

# Attachment D

Draft Decision Letters and Analysis:

- 1) Mequon (Rejected Witness Address)
- 2) Mequon (Potentially Incomplete Canvass)
- 3) Madison (Late Arriving Absentee Ballots)



# Wisconsin Elections Commission

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April 30, 2026

## STATE OF WISCONSIN WISCONSIN ELECTIONS COMMISSION

In re the investigation of:

City of Mequon Municipal Clerk  
Ozaukee County Clerk  
Mequon Municipal Board of Canvassers  
Ozaukee County Board of Canvassers  
("Mequon and Ozaukee County Election Officials")

Investigation No. 2026 - 0002

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### DECISION PURSUANT TO WIS. STAT. § 5.06(6)

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Pursuant to Wis. Stat. § 5.06(6), and the vote of the Wisconsin Elections Commission ("the Commission") taken on April 30, 2026, the following is the Commission's final decision issued in the investigation into the Clerk City of Mequon Clerk Caroline Fochs ("City Clerk"), the Ozaukee County Clerk Kellie Kretlow ("County Clerk"), the Mequon Municipal Board of Canvassers ("MBOC"), and the Ozaukee County Board of Canvassers ("CBOC").

#### Introduction

During the week of the April 7, 2026, Spring Election, the Wisconsin Elections Commission ("the Commission") was made aware of a situation regarding the rejection of five absentee ballots in the City of Mequon. Election inspectors, due to the specific training of the City of Mequon Municipal Clerk, rejected absentee ballots due to a witness address containing a street name, number, and the name of a municipality that was not unique to one location, and lacking any other identifying information. The Municipal Board of Canvassers and County Board of Canvassers were aware of these rejections and the reasons given and did not take action to change the decisions of the local election inspectors.

The Chair of the Commission is required to canvass the results of the April 7 Spring Election, and certify the state-level contests, no later than May 15. Wis. Stat. § 7.70(3)(a). At the April 30, 2026, public meeting, the Commission voted to investigate and make determinations about whether local election officials in Mequon and Ozaukee County took actions that were contrary to law or abused their discretion. Wis. Stat. §. 5.06(4) and (6).

#### *Commissioners*

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

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*Administrator*  
Meagan Wolfe

**Part One:**  
**Procedural Background**

On April 30, 2026, the Commission voted on its own motion pursuant to Wis. Stat. § 5.06(4) to investigate and determine whether the City Clerk, County Clerk, MBOC, and CBOC failed to comply with the law or abused the discretion vested in them or proposes to do so.

On April 30, 2026, the Commission conducted and completed its investigation into whether during the April 7, 2026, Spring Election the City Clerk, County Clerk, MBOC, and CBOC incorrectly rejected 5 absentee ballots with witness addresses containing a street name, number, and a municipality name that was not unique to one location. As part of its investigation, the Commission reviewed correspondence between City of Mequon Attorney Brain Sajdak and WEC staff, notices, agendas, and meeting minutes from the MBOC and CBOC.

On April 30, 2026, the Commission summarily decided this matter after completing the investigation it deemed to be appropriate, and hereby issues this order against the City Clerk, the County Clerk, the MBOC, and the CBOC. Wis. Stat. § 5.06(6).

**Part Two:**  
**Factual Findings**

Following training on this exact topic from the City of Mequon Municipal Clerk, Election inspectors in the City of Mequon rejected 5 absentee ballots with witness addresses containing a street name, number, and a municipality name that was not unique to one location. The Municipal Board of Canvassers and the County Board of Canvassers both accepted these rejections and did not take action to change the determinations regarding these 5 ballots.

