

# NOTICE OF OPEN AND CLOSED MEETING

## Wisconsin Elections Commission

Special Meeting

Tuesday, July 30, 2024

5:00 P.M.

*This meeting is being held via video teleconference only. Members of the public and media may attend online or by telephone. Please visit, <https://elections.wi.gov/event/special-meeting-7302024>, to view materials for the meeting. All public participants' phones/microphones will be muted during the meeting. Members of the public wishing to communicate to the Commissioners should email [electioncomments@wi.gov](mailto:electioncomments@wi.gov) with "Message to Commissioners" in the subject line.*

Zoom information:

When: July 30, 2024, 05:00 PM Central Time (US and Canada)

Topic: Meeting of the Wisconsin Elections Commission

Please click the link below to join the webinar:

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# NOTICE OF OPEN AND CLOSED MEETING

## OPEN AND CLOSED SESSION AGENDA

- A. **Call to Order**
- B. **Administrator’s Report of Appropriate Meeting Notice**
- C. **Discussion, Review, and Possible Action Pertaining to the Commission Manuals for County/Municipal Clerks.**
  - 1. **Revisions to the Election Administration and Election Day Manuals Related to Recent Litigation Activity** **1**
- D. **Discussion of Recent Attorney General Opinion / Discussion and Possible Adoption of a Commission Communication Relating to Wisconsin Constitution art. III, § 7 (1) & (2)** **41**
- E. **External Use of Agency Materials, Logos, and Branding: Consideration and Possible Action** **49**
- F. **Review and Potential Action Relating to Administrative Complaint Forms** **53**
- G. **Possible Consideration and Action Related to Wisconsin Municipalities that Vote to Remove Electronic Voting Equipment, Particularly Accessible Voting Equipment**
- H. **Discussion, Review, and Possible Action Pertaining to Recent Ruling in the Matter of Thomas Oldenburg v. WEC et al. (24-CV-0043)** **64**
- I. **Discussion and Potential Action Pertaining to WEC’s Receipt of ERIC’s “Eligible but Unregistered” Reports** **68**
- J. **Closed Session\*\***
  - 1. **Litigation Update and Consideration of Potential Litigation**

*§ 19.85(1)(g) – The Commission may confer in closed session with legal counsel for the governmental body who is rendering oral or written*

# NOTICE OF OPEN AND CLOSED MEETING

*advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.*

## **K. Adjourn**

*\*\*The Elections Commission will convene in open session but may move to closed session under Wis. Stat. § 19.85(1)(g) and then reconvene into open session prior to adjournment of this meeting. This notice is intended to inform the public that this meeting will convene in open session, may move to closed session, and then may reconvene in open session. Wis. Stat. § 19.85 (2).*





# Wisconsin Elections Commission

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**DATE:** July 30, 2024

**TO:** Wisconsin Elections Commission

**FROM:** Angela O'Brien Sharpe  
Staff Attorney

**SUBJECT:** **Revisions to the Election Administration and Election Day Manuals pursuant to *Rise v. WEC* and *Priorities USA v. WEC***

**ATTACHMENTS:** Attachment A – Election Administration Manual Redlines  
Attachment B – Election Day Manual Redlines

## Introduction

In July 2024, two decisions were issued by Wisconsin appellate courts that warrant proposed revisions to the Election Administration and Election Day manuals ahead of the August 13, 2024 Partisan Primary.

On July 5, 2024, the Wisconsin Supreme Court issued *Priorities USA v. WEC*, 2024 WI 32, which overruled its prior decision, in part, in *Teigen v. WEC*, and held that secure drop boxes were permitted under state law as a valid method of absentee ballot return.

On July 11, 2024, the Wisconsin Court of Appeals, District IV issued *Rise, Inc. et al v. WEC et al.*, 2024AP000165, which affirmed in part and overruled in part a circuit court permanent injunction pertaining to the proper definition of a witness address on the absentee ballot certificate.

The Commission has already issued detailed guidance for both cases. On February 9, 2024, the Commission issued updated guidance relating to the definition of a witness address. Staff propose including that guidance in both manuals, subject to necessary revisions consistent with the appellate decision that was issued on July 11. Also on July 11, the Commission issued guidance in the wake of the Wisconsin Supreme Court's decision in *Priorities USA* relating to frequently asked questions about drop boxes.

**The vast majority of edits proposed by staff are not new substantive changes.** Instead, they are intended to integrate already-approved guidance into the Election Administration and Election Day manuals, as well as to remove old guidance that now conflicts with those decisions. These manuals are important, consolidated resources for Wisconsin clerks, and staff intend to provide all critical Commission guidance to clerks in one place ahead of the remaining elections in 2024. The exception to this would be the edits proposed in the wake of the appellate decision in *Rise*. Those additions are tracked in yellow highlight in the tracked changes pages of the manuals.

Wisconsin Elections Commissioners

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

Administrator  
Meagan Wolfe

**Election Administration Manual – Description of Redline Revisions**

Affected Pages	Description of Proposed Revisions
76-77	<p>Staff propose removing outdated guidance that stated drop boxes are unlawful, and recommend inserting the Commission’s FAQ guidance that was issued on July 11.</p> <p>Staff also propose updating the cross-reference to page 104 of the EA manual in the Best Practices: Security of Ballot Retrieval/Emptying section because that page number will now be different.</p> <p>The FAQ document predates the decision of JCRAR to suspend the emergency rule pertaining to the mandatory use of uniform instructions, so staff recommend deleting the following line from Q13 : “Such an insert would be considered additional administrative or logistical instructions pursuant to EL § 6.05(2).”</p>
86-87	<p>Staff propose adding brief case citations to page 86. They are more fully described in the “Voter Correction of Incomplete Absentee Certificate Envelopes” section.</p> <p>Staff propose updating the Litigation Note to remove the line that no merits decision has been reached. The drop box portion of Priorities USA has been resolved, but the litigation will continue for their remaining claims.</p> <p>Staff propose removing “to the office of” the municipal clerk, adding a drop box reference, and updating the case citation to include Priorities USA.</p> <p>Staff propose removing the previous paragraph on drop boxes and replacing it with a cross-cite to the portion of the manual that contains the drop box FAQ.</p>
89-90	<p>Staff proposed revising the Litigation Note to remove outdated information and to remove cross-references to outdated guidance. The note will now contain the main holding in the updated Rise decision and will direct to a new proposed section that integrates all current guidance on witness addresses pursuant to the <i>Rise</i> and <i>League of Women Voters</i>.</p>
91	<p>Staff propose adding a new section to the manual to incorporate the Commission’s guidance following the temporary injunctions in <i>Rise</i> and <i>League of Women Voters</i> in February 2024, as well as the new holding from the appellate court in Rise on July 11, 2024. The guidance in this section is an exact copy of the guidance issued by the Commission on February 9. The only changes, which are tracked in yellow highlight, is to update that guidance consistent with the finding of the appellate court on July 11.</p>

