



Wisconsin Elections Commission

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March 18, 2025

Beth Kreitzer
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Clerk Brad Calder
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Sent via email: bkreitzer70.3@gmail.com, clerk@villageofvernonwi.org,
kschuh@villageofvernonwi.org, sfischer@villageofvernonwi.org

Re: Beth Kreitzer v. Brad Calder (EL 24-107)

Dear Ms. Kreitzer and Clerk Calder:

This letter is in response to the complaint submitted by Beth Kreitzer (“the Complainant”), a registered Wisconsin elector who lives in New Zealand, to the Wisconsin Elections Commission (“Commission”), which was filed in response to actions taken by Clerk Brad Calder (“the Respondent”) of the Village of Vernon (Waukesha County) concerning alleged violations of Wis. Stats. §§ 6.87(3)(a), (d), and (4)(b), and 7.15(1)(cm). The complaint alleges that the Respondent violated the Complainant’s rights under Wis. Stats. §§ 6.87(3)(a), (d), and (4)(b) when the Respondent provided incorrect instructions and materials for an overseas elector voting absentee. The complaint also alleges that the Respondent violated the Complainant’s rights under Wis. Stat. § 7.15(1)(cm) when the Respondent sent the requested absentee ballot later than 47 days before the 2024 General Election.¹

The Commission has reviewed the complaint. The Respondent did not file a response.

The Commission provides the following analysis and decision. In short, the Commission finds that the Complainant did show probable cause to believe that a violation of law or abuse of discretion occurred with relation to the actions of Respondent Calder handling Complainant Kreitzer’s absentee ballot.

Commission Authority and Role in Resolving Complaints Filed Under Wis. Stat. § 5.06

Under Wis. Stat. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the inherent, general, and specific authority to consider the submissions of the parties to a complaint and to issue findings.

¹ The Complaint also alleges violations of Wis. Stats. §§ 12.13(2)(a) and (b)7. Section 12.13 is a criminal statute and alleged violations of the statute cannot be addressed in a § 5.06 complaint such as this because criminal violations cannot be remedied by an order to an official to conform, restrain, or correct their conduct under § 5.06(6). Complaints of alleged criminal violations fall under § 5.05(2m)(c) instead, with the potential remedy of referral to a county district attorney. Wis. Stat. § 5.05(2m)(c)11. Thus, this decision letter does not address these allegations.

Commissioners

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

Administrator
Meagan Wolfe

In instances where no material facts appear to be in dispute, the Commission may summarily issue a decision and provide that decision to the affected parties. This letter serves as the Commission’s final decision regarding the issues raised in this complaint.

The Commission’s role in resolving verified complaints filed under Wis. Stat. § 5.06, which challenge the decisions or actions of local election officials, is to determine whether a local official acted contrary to applicable election laws or abused their discretion in administering applicable election laws.

Complaints “...shall set forth such facts as are within the knowledge of the Complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur.” Wis. Stat. § 5.06(1) (2021-22).² Probable cause is defined in Wis. Admin. Code § EL 20.02(4) to mean “the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.”

Complaint Allegations

The Complainant alleges that the Respondent provided incorrect information about absentee voting for an overseas elector and delayed in sending complete absentee ballot materials. The Complainant alleges that she was “enrolled and registered for the 2024 general election” and that she emailed her local clerk, the Respondent, on September 17, 2024,³ to “ensure” that an absentee ballot would be coming, given that the Complainant is an overseas elector. The Complainant alleges that the Respondent replied that he would send the absentee ballot that day. The Complainant alleges that, the day after, “the computer system was showing [that the absentee ballot] was sent” but the Complainant only received the absentee ballot on September 20. The Complainant alleges that this delay violates the 47-day deadline in Wis. Stat. § 7.15(1)(cm) to send absentee ballots prior to a federal election.

When the Complainant received the emailed absentee ballot, she alleges it contained only “the 2 ballot pages and one side of the envelope.” The Complainant also alleges that the Respondent sent instructions to scan the ballot pages and envelope and email that scan back to the Respondent. The Complainant further alleges that the Respondent instructed her to have it witnessed and signed by a US citizen. The Complainant notes that there were no instructions from the Commission in the provided materials and that the front of the absentee ballot envelope was missing.