The factual record for the Mequon incidents consists of the following materials in **Attachment A**:

- April 7, 2026, Letter from Law Forward to Mequon City Clerk Caroline Fochs
- April 8, 2026, Letter from Mequon City Clerk Caroline Fochs to Law Forward
- April 10, 2026, Letter from Law Forward to the Ozaukee Board of Canvassers
- Meeting Notice, Mequon Municipal Board of Canvassers
- Meeting Minutes, Mequon Municipal Board of Canvassers
- Meeting Minutes, Ozaukee Board of Canvassers

**Part Three:**  
**Legal Analysis**

Witnesses to absentee voting are required by Wis. Stat. § 6.87(2) to provide their address on the certificate envelope. Further, Wis. Stat. § 6.87(6d) states that “[i]f a certificate is missing the address of a witness, the ballot may not be counted.” “Address” is undefined, but, following litigation, a court of appeals ruling provided a definition that applies statewide.

When evaluating a certificate envelope, a witness address means “a place where the witness may be communicated with.” *Rise, Inc. v. Elections Comm'n*, 2024 WI App 48, ¶ 3, 413 Wis. 2d 366, 372, 11 N.W.3d 241, 244. The witness must provide the address, and an election official cannot add it, or add to it, after the ballot has been returned, *See Id.* at ¶ 3. The *Rise* Court held that an absentee ballot could not be rejected if “the face of the certificate contains sufficient information to enable a *municipal clerk* to reasonably identify a place

where the witness may be communicated with.” *Id.* at ¶ 59 (emphasis added). If this standard is not met, a clerk may return the certificate for correction under Wis. Stat. § 6.87(9). Further, “[a]s long as the address information provided by the witness is sufficient to enable communication with the witness, the purposes of the address requirement are fulfilled” and “specific address components are not necessary.” *Id.* at ¶ 56–57.

To apply this standard, clerks can use their “own knowledge of community places, building names, and local addresses.” *Id.* at ¶ 64–65. While the Court offered very few specifics, a clerk may look anywhere “on the face of the certificate” to help determine a witness address and if a witness writes “same as the voter” or “ditto” on the witness address line, that is a sufficient witness address provided that the voter’s address is itself sufficient. *Id.* at ¶ 65, including note 23, and ¶ 66.

The standards provided by the *Rise* Court are binding statewide. In addition, the Commission voted on October 23, 2025, to adopt guidance in its forthcoming Election Law and Administration in Wisconsin manual, to assist clerks by providing what it believes are common types of acceptable addresses. These examples come from the now withdrawn case *League of Women Voters of Wisconsin v. Wisconsin Elections Commission, Dane County 2022CV002472*. One of the Commission’s best practices states that clerks should consider an address sufficient if: “[t]he witness’s street number, street name, and municipality are present, regardless of whether a state name or a ZIP code are provided.” While the Commission believes that following its best practice guidance will allow clerks to properly and efficiently identify sufficient witness addresses, the guidance is not itself binding and the Commission will thus apply the *Rise* standard to its analysis.

The Commission has examined the minutes from the City of Mequon Board of Canvassers meeting. These minutes are extremely minimal, do not provide any details of what the board examined or discussed, and simply lists the winning candidates for municipal offices. The Commission has also examined the minutes from the Ozaukee County Board of Canvassers meeting for the April 7, 2026, Spring Election, which are far more detailed.

From the county canvass minutes, the Commission understands that the election inspectors in the City of Mequon rejected five<sup>1</sup> absentee ballot certificate envelopes that specified a street name, number, and municipality without providing a state or a ZIP code. The City of Mequon election inspectors rejected one ballot from a city of “Verona,” two ballots from a “Fox Point,” one ballot from a city of “Baltimore,” and one ballot from a city of “Houston.”

The Commission received a communication from the City of Mequon attorney clarifying the reasoning for the rejections. The letter states that the *Rise* interpretation includes a reasonability standard. The letter states in part that:

Ms. Fochs trains her elections officials to review all absentee ballots and all of the information contained on the return envelope to determine if the location at which a party may be communicated with is reasonably ascertainable. Thus, for example, if a certification address lacked a state and zip code but the place to communicate with the witness is ascertainable by comparing that address to the voter’s address, such ballot would be accepted.