**Election Day Manual – Description of Redline Revisions**

Affected Pages	Description of Proposed Revisions
90	<p>Staff propose a simple update to the page number for the cross-cite to that section as it will change if all proposed edits are accepted.</p>
92	<p>Staff propose removing the three-part address parenthetical as that interpretation was rejected by the appellate court in Rise, and adding a cross-reference to the new section that contains the Commission’s guidance on this topic.</p>
93	<p>Staff propose adding a cross-reference to the new section that contains the Commission’s guidance on this topic.</p>

95	<p>Staff propose adding a cross-reference to the new section that contains the Commission’s guidance on this topic.</p> <p>Staff also propose modifying the note to include what to do if the witness address is incomplete, which includes another cross-reference to the new section that contains the Commission’s guidance on this topic.</p>
101	<p>Staff propose adding to section (9) to include what to do if the witness address is incomplete, which includes another cross-reference to the new section that contains the Commission’s guidance on this topic.</p>
104-105	<p>Staff propose inserting the same Witness Address Requirements section in the Election Day manual on page 104 or 105. This proposed new section is identical to what is included in the Election Administration manual.</p> <p>The Election Day manual does not contain any references to drop boxes or to Priorities USA. The Commission should consider whether the Election Day manual should also include the Commission’s FAQ document on drop boxes. This could be beneficial for election day because the drop boxes presumably will still be utilized and emptied on election day. Staff propose including the same drop box update / FAQ that was proposed for the Election Administration manual.</p>

**Recommended Motion:** The Wisconsin Elections Commission has reviewed and approves the proposed edits to the Election Administration and Election Day manuals, subject to any additional revisions that received consensus during the open session discussion. Staff are directed to implement these edits, along with any scrivener’s changes to page numbers, formatting, and section numbers. The manuals should be revised so their edition dates read “July 2024.” Finally, staff are directed to notify Wisconsin’s clerks that revisions to the manuals have been approved by the Commission, as well as provide information on where clerks can access the updated manuals, no later than August 2, 2024.





envelope. If the clerk is not a WisVote user, the clerk should write the name of the care facility on the first line of the address field on the certificate envelope.

### *Absentee Ballot Returns*

Only the voter may lawfully return his or her completed absentee ballot, either by mail or in person to the office of the municipal clerk, subject to two exceptions. Wis. Stat. § 6.87(4)(b)(1); *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, 59, 403 Wis. 2d 607, 976 N.W.2d 519.

First, pursuant to the Voting Rights Act, any Wisconsin voter who requires assistance with mailing or delivering their absentee ballot to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union. *Carey v. Wis. Elections Comm'n*, 624 F. Supp. 3d 1020 (W.D. WI 2022).

Second, pursuant to section 6.86(3)(a)1., an agent may return a completed absentee ballot on behalf of a hospitalized voter by following the procedures required by that section.

When an election official is presented with an absentee ballot delivered in-person, the official may ask the following questions:

- Are you the voter? If not, then:
- Are you delivering the voter's ballot because the voter has determined that they require assistance returning their ballot due to their disability? If yes, then:
  - Are you someone other than the voter's employer, an agent of that employer, or an officer or agent of the voter's union? If yes, then the ballot can be accepted.<sup>1</sup>

### *Drop Boxes*

<sup>1</sup> This guidance was approved by the Commission on September 6, 2022, and is available here: <https://elections.wi.gov/news/guidance-absentee-ballot-return-options>.

~~The use of drop boxes is not permitted unless the drop box is staffed by the clerk and located in the office of the clerk or a properly designated alternate absentee voting site. Wis. Stat. § 6.855; *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519.~~

On July 5, 2024, the Wisconsin Supreme Court overruled its prior decision, in part, in *Teigen v. WEC*, and held that secure drop boxes were permitted under state law as a valid method of absentee ballot return. The decision is binding on all lower Wisconsin courts. The use of drop boxes is not mandatory and is at the discretion of the municipal clerk.

On July 11, 2024, the Wisconsin Elections Commission (“the Commission”) held a public meeting to review and issued the following guidance.<sup>2</sup>

### **1. Does the decision affect all municipal clerks?**

Yes. The decision permits all municipal clerks to choose to use secure absentee ballot drop boxes in their jurisdiction if they wish, starting immediately.

### **2. What does the decision say?**

The Wisconsin Supreme Court determined that the statute that permits voters to return their absentee ballots “to the municipal clerk issuing the ballot or ballots” refers to a person, not a location. The court asserted that this interpretation of state law is consistent with Wisconsin’s highly decentralized system whereby municipal clerks have broad statutory discretion to administer elections in their jurisdiction. Accordingly, since voters may return their absentee ballots to the municipal clerk, or his or her authorized representatives, they may do so via drop box, if that’s a method the municipal clerk chooses to utilize.

### **3. Does the decision change any established practice?**

Yes. The decision reverses a prior Wisconsin Supreme Court decision, in part, and holds that secure drop boxes are a legal method of absentee ballot return under Wisconsin law.

<sup>2</sup> This guidance was published on the Commission’s website on July 11, 2024, and was distributed to all Wisconsin clerks. It is being incorporated into the manual in this section, but this section is not substantively different than the guidance provided by the Commission on July 11.

#### **4. Do clerks have to use drop boxes?**

No. The decision explicitly states that it does not require clerks to use drop boxes, it just says that the law permits clerks to utilize them if they choose. So if a municipal clerk decides not to use drop boxes in an exercise of clerk election administration discretion, they will not be violating the Priorities USA decision. Clerks should note, however, that choosing not to use drop boxes because of a belief that they are not legal is likely inconsistent with the reasoning of the decision, and raises the risk of a legal challenge.