The Complainant states that she relied on this advice – that she could email back the scanned ballot instead of mailing it – and next acted on September 29, 2024. The Complainant states that she checked the Commission website, which “seemed to indicate that scanning a ballot was illegal” and that if she attempted to vote in the way Respondent had instructed her vote would not be counted. The Complainant emailed the Respondent again and alleges that the Respondent reiterated his prior guidance: the absentee ballot could be scanned and emailed to the Respondent.

The Complainant states that she took steps to mail the ballot, notwithstanding the Respondent’s guidance, after calling the Commission to “verify the law.” She encountered several barriers. Initially, she considered sending the ballot via the US consulate which she understood to require either a US postage stamp or a prepaid envelope. The Complainant claimed that because the Respondent had never sent the front of the absentee envelope, the Complainant did not have either

² All subsequent references to the Wisconsin Statutes are to the 2021–22 version unless otherwise indicated.

³ All dates and times given are those in Wisconsin unless otherwise indicated.

the address to send the ballot to or a prepaid envelope. The Complainant states that she emailed the Respondent on October 1 and, after failing to send the front of the envelope at first, the Respondent sent the front of the envelope on October 2. The Complainant states that she ultimately sent the ballot via ordinary mail to the Village of Vernon and that she paid for postage but argues that the mail should have qualified for free postage within the US and that sending the ballot via the US consulate should have counted as mail sent within the US. The Complainant concludes by expressing frustration that this was the only method available for her to vote and that her vote likely didn't make it in time to be counted after the series of miscommunications and delays.

The Complainant also attached an email chain allegedly showing her correspondence with the Respondent throughout this process. The content of the email chain is reflected in the discussion of the Complaint above.

Discussion

Federal laws on voting for overseas electors

A federal law, the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), governs the procedures for absentee voting in federal elections by uniformed and overseas electors including the absentee voting access responsibilities for state governments. 52 U.S.C. § 20302. Among these requirements, the law requires states to “establish procedures for transmitting blank absentee ballots by mail and electronically to absent uniformed services voters and overseas voters,” *id.* at § 20302(a)(7), and requires states to transmit a validly requested absentee ballot to a uniformed or overseas voter no later than 45 days before an election, when requested at least 45 days before that election. *Id.* at § 20302(a)(8)(A).

UOCAVA also establishes a federal procedure for returning absentee ballots for overseas uniformed voters which mentions a “no postage requirement.” *Id.* at § 20304(b)(4). The law points to the requirement elsewhere that balloting materials – including marked absentee ballots – under UOCAVA “shall be carried expeditiously and free of postage” and may be mailed at post offices at Armed Forces installations. *Id.*; 39 U.S.C. § 3406(a).

In practice, this has been implemented by providing 1) a method for overseas uniformed service members to mail and track their ballot using a prepaid mail label and 2) a separate method for overseas voters generally to mail federal balloting materials using postage-paid envelopes via a U.S. embassy or consulate. The second method, relevant in this case, allows overseas voters mailing ballots via embassy or consulate to use a postage-paid envelope. The State Department website states that

You or another person can drop off your ballot request (FPCA) or *completed ballot* at the nearest U.S. embassy or consulate for return to the United States. It must be addressed to your local election officials and have sufficient U.S. postage, or be in a postage-paid envelope. A postage-paid envelope is available on the FVAP website.

Absentee Voting Information for U.S. Citizens Abroad, U.S. Department of State – Bureau of Consular Affairs, Travel.State.Gov. (last accessed November 25, 2024) (emphasis added).⁴

⁴ Available at <https://travel.state.gov/content/travel/en/international-travel/while-abroad/voting.html>.