On the other hand, if there is no other available information from which the election official can ascertain how to communicate with the party, a certificate that contained only a municipality name would be rejected if that municipality name is shared with more than one municipality. For

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<sup>1</sup> The minutes reference five instances of rejections for this reason, though letter from the Mequon City Attorney and other information reference six such rejections. The Commission’s analysis does not depend on the number of rejections because the reasoning for the rejections as discussed in this order appears to have been uniformly applied in each instance.

example, Mequon borders Germantown. There are at least six other incorporated municipalities with the same name (TN, IL, MD, OH, NY and KY) and countless unincorporated townships (including two in Wisconsin). Thus, without more information available, a voter who requests their ballot to be mailed to Madison and has a witness indicate an address in Germantown could have their ballot rejected given that Madison is roughly equidistant from both the Village and Town in Washington County and the Town in Juneau County.

The letter describes this as a “policy of last resort utilized only when all other reasonable attempts have failed. Furthermore, every effort is made to contact the voter to explain and provide time to rectify the issue where possible.” It is also clear that while four different chief inspectors determined that the witness addresses were insufficient, the inspectors were following the training that they had received from the Clerk Fochs. Further, the letter stated, on April 8, that “[a]s required by law, these rejections will be reviewed a second time during the official canvass, which has in the past resulted in a change for some of the rejected ballots.” The municipal canvass minutes do not explain or show any evidence of this review, but it is clear from the Ozaukee County minutes that the City of Mequon Municipal Board of Canvassers did not determine to change the rejections of at least these five ballots. It is unclear if the city canvass overturned any other rejections of certificate envelopes and determined to instead count those ballots.

The Commission agrees that *Rise* provides a general description of a sufficient witness address on an absentee ballot certificate envelope with a reasonability standard that clerks must apply on a case-by-case basis. The Commission finds that Mequon attempted to apply *Rise* and thus does not find a violation of law. However, the Commission finds that the City of Mequon clerk abused her discretion in applying this standard and excluded witness addresses for an impermissible reason.

From the number of ballots rejected for lacking a state and ZIP code, it does appear that the City Clerk is applying this standard as a last resort. City Attorney Sajdak’s letter explains that if a witness’s address is “ascertainable by comparing that address to the voter’s address,” that the certificate would not be rejected. While it is not entirely clear what this means, it seems that if these addresses match that certificate is not rejected, and the Commission also notes that the City of Madison example appears to show that the City Clerk is taking the mailing address of the absentee ballots into consideration. However, even if only a small total number of ballots are rejected for lacking a state and ZIP code, these are votes from electors that must be counted if the absentee ballot voting procedures have been followed, and in this case that means properly applying the standard from *Rise*.

From the available information, it appears that once certain other efforts to identify an address have been exhausted, a witness address including a street name, number, and municipality, but lacking a state and a zip code, would be rejected unless the name of the municipality was unique within the United States.<sup>2</sup> The Commission disagrees with this policy and finds it an abuse of discretion. The City Clerk appears to believe that if an address lacks a state and ZIP code, the address is not ascertainable by comparing it with the voter’s address, and the ballot was not sent to a municipality matching the mailing address provided by the witness, that there is not enough information to reasonably communicate with the witness. There is a glaring omission in this analysis. The city neglects entirely the street name and number.

The *Rise* decision did not supply a simple bright line rule for easy application by municipal clerks but instead issued a broad and permissive definition of a witness address. The Commission, through guidance, has voted to provide clerks with standards consistent with *Rise* to help efficiently manage absentee ballot review. To that end, the Commission recommends to clerks that witness addresses containing a street name, number, and municipality

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<sup>2</sup> It is not clear from the minutes or the letter from Attorney Sajdak how overseas ballots were evaluated, though many of the same issues could be present for the witnesses addresses of overseas voters. It is not clear whether the existence of international municipalities with the same name was part of the analysis or training.

should be accepted without additional analysis. If a witness address lacks these three elements, the clerk would need to determine whether information exists such that the clerk can reasonably determine a place where the witness may be communicated with. A municipality may disregard the Commission's suggestion and invest in more thoroughly reviewing addresses containing a street name, number, and municipality. But in any case, the test is to reasonably determine if there is sufficient information on the envelope identifying a place where the witness may be communicated with. To make this determination, a clerk must use *all* available information on the certificate. Examining the municipality name alone is not enough.