#### **5. Can a clerk be successfully sued if he or she chooses not to utilize drop boxes?**

Likely not. If a clerk chooses not to use drop boxes in upcoming elections, it is very unlikely that a challenger would be successful in arguing that Priorities USA requires them to be used. 6. Are the Commission's previous memos related to drop boxes prior to the Teigen decision back in effect? No. The Commission withdrew memoranda dated March 31 and August 19, 2020 relating to drop boxes as part of the Teigen litigation on February 16, 2022. The Priorities USA decision does not mean either of those memoranda are back in effect. This memorandum, dated July 11, 2024, is the Commission's sole issued guidance document related to drop boxes as of this date.

#### **7. Did the decision discuss where drop boxes may be located and who can set them up?**

Yes. The decision stated that drop boxes are set up, maintained, secured, and emptied by the municipal clerk, which includes their authorized representatives. A single person need not set up, maintain, secure, and empty all drop boxes in a municipality. The drop boxes may be placed in a location other than the municipal clerk's office, and may be placed in any location that the municipal clerk, within his or her statutory discretion, designates.

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

Yes. The decision held that state law permits clerks to lawfully utilize secure drop boxes in an exercise of their statutorily conferred discretion. The decision did not provide guidance on what it means for a drop box to be "secure." The Commission

recommends that clerks keep the following non-exhaustive security considerations in mind when planning to utilize drop boxes, which are consistent with guidance from the U.S. Election Assistance Commission (EAC) and the U.S. Cybersecurity and Infrastructure Security Agency (CISA). These considerations are merely a starting point—the Commission recommends that clerks thoroughly complete a security assessment for each intended drop box location prior to deployment. The Commission recommends the following best practices:

### **Best Practices: Physical Security of the Drop Box Itself**

- The drop box be securely affixed to the ground or the side of the building, or secured such that the drop box cannot be removed or tampered with.
- If located outside, the drop box be sturdy enough to withstand the elements so the ballots inside will remain unspoiled.
- The drop box be secured against unlawful access or emptying.
- The slot of the drop box be appropriately sized so that only an absentee ballot can be deposited and not other objects or liquids.
- Any damage to or tampering with the drop box be documented and the drop box be inspected to ensure that it remains secure for the purpose of depositing absentee ballot envelopes.
- The drop box be clearly marked or labeled that the drop box is for the purpose of collecting absentee ballots in return envelopes.
- The time of final retrieval of ballot return envelopes be clearly marked on or near the drop box. After the time of final retrieval, the drop box be secured to prevent the submission of absentee ballot return envelopes.

### **Best Practices: Security of the Drop Box Surroundings**

- The drop box be located in a safe location with adequate parking and safe access for pedestrians.
- The drop box be located in a well-lit area.

- The drop box be clearly visible, and the path to the drop box be accessible with clear and level ground space in front.

### **Best Practices: Security of Ballot Retrieval/Emptying**

- The drop box be emptied often enough to avoid the box from being filled with ballots, and a record of the times and dates of retrieval, number of ballots retrieved and the person or persons participating in the retrieval be maintained.
- Ballots retrieved from a drop box be securely transported to the office of the clerk.
- The drop box be equipped with unique locks or seals to secure ballots.
- Absentee ballots that are returned via drop box be secured and transported in the same manner as all other absentee ballots received by clerks. Please refer to **page 104** of the Election Administration Manual for guidance on how to secure and transport voted absentee ballots.

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

- EAC Quick Start Guide on Drop Boxes (PDF)
  - [https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Ballot\\_Drop\\_Boxes\\_EAC\\_Quick\\_Start\\_Guide\\_508.pdf](https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Ballot_Drop_Boxes_EAC_Quick_Start_Guide_508.pdf) • EAC Election Management Guidelines, Pages 53, 80, 100 (PDF) ○ [https://www.eac.gov/sites/default/files/electionofficials/EMG/EAC\\_Election\\_Management\\_Guidelines\\_508.pdf](https://www.eac.gov/sites/default/files/electionofficials/EMG/EAC_Election_Management_Guidelines_508.pdf)
- EAC Sample FAQ Language for How Drop Boxes Work that Can be Adapted for Wisconsin
  - <https://www.eac.gov/how-do-drop-boxes-work> • CISA Drop Box Considerations ○ [https://www.cisa.gov/sites/default/files/2023-07/Ballot\\_Drop\\_Box.pdf](https://www.cisa.gov/sites/default/files/2023-07/Ballot_Drop_Box.pdf)

### **9. Does the governing body of the municipality need to be the one to designate drop box locations?**

No. The governing body of the municipality designates the location of alternate absentee voting sites under Wis. Stat. § 6.855. The Priorities USA decision clearly states that state law “...requires only that the ballot be delivered to a location the municipal clerk, within his or her discretion, designates.”<sup>3</sup> The municipal clerk has the authority to designate drop box locations.

### **10. Who can return a ballot to a drop box?**

A voter may return his or her own ballot. An individual may also return the ballot of anyone he or she is lawfully assisting, such as a voter with a disability or a hospitalized voter. An individual is permitted to provide assistance to more than one disabled or hospitalized absentee voter. These principles were issued in Commission guidance following the litigation in Carey v. WEC, and are unchanged by the Priorities USA decision.<sup>4</sup> The decision does not say that drop boxes need to be staffed, nor does the decision require a clerk to ask any questions of a voter who is attempting to return a ballot to a drop box.

### **11. What steps should clerks take if they want to display their drop box locations on MyVote ahead of the August 13, 2024 election?**

Once implemented, clerks will be able to add drop box locations and information to WisVote under Election Specific Absentee Options, which will make the drop box locations viewable to voters in their municipality on MyVote. Registered voters in these municipalities will be able to see the information under “Find My Local Absentee Options” button from the Vote Absentee section (<https://myvote.wi.gov/en-us/VoteAbsentee>). Clerks will receive detailed instructions when this functionality becomes available again. Clerks are encouraged to communicate to voters as to the dates, times, and locations of drop boxes, as well as final retrieval dates and times.

### **12. Does the decision require clerks to track which ballots are received by drop box?**

No. Nothing in the decision requires clerks to track, mark, or otherwise separate or indicate which returned absentee ballots were received via secure drop box.

<sup>3</sup> Priorities USA v. WEC, 2024 WI 32, P26. The Priorities USA decision also states that Wis. Stat. § 6.855 “...simply does not apply to drop boxes.” Id. at P29.