Overseas voters may use a FVAP postage-paid envelope to mail their completed absentee ballot or may use other methods to return a completed absentee ballot, including local mail, an express courier service, or, depending on the state, a fax, email or the internet. *Id.*

Wisconsin laws on voting by overseas electors

The Wisconsin Statutes establish a process for absentee voting for overseas electors.⁵ Section 6.24 details several ways for an overseas elector to request a ballot and directs municipal clerks to respond to these requests. Wis. Stat. § 6.24(4). When an overseas elector makes a “written application to the municipal clerk for an official ballot by means of . . . electronic mail,” Wis. Stat. § 6.86(1)(ac), “the municipal clerk shall . . . transmit an absentee ballot to the elector by means of electronic mail.” Wis. Stat. § 6.24(4)(e). This electronic transmission of an absentee ballot from the municipal clerk should contain, in addition to the absentee ballot, an “electronic copy of the text of the material that appears on the certificate envelope . . . together with instructions prescribed by the commission.” Wis. Stat. § 6.87(3)(d). The instructions must require the overseas elector to “enclose the absentee ballot in a separate envelope contained within a larger envelope” that also contains the witness certification. *Id.*

Instructions concerning the witness certification are among the instructions that municipal clerks should provide to military and overseas electors. *Id.* All Wisconsin electors who vote absentee “shall make and subscribe to” a witness certification. Wis. Stat. § 6.87(4)(b)1. Military and overseas electors must be witnessed by an adult “who need not be a U.S. citizen.” *Id.*

Municipal clerks must meet certain deadlines in responding to an absentee ballot request and sending the absentee ballot along with the other required materials. Wis. Stat. § 7.15(1)(cm). A clerk has the duty to send an official absentee ballot to an overseas elector who has requested a ballot by email “no later than the 47th day” before a general election if the request was made before that day. *Id.* If the request was made after the 47th day before a general election then “the municipal clerk shall send or transmit an official absentee ballot within one business day of the time the elector’s request for such a ballot is received.” *Id.*

Concerning postage, to return a completed absentee ballot that was emailed to an overseas or military voter, “[t]he elector shall . . . affix sufficient postage unless the absentee ballot qualifies for mailing free of postage under federal free postage laws” and then mail the absentee ballot to the municipal clerk. Wis. Stat. § 6.87(3)(d). This must be considered alongside section 6.24, which describes three methods of paying for postage when an overseas elector returns an absentee ballot: 1) “[i]f the return envelope qualifies for mailing free of postage under federal free postage laws,” the municipal clerk shall “affix the appropriate legend” which presumably means to include a properly labeled return envelope, 2) “[o]therwise,” when the ballot is mailed from within the U.S., “the municipal clerk shall pay the postage,” and 3) “[i]f the ballot is not mailed by the overseas elector from within the United States, the overseas elector shall provide return postage.” Wis. Stat. § 6.24(6).

⁵ It is unknown whether Wisconsin’s definition of a military elector, which includes civilian employees of the United States serving outside the United States, Wis. Stat. § 6.22(1)(b)3., applies in this case. The definition in the Wisconsin Statutes is wider than the federal definition of “absent uniformed services voter.” See 52 U.S.C. §20310.

Commission guidance on overseas voting

The Commission has published a Military and Overseas Voter Manual (“UOCAVA Manual”) to put these statutory requirements into practice. “Military and Overseas Voting,” Wisconsin Elections Commission (February 2022) (last accessed December 2, 2024).⁶ The Commission indicates that military and overseas voters may request an absentee ballot by email and that they may only return an absentee ballot by mail or in person. UOCAVA Manual at 11.

The UOCAVA Manual provides detailed steps for municipal clerks emailing an absentee ballot to a military or overseas voter. *Id.* at 13–14. These steps are to a) initial the ballot and scan the initialed ballot, b) email the initialed ballot to the voter along with the “Absentee Ballot Certificate for Military and Overseas Voters” and the “Uniform Instructions for Emailed and Faxed Ballots,” and c) provide a paragraph of specific instructions for the absentee elector to follow regarding the envelope and witness requirements. *Id.* at 14.