Given a situation in which only the witness's street name, number, and municipality name are relevant to determining whether a witness address is valid, for example, if there is no overlap at all between the witness address and the voter's home address or mailing address, a clerk must still determine if the witness information provided, taken as a whole, is enough to identify a place where the witness may be communicated with. Though the Commission considers the order of the analysis to be inefficient, if the City Clerk is aware that a municipality name is completely unique, and therefore determines that the witness address is sufficient, the Commission does not find an abuse of discretion. However, if there is more than one municipality of the same name, there is no reason whatsoever to stop the analysis at that point, and it was an abuse of discretion on the part of the clerk to stop her own analysis at that point and to instruct her election officials to do the same.<sup>3</sup>

The Commission finds that the determination of a witness address must include all elements provided, including a street name and number, if present. Even if there is more than one such municipality, examining the street and number will significantly reduce the number of potential matches, likely to one. Regarding the addresses listing Fox Point and Verona, the Commission's own MyVote website could be used to assist with identifying the address. Setting aside that the names of "Houston" and "Baltimore" are easily recognizable, other resources exist to look up the street addresses of American municipalities. Once again, the Commission does not believe such analysis to be necessary, but if done, it must be done using all available information. The Commission thus orders the City of Mequon to change its policy, and when a witness's address is evaluated that all available information be considered.

Since the Commission has concluded that the City of Mequon Clerk took actions that were an abuse of discretion when she trained her election officials to reject absentee ballots containing a street name, number, and address but lacking a unique municipal name, it must also address the actions of the Mequon Municipal Board of Canvassers and Ozaukee County Board of Canvassers. Both boards of canvassers accepted the results containing the improperly rejected ballots and took no action to correct the issue, even despite the County Board of Canvassers apparently agreeing that the rejections were improper.

The Commission concludes that Mequon Municipal Board of Canvassers and the Ozaukee County Board of Canvassers both abused their discretion when they accepted the rejection of these five absentee ballots in their canvass of the results of the April 7, 2026, Spring Election. Both the MBOC and CBOC knew that the ballots had been rejected and the reasoning behind the rejections, but did not take any corrective action. Accordingly, it was an abuse of discretion for the MBOC and CBOC to accept the rejection of those ballots in their election results.

#### **Part Four:** **Order**

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<sup>3</sup> It is not clear from the minutes whether the municipal clerk, including her authorized representatives, received these ballots, evaluated them as "to be rejected" and transported them to the polling places, or whether the ballots were returned on election day to the polling places. In any case, the rejections all appear to stem from the municipal clerk's policy. It is also unclear whether any ballots were mailed back to voters under Wis. Stat. § 6.87(9) following this standard, but the Commission's order would likewise prevent the return of any ballots to voters for the same reason as these five ballots were rejected.

In re Investigation of Mequon and Ozaukee County Election Officials  
April 30, 2026  
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In addition to this decision letter, the Commission also issues the enclosed order pursuant to Wis. Stat. § 5.06(6).

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If any party should have questions about this letter or the Commission's decision, please feel free to contact the commission at 608-266-8005 or [elections@wi.gov](mailto:elections@wi.gov).

Sincerely,

**WISCONSIN ELECTIONS COMMISSION**

DRAFT





# Wisconsin Elections Commission

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April 30, 2026

## STATE OF WISCONSIN WISCONSIN ELECTIONS COMMISSION

In re the investigation of:

Mequon Municipal Board of Canvassers

Investigation No. 2026 - 0003

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### DECISION PURSUANT TO WIS. STAT. § 5.06(6)

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Pursuant to Wis. Stat. § 5.06(6), and the vote of the Wisconsin Elections Commission (“the Commission”) taken on April 30, 2026, the following is the Commission’s final decision issued in the investigation into the Mequon Municipal Board of Canvassers (“Mequon MBOC”).