<sup>4</sup> Available at: <https://elections.wi.gov/memo/guidance-absentee-ballot-return-options-under-federal-voting-rights-act>.

**13. May a clerk place an insert informing voters of the availability of drop boxes?**

Yes. Clerks may place an insert informing voters of the availability of drop boxes for the return of absentee ballot envelopes. Those inserts are recommended to include the locations of the drop boxes, dates and times of availability, and date and time of final retrieval of absentee ballot envelopes. Such an insert would be considered additional administrative or logistical instructions pursuant to administrative rule EL § 6.05(2).

**14. Will there be additional training on drop boxes?**

Yes. Commission staff intend to provide training to clerks in ElectEd that will be consistent with the Commission’s guidance.

**15. Are private citizens permitted to watch drop boxes if they are located in public?**

Yes, but not if the watching interferes with voting. Whoever “interrupt[s] or disturb[s] the voting...proceedings” may be fined not more than \$1,000, or imprisoned not more than 6 months or both.<sup>5</sup> Additionally, anyone who “by abduction, duress, or any fraudulent device or contrivance, impede[s] or prevent[s] the free exercise of the franchise at an election” is guilty of a Class I felony.<sup>6</sup> Clerks immediately contact law enforcement if anyone tampers with, defaces, destroys, unlawfully empties, or interrupts, impedes, or prevents the use of a drop box.

**16. What should I do if I still have questions?**

If you have additional questions, please email [elections@wi.gov](mailto:elections@wi.gov).

*In Person Requests*

1. In person absentee voting in the clerk’s office or another designated absentee voting location may not begin any earlier than 14 days before an election.  
In-person absentee voting may not take place the Monday before an election.

<sup>5</sup> See Wis. Stat. §§ 12.13(3)(x), 12.60(1)(b).

<sup>6</sup> See Wis. Stat. §§ 12.09(2), 12.60(1)(a).

The clerk must specify in the Type E Notice the hours during which they will be available to receive in person absentee requests. Wis. Stat. § 6.855(2).

2. Proof of identification must be presented. The clerk must initial the absentee certificate envelope indicating that the clerk has viewed acceptable proof of identification. Proof of identification must be presented by an elector each time they vote in person absentee in the clerk's office.

Wis. Stat. § 6.86(1)(ar).

1. The applicant does not need to fill out a separate written request if they only wish to vote absentee for the current election. The absentee certificate envelope doubles as an absentee request and certification when completed in person in the clerk's office.
2. Before issuing the ballot, the clerk must review the Ineligible Voter List to confirm that the elector is eligible to vote on the day of the election.
  - a. If the name of the elector appears on the list, the clerk shall inform the elector that the elector is ineligible to vote per Department of Corrections.
  - b. If the elector agrees that they are ineligible, the absentee application should be rejected and the voter registration inactivated.
  - c. If the elector maintains that they are eligible to vote in the election, the clerk shall make a reasonable effort to contact the WEC to verify the elector's felony status.
    - i. If WEC confirms the elector is eligible to vote, the clerk should document on the Absentee Ballot Log (EL-124) that they



- a. The Absentee Ballot Log (EL-124) is sent to the polling place with the absentee ballots on Election Day.
1. An absentee ballot is marked by an absent voter, and sealed in an Absentee Ballot Certificate Envelope (EL-122). The Absentee Ballot Certificate Envelope (EL-122) is then completed and signed by the absentee voter, witnessed by an adult U.S. Citizen, and mailed or delivered in person to the office of the municipal clerk. Wis. Stat. § 6.87(4)(b); *Teigen v. Wis. Elections Comm’n*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519. Note: The witness for absentee ballots completed by Military, Permanent and Temporary Overseas voters, must be an adult, but does not have to be a U.S. Citizen.
    - a. The witness must include their address. Note: The WEC may issue and distribute its guidance regarding the definition of ‘address.’ *White v. WEC*, (2022CV001008). The WEC’s guidance on witness address has been further revised consistent with decisions in *Rise v. WEC* (2024AP000165), and *League of Women Voters of Wisconsin v. WEC* (2022CV002472). See “Voter Correction of Incomplete Absentee Certificate Envelopes” on page 88.
    - b. The witness must include their printed name If an absentee certificate is missing the witness’s printed name, the clerk should decide how to proceed. If a clerk receives an absentee ballot with an improperly completed certificate, § 6.87(9) states that they may return the ballot to the elector whenever time permits the elector to correct the defect. A ballot may also be set aside for rejection under § 6.88(3)(b) if the “certification is insufficient.” Statute directs that the absentee ballot certificate language appear in “substantially” the form listed in § 6.87(2), which includes a field for a witness’s printed name, in addition to their signature. A clerk should determine whether a missing witness printed name renders the certification “insufficient” when determining if they should take action under § 6.88(3)(b). See also “Voter Correction of Incomplete Absentee Certificate Envelopes on page 88.”
      - a. **Litigation Note:** On July 20, 2023, a complaint was filed in the matter of *Priorities USA et al v. Wis. Elections Comm’n* (2023CV001900) in Dane County. The complaint seeks declaratory judgment that the witness requirement for absentee voting is invalid. ~~As of December 2023, no~~

~~judgement or order has been entered on the merits of this litigation.~~ The Priorities USA matter is still being litigated, and this section of the manual will be updated and/or supplemented consistent with further updates in that case, if any.

### *Caselaw Update: Return of Voted Absentee Ballots*

Subject to two exceptions, only the voter may lawfully return his or her completed absentee ballot, either by mail or in person to the ~~office of the~~ municipal clerk, which can include a secure drop box. Wis. Stat. § 6.87(4)(b)(1); *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, 59, 403 Wis. 2d 607, 976 N.W.2d 519, overruled in part by *Priorities USA v. WEC*, 2024 WI 32. <sup>7</sup>

#### Exceptions

First, pursuant to the Voting Rights Act, any Wisconsin voter who requires assistance with mailing or delivering their absentee ballot to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union. *Carey v. Wis. Elections Comm'n*, 624 F. Supp. 3d 1020 (W.D. WI 2022).

Second, pursuant to section 6.86(3)(a)1., an agent may return a completed absentee ballot on behalf of a disabled voter by following the procedures required by that section.

