarding the 193 uncounted absentee ballots from Wards 56, 65, and 68 from the November 5, 2024, General Election. Staff are directed to continue the investigation pursuant to the March 7, 2025, memo, the bipartisan discovery requests prepared by Chair Jacobs and Commissioner Millis, and any parameters or directives that achieved consensus during the

Commission discussion. Staff are directed to immediately transmit the discovery requests to Clerk Witzel-Behl, as soon as they are finalized, and to make those requests immediately available to the public. Staff are directed to inform Clerk Witzel-Behl that the Commission requests her compliance no later than **March 21, 2025**.

Possible Motion 2: The Wisconsin Elections Commission (“the Commission”) directs staff to prepare a draft decision letter pursuant to Wis. Stat. § 5.06(6) with

Option 1: A recommendation of whether /

Option 2: That Clerk Witzel-Behl took actions /

Option 3: That Clerk Witzel-Behl did not take actions / that were contrary to law or abused her discretion with respect to this incident. Staff are directed to prepare the draft decision for the Commission’s review, discussion, and approval at an upcoming meeting.

Option 4: [Add any decision letter specifics that receive consensus during meeting, if any].

Possible Motion 3: Staff are also directed to prepare a statewide clerk communication of best practices for processing and handling absentee ballots for the Commission’s review and discussion at an upcoming meeting. Finally, staff are directed to issue a press release summarizing the current state of the investigation.