#### Introduction

During the week of the April 7, 2026, Spring Election, the Wisconsin Elections Commission (“the Commission”) staff became aware that the Mequon Municipal Board of Canvassers may have only canvassed the results from their Alderman races, instead of canvassing every race that appeared on their city ballots.

The Chair of the Commission is required to canvass the results of the April 7 Spring Election, and certify the state- level contests, no later than May 15. Wis. Stat. ss. 7.70(3)(a). At the April 30, 2026, public meeting, the Commission voted to investigate and make determinations about whether the Mequon Municipal Board of Canvassers took actions that were contrary to law or abused their discretion. Wis. Stat. § 5.06(4) and (6).

#### Part One: Procedural Background

On April 30, 2026, the Commission voted on its own motion pursuant to Wis. Stat. § 5.06(4) to investigate and determine whether the Mequon MBOC failed to comply with the law or abused the discretion vested in them or proposes to do so.

On April 30, 2026, the Commission authorized an investigation into whether during the April 7, 2026, Spring Election, the Mequon MBOC only canvassed the results for their three Alderman races, or whether they canvassed the results for all races and referenda that appeared on their city

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*Administrator*  
Meagan Wolfe

ballots. As part of its investigation, the Commission reviewed the notice, agenda, and meeting minutes from the Mequon MBOC meeting.

On April 30, 2026, the Commission summarily decided this matter after completing the investigation it deemed to be appropriate, and hereby issues this order against the Mequon MBOC. Wis. Stat. § 5.06(6). If the Mequon MBOC, or Mequon Municipal Clerk, certifies to the Commission before 5 p.m. on Friday, May 1, 2016, that it canvassed all of its results, the order included with this decision letter is withdrawn pursuant to Wis. Stat. § 5.06(7).

**Part Two:**  
**Factual Findings**

It appears as if the Mequon MBOC may have only canvassed the results of their races for the races of Alderman District 2, Alderman District 3, and Alderman District 4. It appears this way because the meeting minutes state that the Mequon MBOC convened “for the purpose of *canvassing* the results” of the races listed. (Emphasis added).

The factual record for the Mequon MBOC incident consists of the following materials:

- Meeting Notice and Agenda, Mequon Municipal Board of Canvassers
- Meeting Minutes, Mequon Municipal Board of Canvassers
- Meeting Notice and Agenda, Ozaukee County Board of Canvassers

**Part Three:**  
**Legal Analysis**

There are legal and procedural differences between *canvassing* the results of an election and *certifying* the results of an election. Wis. Stat. § 7.53(2)(d) (“publicly canvass the returns of *every election*” versus “prepare a determination showing the names of the persons who are elected to *each municipal office* and the results of each municipal referendum.”). (Emphasis added).

The public “canvass” of the returns is the step of the board of canvassers meeting where the board reviews the Election Day materials from each reporting unit, reviews and reconciles the poll lists, opens and counts provisional ballots (if any), addresses any inconsistent totals or results, reviews tally sheets and/or electronic vote records, reviews inspectors’ statements and accompanying documentation, compares the vote totals to the tally sheets prepared by the municipal clerk, reviews and confirms write-in votes, and completes the canvass statement. These procedural steps are consistent with the Commission’s longstanding best practices.

The Commission’s Election Day materials are configured so that a board of canvassers would have to make several intentional decisions to only *canvass* a subset of races or referenda on their ballots. The MBOC reviews the results from all races and referenda on the ballot, alongside important Election Day documentation, to confirm that the unofficial results for all races and referenda are consistent across documentation. *See* Wis. Stat. § 7.53(2)(d) (The MBOC “shall publicly canvass the returns of *every election*.”) (Emphasis added).

On the other hand, *certifying* the election results means the legal step that the board of canvassers takes to confirm the winners of the races and referenda for their level of canvass. Wis. Stat. § 7.53(2)(d). The MBOC certifies the winners of municipal races and referenda. Wis. Stat. § 7.53(2)(d). The CBOC certifies the winners of county races and referenda. Wis. Stat. § 7.60(4)(a).