The UOCAVA Manual reiterates the statutory deadline to send out absentee ballots at 47 days prior to elections with federal contests for requests on file or within one business day for requests received after the deadline. *Id.* at 12. It states that absentee ballots not sent out within the statutory deadline are late and should be expedited. *Id.* at 14–15. Specifically,

If the ballot is sent out late to a military or overseas voter, then the clerk must expedite the late ballot and include a prepaid expedited return mailing label. If the ballot is sent by email or fax, then the clerk can simply offer expedited return by including a message that says something like “this ballot was sent to you late. Would you like me to send you an expedited prepaid return label?” Then, the clerk can go to the post office, FedEx, UPS, or other mail service provider and get a prepaid expedited return label and scan it to the voter. This expedited delivery and return serves as a sort of “fix” to sending a late ballot to make up for any lost time.

Id. at 15. To emphasize this expectation, the UOCAVA Manual poses a hypothetical question, “I am sending this ballot out one day late, do I really have to expedite it and offer a prepaid expedited return label?” and the response, “Yes, even if the ballot is just one day late.” *Id.*

Finally, the UOCAVA Manual states that an absentee elector must return “the hard copy of the ballot and the completed certificate to the municipal clerk.” *Id.* at 16 (emphasis in original). While electors may choose from among mailing options to ensure that their ballot makes it to the clerk so that the clerk can deliver it to the polling place on election day, “[t]he municipal clerk is not responsible for return postage of a faxed or e-mailed absentee ballot.” *Id.*

Analysis

The material facts in this matter are not in dispute because there was no response from the Respondent. Based on the Complainant’s allegations and the email chain presented, the issues are:

- 1) Did the Respondent provide the Complainant with all the proper materials for an overseas elector?

⁶ Available at <https://elections.wi.gov/resources/manuals/military-and-overseas-voter-manual>.

- 2) Did the Respondent properly instruct the Complainant in completing the absentee voting process for an overseas elector?
- 3) Did the Respondent provide the Complainant with an absentee ballot in a timely manner once requested?
- 4) Did the Respondent err in not providing a postage-paid method to mail the absentee ballot?

On the first issue, it appears that the Respondent did not provide the Complainant with all the proper materials for an overseas elector because the Complainant states the email with the ballot “only included the 2 ballot pages and one side of the envelop along with email instructions to scan it back to him.” Complaint at 2. While it is not clear which attachments were sent when, since the attachments were not included in the email chain in the complaint, this list of contents does not include anything which might be the Uniform Instructions for Emailed and Faxed Ballots. This is contrary to the statutory requirement that “[t]he commission shall prescribe the instructions for marking and returning ballots and the municipal clerk shall enclose such instructions with each ballot,” Wis. Stat. § 6.24(6), and “[i]f the clerk transmits an absentee ballot to a military or overseas elector electronically, the clerk shall also transmit a[n] . . . electronic copy of the text of the material that appears on the certificate envelope . . . together with instructions prescribed by the commission.” Wis. Stat. § 6.87(3)(d). There is probable cause that the Respondent violated Wis. Stats. §§ 6.24(6) and 6.87(3)(d) by failing to include the Commission’s instructions for overseas voting in the absentee ballot email.

On the second issue, it appears that the Respondent failed to properly instruct the Complainant on multiple occasions when he told her to scan and return the absentee ballot and when he told her that the witness needed to be a U.S. citizen. These instructions are contrary to those required by Wis. Stat. § 6.87(3)(d), which contemplate only a mailed absentee ballot enclosed within an envelope contained within a larger envelope and which point to the non-US citizen adult witness allowed by Wis. Stat. § 6.87(4)(b). There is probable cause that the Respondent violated Wis. Stat. §§ 6.24(6) and 6.87(3)(d) by sending incorrect instructions to an overseas voter in the email containing the absentee ballot and in subsequent emails related to returning the absentee ballot.

On the third issue, it appears that the Respondent missed the statutory deadline to send the absentee ballot to the Complainant. The Complainant properly requested an absentee ballot at the latest by email on Wednesday, September 17 at 10:45 PM in Wisconsin. This was before September 19, which was the 47-day deadline for the 2024 General Election. Under Wis. Stat. § 7.15(1)(cm), municipal clerks shall send absentee ballots no later than the 47-day deadline to absentee electors who submit absentee ballot requests prior to the 47-day deadline. Here, however, the Respondent sent the Complainant’s absentee ballot on Friday, September 20 in Wisconsin. There is probable cause that the Respondent violated Wis. Stat. § 7.15(1)(cm) by sending a late absentee ballot in response to a timely absentee ballot request.⁷ The Respondent’s incorrect advice and failure to send the proper materials further aggravated this missed deadline.