When an election official is presented with an absentee ballot delivered in-person, the official may ask the following questions:

- Are you the voter? If not, then:
- Are you delivering the voter's ballot because the voter has determined that they require assistance returning their ballot due to their disability? If yes, then:
- Are you someone other than the voter's employer, an agent of that employer, or an officer or agent of the voter's union? If yes, then the ballot can be accepted.<sup>1</sup>

<sup>1</sup> This guidance was approved by the Commission on September 6, 2022, and is available here: <https://elections.wi.gov/news/guidance-absentee-ballot-return-options>.

~~The use of drop boxes is not permitted unless the drop box is staffed by the clerk and located in the office of the clerk or a properly designated alternate absentee voting site. Wis. Stat. § 6.855; Tiegen v. Wis. Elections Comm’n, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519. The office of the municipal clerk means any physical area that is controlled by the municipal clerk in order to carry out their statutory duties.~~

Absentee ballots may also be returned via secure drop box, if the municipal clerk chooses to utilize drop boxes. See page “XX” for Commission guidance on drop boxes in the wake of Priorities USA v. WEC.

elector...whenever time permits the elector to correct the defect and return the ballot” so that the municipal clerk can cause the completed ballot to be delivered to the proper polling place by 8 p.m. on Election Day. Wis. Stat. § 6.87(9). Sec. 6.87(9) does not limit how a municipal clerk should “return the ballot” to the elector. A clerk should contact a voter directly (phone, email, or otherwise) to notify the voter that there is a defect with their certificate envelope so that the voter may take steps to correct the defect. Whenever time permits, a clerk may choose to return the ballot to the voter under § 6.87(9) by returning it by mail, or by returning it to the voter in person in the clerk’s office or at the polling place on Election Day.

It is incumbent upon the voter to “correct the defect.”

If necessary, a clerk may include a new certificate envelope to the voter when returning a ballot for a voter to correct pursuant to § 6.87(9).

If the ballot has been returned to the voter under § 6.87(9), the voter must ensure the corrected ballot is returned so it is delivered to the polling place no later than 8 p.m. on Election Day. If a municipal clerk returns a ballot to a voter pursuant to § 6.87(9) and the voter chooses not to return it with the defect corrected, the voter may still vote in person at the polls on Election Day, or vote in person absentee pursuant to § 6.86(1)(a)2.

### **Defect in Voter Information Section**

If the voter is correcting the original certificate envelope (to fill in a missing required field, for example), the original witness does not need to be present to witness the voter correcting the defect under § 6.87(9).

### **Defect in Witness Information Section**

If the witness address or witness signature is missing, the voter and their original witness may go together to the clerk’s office or polling place for the witness to correct the defect.<sup>1</sup> If the voter consents and communicates

<sup>1</sup> **Litigation Note:** Litigation Note: The definition of “witness address” is the subject of ongoing litigation. In two cases, Rise Inc., et al v. Wis. Elections Comm’n et al (2022CV002446); League of Women Voters v. Wis. Elections Comm’n et al (2022CV002472), the Dane County Circuit Court issued decisions on January 2, 2024, and permanent injunctions on January 30, 2024. ~~Both cases are on appeal as of February 2024. Refer to clerk communications “Permanent Injunction on WEC concerning Absentee Voter Witness Address Information in Rise, Inc., et al. v.~~

that consent to the clerk, the witness may go to the clerk’s office or polling place for the witness to correct the defect in the witness information section. The clerk may not issue a new certificate envelope to the witness only—if a new certificate envelope is issued to allow a witness to correct a defect, the voter must also be present.

## Issuing a New Certificate Envelope

A new certificate envelope may be necessary if the voter or witness are unable to correct the defect on the existing envelope.

If the voter or witness corrects the certificate envelope in the clerk’s office, the clerk may issue a new certificate envelope to the voter. Wis. Stat. § 6.87(9). An election inspector at the polls may issue a new envelope, if necessary, pursuant to the clerk’s authority under § 6.87(9). If a new certificate envelope is issued and completed, the original defective certificate envelope must be destroyed, but still set aside to be accounted for later in the event of a recount.

If the municipal clerk has provided the voter with a new envelope, the voter must request that their original witness re-complete the witness portion of the absentee envelope. The original witness must be used in this case because they were the one who witnessed the voter marking, folding, and depositing the ballot into the envelope. A new witness cannot be used because there is no way for a new witness to witness the elector marking their ballot if an elector is attempting to correct a defect under § 6.87(9).

If the voter is correcting a defect and the clerk has issued a new certificate envelope, **the voter** should take the following steps:

- Open the original certificate envelope

~~WEC et al. (2022 CV 002446)” and “Permanent Injunction on WEC concerning Absentee Voter Witness Address Information in League of Women Voters of Wisconsin v. WEC, et al. (2022 CV 002472)” for further information on how the decisions and permanent injunctions provide explanation and definition of when a ballot may be rejected due to a defect in the witness address field. The manual will be updated to be consistent with the final appellate decisions in either or both cases. On July 11, 2024, the Court of Appeals, District IV, issued a decision in *Rise* that modified the decision of the circuit court, in part, to hold that the “reasonable person in the community” standard is now only applied to the municipal clerk. For further detail on current injunctions and decisions regarding the definition of witness address, see “Witness Address Requirements” on page XX of the manual. The manual will be updated to be consistent with further decisions, if any, in these cases.~~

- Verify their ballot
- The voter may NOT remove the ballot from the polling place or the clerk's office.

### Witness Address Requirements

Since 2022, litigation in three separate cases has resulted in decisions regarding what constitutes a witness address.—Rise, Inc., et al. v. WEC et al., (2022-CV-002446), overruled in part by Rise, Inc. et al v. WEC et al. (2024AP000165), League of Women Voters of Wisconsin v. WEC, et al., (2022-CV-002472), and White et al. v. Wisconsin Elections Commission, (2022-CV-001008).

The following guidance was issued by the Commission on February 9, 2024<sup>2</sup>, and has been slightly modified following the appellate court decision in Rise v. WEC on July 11, 2024:

#### **Question 1: Can an election official modify or add information to absentee ballot witness certifications?**

Answer 1: No. Election officials cannot modify or add information to absentee ballot witness certifications.

#### **Question 2: What does “address” mean as used in Wis. Stat. § 6.87(2) and (6d)?**

Answer 2: It means “a place where the witness may be communicated with.”