And the Chair of the Commission certifies the winners of state- and federal-level contests and referenda. Wis. Stat. § 7.70(3)(d).

The agenda for the meeting of the Mequon MBOC states: “*Canvass* election results from the April 7, 2026, Spring Election [for] Aldermanic District 2, Aldermanic District 3, [and] Aldermanic District 5.” (Emphasis Added).

The meeting minutes for the Mequon MBOC state: “The City of Mequon Municipal Board of Canvassers convened for the purpose of *canvassing* the results of Aldermanic District 2, 3, and 5 races from the April 7, 2026, Spring Election.” (Emphasis Added).

Based on the phrasing of these meeting documents alone, the Commission does not know if the Mequon MBOC only *canvassed* the results of those three Aldermanic races, or if they meant they canvassed *all* races and referenda on their ballot (standard practice) and *certified* the results of the Aldermanic races. Nothing in the Ozaukee County Board of Canvassers notice, agenda, or minutes indicates that the county did not receive a complete canvass from the City of Mequon. The Commission voted to authorize an investigation for the Mequon MBOC or the Mequon Municipal Clerk to answer this question. Wis. Stat. § 5.06(4).

However, for the purpose of resolving this matter, until the Commission receives an answer from the Mequon MBOC or the Mequon Municipal Clerk, it must take the notice, agenda, and meeting minutes at their word. To the extent that those documents show that the Mequon MBOC only canvassed the results of the three Aldermanic Districts listed, that action was contrary to law. Wis. Stat. § 7.53(2)(d).

**Part Four:**  
**Order**

In addition to this decision letter, the Commission also issues the enclosed order pursuant to Wis. Stat. § 5.06(6). If the Mequon MBOC or Mequon Municipal Clerk provides the answer to the Commission’s question by 5 p.m. on Friday, May 1, 2026, and confirms they did indeed canvass every election on the City of Mequon ballots, this order is withdrawn pursuant to Wis. Stat. § 5.06(7).

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If any party should have questions about this letter or the Commission’s decision, please feel free to contact the commission at 608-266-8005 or [elections@wi.gov](mailto:elections@wi.gov).

Sincerely,

**WISCONSIN ELECTIONS COMMISSION**





# Wisconsin Elections Commission

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April 30, 2026

## STATE OF WISCONSIN WISCONSIN ELECTIONS COMMISSION

In re the investigation of:

City of Madison Municipal Clerk  
Dane County Clerk  
Madison Municipal Board of Canvassers  
Dane County Board of Canvassers  
("Madison and Dane County Election Officials")

Investigation No. 2026 - 0001

### DECISION PURSUANT TO WIS. STAT. § 5.06(6)

Pursuant to Wis. Stat. § 5.06(6), and the vote of the Wisconsin Elections Commission ("the Commission") taken on April 30, 2026, the following is the Commission's final decision issued in the investigation into the Clerk City of Madison Clerk Lydia McComas ("City Clerk"), the Dane County Clerk Scott McDonell ("County Clerk"), the Madison Municipal Board of Canvassers ("MBOC"), and the Dane County Board of Canvassers ("CBOC").

#### Introduction

During the week of the April 7, 2026, Spring Election, the Wisconsin Elections Commission ("the Commission") was made aware of a situation regarding the correct counting of absentee ballots in the City of Madison. In the City of Madison, election inspectors opened and counted 23 absentee ballots even though they were delivered to their respective polling places after 8 p.m. The Municipal Board of Canvassers and County Board of Canvassers affirmed the decisions of the local election inspectors.

The Chair of the Commission is required to canvass the results of the April 7 Spring Election, and certify the state-level contests, no later than May 15. Wis. Stat. ss. 7.70(3)(a). At the April 30, 2026, public meeting, the Commission voted to investigate and make determinations about whether local election officials in Madison and Dane County took actions that were contrary to law or abused their discretion. Wis. Stat. §. 5.06(4) and (6).