On the fourth issue, it is not clear that the Respondent erred in failing to provide a postage-paid method to mail the absentee ballot. The Respondent did not follow the Commission’s advice to offer a prepaid expedited return label to an overseas elector who received a late absentee ballot by email. But the Respondent may have been relying on the Commission’s advice that “[t]he municipal clerk is not responsible for return postage of a faxed or e-mailed absentee ballot,”

⁷ Because the Respondent sent the absentee ballot no later than 45 days before the election after a request earlier than 45 days before the election, the Respondent did not violate 52 U.S.C. § 20302(a)(8)(A).

UOCAVA Manual at 16, or the contingent language of Wis. Stat. § 6.24, under which the municipal clerk is only required to pay return postage when the ballot is mailed from with the U.S, and the directive in Wis. Stat. § 6.87(3)(d) that “[t]he elector shall then affix sufficient postage unless the absentee ballot qualifies for mailing free of postage under federal free postage laws and shall mail the absentee ballot to the municipal clerk.” While it appears to be standard practice for overseas voters to use a postage-paid envelope and send absentee ballots via embassies or consulates, this is not directly mandated by UOCAVA – which contains a “no postage requirement” only for overseas uniformed voters, 52 U.S.C. § 20304 – and seems to be one of several options offered to overseas voters for the return of their absentee ballot. The Respondent’s failure to provide a postage-paid envelope or to offer expedited return because he emailed the absentee ballot late do not establish probable cause that the Respondent violated Wis. Stat. § 6.87(3)(d).

The complaint alleged violations of two other statutes: Wis. Stats. §§ 6.87(3)(a) and 6.87(4)(b). The former does not apply because it is a statement of procedure for general absentee voting when a municipal clerk mails an absentee ballot to a voter and Wis. Stat. § 6.87(3)(d) is applicable instead. The latter does not apply because that statute directs absentee electors to fulfill witnessing requirements; the Respondent’s incorrect advice about witness requirements implicates other statutes that direct municipal clerks.

Commission Decision

Based upon the above review and analysis, the Commission finds probable cause to believe that a violation of law or abuse of discretion occurred regarding Respondent Calder’s handling of Complainant Kreitzer’s absentee ballot.

Accordingly, the Commission orders the municipal clerk of the Village of Vernon to:

1. Provide all military and overseas electors who have properly and timely requested an absentee ballot with absentee ballots in a manner consistent with Wis. Stat. § 7.15(1)(cm), including no later than 47 days before a federal election for requests submitted prior to that date.
2. Provide the proper materials to military and overseas electors when sending absentee ballots by email, including the initialed ballot and the face of the [Absentee Ballot Certificate for Military and Overseas Voters](#) along with the [Uniform Instructions for Emailed and Faxed Ballots](#).
3. Provide the proper instructions to military and overseas electors regarding completing and returning their absentee ballots based on the following instructions in the UOCAVA Manual:

The voter should be instructed to vote the ballot in the presence of a witness, fold the ballot and seal it inside a regular, non-window envelope, complete and sign the absentee certificate. An adult witness must sign and provide their address on the certificate. Military or permanent overseas voters should provide their birthdate in the appropriate section provided on the certificate. The certificate should be affixed to the envelope containing the voted ballot. The envelope with the certificate attached should be placed into another, larger envelope, sealed and mailed to the municipal clerk. The ballot must be received by 8 p.m. on Election Day.

Additionally, the Commission encourages the clerk to:

4. Provide a postage-paid envelope to overseas electors if appropriate under Wis. Stat. § 6.24 and provide relevant information from the Federal Voting Assistance Program regarding the return of absentee ballots and the 39 U.S.C. § 3406 envelopes available through that program. If an absentee ballot is emailed late, offer the absentee elector a prepaid expedited return label.

Right to Appeal – Circuit Court

This letter constitutes the Commission's resolution of this complaint. Wis. Stat. § 5.06(2). Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If any of the parties 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.