#### **Question 3: What information is required for a sufficient witness address?**

Answer 3: No particular components or information are required, but an absentee ballot cannot be rejected or returned to a voter for correction under Wis. Stat. § 6.87(9) as long as the face of the certificate contains sufficient information to allow the municipal clerk to identify a location where the witness may be communicated with. “The standard for applying the definition of “address” must be viewed from the perspective of the municipal clerk, rather

<sup>2</sup> Available at: <https://elections.wi.gov/memo/wec-clerk-communications-relating-absentee-ballot-certificate-witness-addresses>

than from a “reasonable person in the community.””<sup>3</sup> This does not prevent returning an absentee ballot to a voter or rejecting an absentee ballot after 8 p.m. on Election Day if this standard cannot be met or if there is a separate issue, such as a missing witness signature or missing voter signature.

Question 4: What information is enough for the municipal clerk to reasonably identify a location where the witness can be communicated with?

Answer 4: ~~The Commission cannot provide a complete answer to this question since, by definition, it is community specific. However, it can state that in~~ The appeals court in the Rise decision affirmed that the purpose of the witness address requirement is so that the witness may be contacted if needed.<sup>4</sup> As long as the address information provided by the witness is sufficient to enable communication with the witness, the purpose of the address requirement is fulfilled.<sup>5</sup> Given the municipal clerk’s role in the absentee voting process, “it follows that the correct standard for properly defining ‘address’ in § 6.87 involves the perspective of each local, municipal clerk performing their duties in a reasonable manner, rather than from the perspective of a reasonable person in the community.”<sup>6</sup> The municipal clerk may reasonably rely upon his or her “own knowledge of community places, building names, and local addresses.”<sup>7</sup>

**Important:** This witness address standard should be based on the face of the certificate, not just the information on the “address” line.<sup>8</sup> This aspect of the circuit court decision in Rise was unchanged by the appellate court.

In the four scenarios below, the witness address must be considered sufficient. A witness address is sufficient if:

- a. The witness’s street number, street name, and municipality are present, but there is neither a state name nor a ZIP code provided;
- b. The witness’s street number, street name, and ZIP code are present, but there is neither a municipality nor a state name provided;

<sup>3</sup> See Rise, Inc. et al v. WEC et al, (2024AP000165), page 3.

<sup>4</sup> Id. at page 34.

<sup>5</sup> Id.

<sup>6</sup> Id. at 37.

<sup>7</sup> Id. at 38.

<sup>8</sup> Id. at 39.

c. The witness's street number and street name are present and match the street number and street name of the voter, but no other address information is provided; or

d. The witness certification indicates that the witness address is the same as the voter's address with any or any combination of the following words: "same," "same address," "same as voter," "same as above," "see above," "ditto," or by using quotation marks and/or an arrow or line pointing to or from the voter address.

Question 5: If one of these four scenarios is not present, should the absentee ballot be rejected?

Answer 5: Not on that basis. If an election official determines that one of the four scenarios above is present, the witness address is sufficient, and no further determination is needed. If one of these scenarios is not present, an election official must apply the standard in Answer 3, which is to look to the face of the certificate for information that would allow a reasonable person in the community the municipal clerk to reasonably identify a location where the witness may be communicated with. If the information can be found on the face of the certificate, it is sufficient.



## ELECTION DAY MANUAL – REVISED PAGE 90

one or more of the following errors: no voter signature, no witness signature, no witness address, no witness printed name, both special voting deputies failed to sign, or no certification language. Wis. Stat. § 6.88(3)(b). Set these aside and process them after 8 p.m. on Election Day See also “Voter Correction of Incomplete Absentee Certificate Envelopes” on page **XX** for further information. Absentee ballots may not be counted until after the polls close.

Processed absentee ballots are placed in the ballot box or optical scan equipment and are counted when all the other ballots are counted. Ballots are considered counted once the polls have closed and all ballots are tabulated, either by equipment or by a hand tally. Election inspectors do not need to stand in the voter line to process absentee ballots.

If the election inspectors have reliable proof that an elector has died before Election Day, the absentee ballot must be rejected.

### **Absentee Ballot Certificate Envelopes (EL-122, EL-122M, EL-122SVD, EL-122SP)**

There are four variations of the Absentee Ballot Certificate Envelope:

1. EL-122 Standard Absentee Certificate Envelope, used in most situations.
2. EL-122M Absentee Certificate Envelope, used for military and permanent overseas voters.
3. EL-122SVD, used for absentee voting conducted by Special Voting Deputies in residential care facilities and retirement homes.
4. EL-122SP, used for voters in SVD-eligible facilities that are not served by SVDs.

# ELECTION DAY MANUAL – REVISED PAGE 92

Step 3: The witness must complete this section by signing and printing their name and providing their address (~~street number, street name, municipality~~). For more detailed Commission guidance on what constitutes a witness address, see “Witness Address Requirements” on page XX.

**STEP 3 WITNESS must complete this part**

I the undersigned witness, subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b), certify that:

- I am an adult U.S. citizen
- The above statements are true and the voting procedure was executed as stated
- I am not a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk).
- I did not solicit or advise the elector to vote for or against any candidate or measure

**WITNESS REQUIRED**

X

Witness Signature

Witness Printed Name

Witness Address (Number, Street Name, City)

## Absentee Certificate Envelope for Other Categories of Absentee Voters

EL-122M for Military and Permanent Overseas Voters. In step 2 of this envelope, voters must include their date of birth. The witness is required to be an adult but does not have to be a U.S. citizen.

**STEP 2**

**VOTER must complete this part**

**I certify, subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b), that:**

- I am a resident of the ward or of the aldermanic district of the municipality in the county of the state of Wisconsin indicated hereon **OR** I am entitled to vote in the ward or aldermanic district at the election indicated hereon
- I am not voting at any other location in this election
- I am unable or unwilling to appear at the polling place in the ward on Election Day, or I have changed my residence within the state from one ward to another less than 28 days before the election
- I displayed the ballot unmarked to the witness and in the presence of no other person marked the ballot and enclosed and sealed it in this envelope in a manner that no one but myself and an assistant under s. 6.87 (5), if I requested assistance, could know how I voted
- I requested this ballot and this is the original or a copy of that request

**X**

**Voter Signature**

**Date of Birth**    /    /  
**(mm/dd/yyyy)**

**Certification of Assistant** (If applicable)

I certify that the voter is unable to sign their name due to a disability and that I signed the voter's name at the direction and request of the voter