*Commissioners*

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

*Administrator*  
Meagan Wolfe

**Part One:**  
**Procedural Background**

On April 30, 2026, the Commission voted on its own motion pursuant to Wis. Stat. § 5.06(4) to investigate and determine whether the City Clerk, County Clerk, MBOC, and CBOC failed to comply with the law or abused the discretion vested in them or proposes to do so.

On April 30, 2026, the Commission conducted and completed its investigation into whether during the April 7, 2026, Spring Election the City Clerk, County Clerk, MBOC, and CBOC incorrectly accepted 23 absentee ballots that had been delivered to their polling places after 8 p.m. in violation of Wis. Stat. § 6.87(6). As part of its investigation, the Commission reviewed correspondence between City of Madison Attorney Michael Haas and WEC staff, notices, agendas, and meeting minutes from the MBOC and CBOC, and a letter and documentation from the City Clerk to the County Clerk and CBOC explaining the circumstances of the 23 ballots.

On April 30, 2026, the Commission summarily decided this matter after completing the investigation it deemed to be appropriate, and hereby issues this order against the City Clerk, the County Clerk, the MBOC, and the CBOC. Wis. Stat. § 5.06(6).

**Part Two:**  
**Factual Findings**

Election inspectors in the City of Madison counted 23 absentee ballots even though the ballots arrived at their polling places after 8 p.m. The City of Madison Clerk said she was advised by her City Attorney to mark each late arriving ballot and count it with the others, which she did. The Madison Municipal Board of Canvassers voted to include those 23 ballots in their certification count, as did the Dane County Board of Canvassers.

The factual record for the Madison incident consists of the following materials:

- April 8-9, 2026, Correspondence between Madison City Attorney Michael Haas and WEC Staff
- Meeting Minutes, Madison Municipal Board of Canvassers
- April 13, 2026, Letter and Documentation from City of Madison Municipal Clerk Lydia McComas to Dane County Clerk Scott McDonell and the Dane County Board of Canvassers
- Meeting Minutes, Dane County Board of Canvassers

**Part Three:**  
**Legal Analysis**

Absentee ballots must be returned so they can be “delivered to the polling place no later than 8 p.m. on election day.” Wis. Stat. § 6.87(6). Municipal clerks must deliver absentee ballots that arrive on election day to their polling places “before 8 p.m.” Wis. Stat. § 6.87(6). The same statute that contains those deadlines also states: “Any ballot not mailed or delivered as provided in this subsection may not be counted.” Wis. Stat. § 6.87(6). These provisions of law do not apply to municipalities that count their absentee ballots using a board of absentee canvassers meeting (“central count”).

It appears as if the City of Madison Clerk's Office counted the 23 absentee ballots at issue because "there was no connivance, fraud, or undue influence and the Clerk's office and election officials substantially complied with the law." See *In re Hayden*, 105 Wis. 2d 468, 313 N.W.2d 869 (Ct. App. 1981); *Lanser v. Koconis*, 62 Wis. 3d 86, 214 N.W.2d 425 (1974) (both which the Clerk's office cited in various materials. In both of those cases, the Wisconsin Supreme Court appeared to interpret § 6.87(6) as directory, not mandatory, despite the Legislature's directive that ballots cast in contravention of that provision may not be counted. Specifically, the *Hayden* court concluded: "We conclude that, despite the directive that improperly delivered ballots shall not be counted, the statute governing the delivery of absentee ballots must be construed as directory. Only when the municipal clerk appears to have solicited voters, or when there is any evidence of fraud, will voters who acted in good faith be disenfranchised." *Hayden*, 105 Wis. 2d 468, 478.

The City of Madison Clerk's Office's reliance on *Hayden*, *Lanser*, and any case that predates 1985 fails for two reasons. First, and most importantly, the Legislature amended the law in 1985 to confirm that specific provisions of absentee voting procedure—including Wis. Stat. § 6.87(6) — must be construed as mandatory. Wis. Stat. §. 6.84(2). Second, even if the Legislature had not made that statutory clarification, both *Lanser* and *Hayden* can be distinguished because the issue in both cases was not the timeliness of delivery of absentee ballots to their polling places before polls closed, but rather, the method of delivery either to the voters or back to the municipal clerk. In other words, neither of those cases analyzed whether § 6.87(6) was mandatory or directory with respect to the requirement that absentee ballots be returned to the municipal clerk so that they can be delivered to their polling places by 8 p.m.

All of the caselaw discussed above—and apparently relied upon by the City of Madison—predates Wis. Stat. § 6.84(2), which was enacted in 1985, and provides unambiguous legislative direction for interpreting absentee procedure statutes. That statute states:

"Notwithstanding 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. Ballots cast in contravention of the procedures specified in those provisions may not be counted. Ballots counted in contravention of the procedures specified in those provisions may not be included in the certified result of any election."

Wis. Stat. § 6.84(2) (Emphasis added)

In other words, the Legislature has passed a clear statute indicating that Wis. Stat. § 6.87(6) "shall be construed as mandatory." Absentee ballots cast in contravention of the specific statutes enumerated in § 6.84(2) may not be counted or included in the certified results of any election. *Gonfiantini v. Rock Cnty. Bd. of Canvassers*, 416 Wis. 2d 118, 138, 20 N.W.3d 773 (Ct. App. 2025).

Several courts that have considered post-election challenges to absentee voting procedures have been reluctant to reject absentee ballots, or otherwise change election results, when the noncompliance with voting statutes was not the fault of the voter. See *Lanser*, 62 Wis. 2d 86 at 93 ("However, we are not inclined to disenfranchise these voters who acted in conformance with the statutory requirements."), *Hayden*, 105 Wis. 2d 468 at 482 ("...[V]oters should not be disenfranchised through no fault of their own because of technical mistakes committed by election officials." (internal citations omitted)). But again, both *Lanser* and *Hayden* were decided before

the Legislature amended the law in 1985 to declare that compliance with Wis. Stat. ss. § 6.87(6) is mandatory.

It may be a compelling argument to assert that 23 absentee voters in the City of Madison should not have their ballots rejected solely because the Clerk's office failed to deliver them to their polling places on time. Based on the Madison City Clerk's assertions to the Dane County Board of Canvassers in, these absentee ballots "had been in the Clerk's Office's custody since Monday, April 6, 2026" and the failure to deliver them to the polling places by 8 p.m. was "due to a longer-than-usual delivery time." In other words, the ballots appear to have been timely returned by the voters, and the error in timely delivering them to the polling places was solely due to actions of the clerk's authorized representatives.

However, the Commission cannot ignore a clear statute to treat the ballot delivery line as a mandatory requirement of absentee voting. The law directs the Commission to read § 6.87(6) as mandatory, and that law says that ballots that are not delivered to polling places by 8 p.m. cannot be counted.

Since the Commission has concluded that the City of Madison Clerk took actions that were contrary to law when she decided to count the 23 absentee ballots that were delivered to their polling places after 8 p.m., it must also address the actions of the Madison Municipal Board of Canvassers and Dane County Board of Canvassers. Both boards of canvassers appeared to have taken votes to affirm the decisions of the local election inspectors to count the absentee ballots in Madison.

The Commission concludes that Madison Municipal Board of Canvassers and the Dane County Board of Canvassers both abused their discretion in violation of Wis. Stat. § 5.06(1) when they decided to include the 23 absentee ballots in their canvass of the results of the April 7, 2026, Spring Election. Both the MBOC and CBOC knew that the ballots had not been delivered to their correct polling places by 8 p.m., in direct contradiction to the plain statutory language of Wis. Stat. §§ 6.87(6) and 6.84(2). Accordingly, it was an abuse of discretion for the MBOC and CBOC to vote to include those ballots in their election results.

**Part Four:**  
**Order**

In addition to this decision letter, the Commission also issues the enclosed order pursuant to Wis. Stat. § 5.06(6).

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If any party should have questions about this letter or the Commission's decision, please feel free to contact the commission at 608-266-8005 or [elections@wi.gov](mailto:elections@wi.gov).

Sincerely,

**WISCONSIN ELECTIONS COMMISSION**