**Assistant signature**

DRAFT

# ELECTION DAY MANUAL – REVISED PAGE 93

EL-122SVD for use by Special Voting Deputies conducting absentee voting in residential care facilities and retirement homes. In step 3 of this envelope, the signatures and addresses of both SVDs are required in the witness section. [For Commission guidance on what constitutes a witness address, see “Witness Address Requirements” on page XX.](#)

STEP 3

SVD must complete this part

**I the undersigned witness, subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b), certify that:**

<ul style="list-style-type: none"> <li>I am an adult U.S. citizen</li> <li>I am not a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk).</li> </ul>	<ul style="list-style-type: none"> <li>I did not solicit or advise the elector to vote for or against any candidate or measure.</li> <li>I further certify that the name and address of the voter is correct as shown</li> </ul>
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<b>X</b>	<b>X</b>
<b>Deputy #1 Signature</b>	<b>Deputy #2 Signature</b>
<b>Deputy #1 Printed Name</b>	<b>Deputy #2 Printed Name</b>
<b>Deputy #1 Address (Number, Street Name, City)</b>	<b>Deputy #2 Address (Number, Street Name, City)</b>

EL-122SP for use by voters residing in SVD-eligible care facilities and retirement homes not served by SVDs. In step 4 of this envelope, the authorized representative of the care facility signs this section or the voter includes photo ID. The care facility representative may also serve as the witness.

**STEP 4**

**CARE FACILITY REP. must complete this part**

I certify I am an authorized representative of the facility listed. I further certify that this facility is registered or certified as required by law, that the above voter is a resident, and I verify that the name and address of the voter described above are correct.

**X**

Care Facility Authorized Representative Signature

Name of Facility

DRAFT

## ELECTION DAY MANUAL – REVISED PAGE 95

- a. be an adult, but does not need to be a U.S. citizen). The witness must include their address and it can be an address outside of the United States. Wis. Stat. § 6.87(4)(b). For Commission guidance on what constitutes a witness address, see “Witness Address Requirements” on page XX.

**Note:** If the envelope has been opened or resealed, the signature of either the elector or the witness is missing or the witness’ printed name or address is missing, the absentee ballot certificate envelope is insufficient, and the absentee ballot must be rejected. If the witness address appears to be incomplete, refer to “Witness Address Requirements” on page XX to determine whether the address provided is insufficient enough to be rejected. If there are no clerk initials on the envelope do not reject the ballot but note the omission on the EL-104 and process normally.

2. If the Absentee Certificate Envelope (EL-122) is found to be **insufficient**:
  - a. Do not open the envelope.
  - b. Do not issue a voter number.
  - c. Mark the envelope “Rejected ballot #\_” (beginning with the number 1). Write the reason for rejection on the envelope.
  - d. List the elector’s name, identifying serial number of the rejected ballot (see “c.” above), and the reason for rejection on the Inspectors’ Statement (EL-104).
  - e. Record the reason for rejection next to the elector’s name on the Absentee Ballot Log.
  - f. Record the ballot as not counted on the Absentee Ballot Log (EL-124).
  - g. Place the unopened certificate envelope in the Certificate of Rejected Absentee Ballots (EL-102) brown carrier envelope.

Wis. Stat. § 6.88(3)(b).

3. If the Absentee Certificate Envelope indicates that proof of identification or the Certification of Authorized Care Facility Representative is required, it is the responsibility of the election inspector to ensure that the elector included proof of identification along with the absentee ballot or completed the appropriate certification section before the ballot may be counted. In these cases, the certificate envelope will be an EL-122SP, which contains the Authorized Care Facility Representative section. Follow these procedures:

DRAFT

# ELECTION DAY MANUAL – REVISED PAGE 101

- c. Check the ballot contains the initials of the issuing clerk.
  - i. If the ballot does not contain the initials of the clerk or deputy clerk, do NOT reject the ballot solely for that reason.
    1. Issue a voter number and record the voter number on the voter list. Document that this was an absentee ballot (red “A” next to voter number). Also, record on the Absentee Ballot Log that the ballot was counted.
    2. Place the ballot in the ballot box.
    3. Place the used certificate envelope in the Used Certificate Envelopes of Absentee Electors (EL-103) white carrier envelope.
    4. Record on the Inspectors’ Statement (EL-104) that clerk’s initials were missing.
    5. Record as counted on the Absentee Ballot Log (EL-124).

NOTE: Elections inspectors do not need to stand in line and go through the motions of a voter in order to process absentee ballots.

9. If the Absentee Certificate Envelope (EL-122) is determined “to be rejected,” because the signature of elector or witness is missing, the witness address is missing or if the envelope is open or appears to have been resealed, see “Voter Correction of Incomplete Absentee Certificate Envelopes” on page XX. If the witness address appears to be incomplete, refer to “Witness Address Requirements” on page XX to determine whether the address provided is insufficient enough to be rejected.

## Voter Correction of Incomplete Absentee Certificate Envelopes

**Disclaimer:** This section of the manual covers a clerk’s ability to return absentee ballots to voters under § 6.87(9), or to reject absentee ballots under §



6.88(3)(b) when there are defects on the certificate envelope. For information on a municipal clerk's ability to return absentee ballots to electors under § 6.86(5) when the ballot is spoiled or damaged, see "Spoiling and Replacement Ballots" on page XX. **Be advised that these two sections of the manual are not interchangeable.**

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necessary, pursuant to the clerk's authority under § 6.87(9). If a new certificate envelope is issued and completed, the original defective certificate envelope must be destroyed, but still set aside to be accounted for later in the event of a recount.

If the municipal clerk has provided the voter with a new envelope, the voter must request that their original witness re-complete the witness portion of the absentee envelope. The original witness must be used in this case because they were the one who witnessed the voter marking, folding, and depositing the ballot into the envelope. A new witness cannot be used because there is no way for a new witness to witness the elector marking their ballot if an elector is attempting to correct a defect under § 6.87(9).

If the voter is correcting a defect and the clerk has issued a new certificate envelope, **the voter** should take the following steps:

- Open the original certificate envelope
- Verify their ballot
- The voter may NOT remove the ballot from the polling place or the clerk's office.
- Seal the ballot in the new certificate envelope and complete the certifications with their original witness.

If the voter corrects a defect of the certificate envelope, they may only correct the defect—they may not vote a new ballot.

The clerk or election inspector should document that a correction was made (and if the ballot was accepted on Election Day) on the Absentee Ballot Log (EL-124).

If any of the following occur, the defect will not be corrected by the voter, and the clerk should proceed to section (2) below:

- 1) There is not time for a clerk to attempt to return the ballot to the voter pursuant to § 6.87(9).
- 2) The clerk chooses not to attempt to return the ballot to the voter pursuant to § 6.87(9).
- 3) The clerk has attempted to return the ballot to the voter under § 6.87(9), but the voter has failed to correct the defect by 8 p.m. on Election Day.
- 4) The clerk has notified the voter of the defect in the certificate and the voter has not remedied the defect by 8 p.m. on Election Day.

## **(2) Setting Aside the Ballot for Rejection – Wis. Stat. § 6.88(3)(b)**

If a clerk, or election inspector, finds that a certificate is insufficient, they shall not count the ballot. Wis. Stat. § 6.88(3)(b).

If exercising authority under § 6.88(3), the clerk should label missing and no certificate envelope ballots as “To Be Rejected,” and keep them separate from the rest of the absentee ballots when delivering to the polling place. These ballots should be kept separate to allow the voter to correct any defects prior to 8 p.m. on Election Day.

After 8 p.m. on Election Day, if a ballot is rejected, an inspector must write “rejected, insufficient certificate” on the back of the ballot. Wis. Stat. § 6.88(3)(b). The rejected ballot should then be reinserted into the certificate envelope in which it was delivered, and securely seal both in an envelope marked for rejected absentee ballots. Wis. Stat. § 6.88(3)(b). All other procedures specified by § 6.88(3)(b) should always be followed when rejecting absentee ballots for any reason.

### **Witness Address Requirements**

Since 2022, litigation in three separate cases has resulted in decisions regarding what constitutes a witness address.—Rise, Inc., et al. v. WEC et al., (2022- CV-002446), overruled in part by Rise, Inc. et al v. WEC et al. (2024AP000165), League of Women Voters of Wisconsin v. WEC, et al., (2022-CV-002472), and White et al. v. Wisconsin Elections Commission, (2022-CV-001008).

The following guidance was issued by the Commission on February 9, 2024<sup>1</sup>, and has been slightly modified following the appellate court decision in Rise v. WEC on July 11, 2024:

### **Question 1: Can an election official modify or add information to absentee ballot witness certifications?**

Answer 1: No. Election officials cannot modify or add information to absentee ballot witness certifications.

### **Question 2: What does “address” mean as used in Wis. Stat. § 6.87(2) and (6d)?**

<sup>1</sup> Available at: <https://elections.wi.gov/memo/wec-clerk-communications-relating-absentee-ballot-certificate-witness-addresses>

Answer 2: It means “a place where the witness may be communicated with.”

### Question 3: What information is required for a sufficient witness address?

Answer 3: No particular components or information are required, but an absentee ballot cannot be rejected or returned to a voter for correction under Wis. Stat. § 6.87(9) as long as the face of the certificate contains sufficient information to allow the municipal clerk to identify a location where the witness may be communicated with. “The standard for applying the definition of “address” must be viewed from the perspective of the municipal clerk, rather than from a “reasonable person in the community.””<sup>2</sup> This does not prevent returning an absentee ballot to a voter or rejecting an absentee ballot after 8 p.m. on Election Day if this standard cannot be met or if there is a separate issue, such as a missing witness signature or missing voter signature.

Question 4: What information is enough for the municipal clerk to reasonably identify a location where the witness can be communicated with?

Answer 4: The Commission cannot provide a complete answer to this question since, by definition, it is community specific. However, it can state that in The appeals court in the Rise decision affirmed that the purpose of the witness address requirement is so that the witness may be contacted if needed.<sup>3</sup> As long as the address information provided by the witness is sufficient to enable communication with the witness, the purpose of the address requirement is fulfilled.<sup>4</sup> Given the municipal clerk’s role in the absentee voting process, “it follows that the correct standard for properly defining ‘address’ in § 6.87 involves the perspective of each local, municipal clerk performing their duties in a reasonable manner, rather than from the perspective of a reasonable person in the community.”<sup>5</sup> The municipal clerk may reasonably rely upon his or her “own knowledge of community places, building names, and local addresses.”<sup>6</sup>

**Important:** This witness address standard should be based on the face of the certificate, not just the information on the “address” line.<sup>7</sup> This aspect of the circuit court decision in Rise was unchanged by the appellate court.

<sup>2</sup> See Rise, Inc. et al v. WEC et al, (2024AP000165), page 3.

<sup>3</sup> Id. at page 34.

<sup>4</sup> Id.

<sup>5</sup> Id. at 37.

<sup>6</sup> Id. at 38.

<sup>7</sup> Id. at 39.

In the four scenarios below, the witness address must be considered sufficient. A witness address is sufficient if:

- a. The witness's street number, street name, and municipality are present, but there is neither a state name nor a ZIP code provided;
- b. The witness's street number, street name, and ZIP code are present, but there is neither a municipality nor a state name provided;
- c. The witness's street number and street name are present and match the street number and street name of the voter, but no other address information is provided; or
- d. The witness certification indicates that the witness address is the same as the voter's address with any or any combination of the following words: "same," "same address," "same as voter," "same as above," "see above," "ditto," or by using quotation marks and/or an arrow or line pointing to or from the voter address.

Question 5: If one of these four scenarios is not present, should the absentee ballot be rejected?

Answer 5: Not on that basis. If an election official determines that one of the four scenarios above is present, the witness address is sufficient, and no further determination is needed. If one of these scenarios is not present, an election official must apply the standard in Answer 3, which is to look to the face of the certificate for information that would allow a reasonable person in the community the municipal clerk to reasonably identify a location where the witness may be communicated with. If the information can be found on the face of the certificate, it is sufficient.

### *Drop Boxes*

On July 5, 2024, the Wisconsin Supreme Court overruled its prior decision, in part, in Teigen v. WEC, and held that secure drop boxes were permitted under state law as a valid method of absentee ballot return. The decision is binding on all lower Wisconsin courts. The use of drop boxes is not mandatory and is at the discretion of the municipal clerk.

On July 11, 2024, the Wisconsin Elections Commission (“the Commission”) held a public meeting to review and issued the following guidance.<sup>8</sup>

### **1. Does the decision affect all municipal clerks?**

Yes. The decision permits all municipal clerks to choose to use secure absentee ballot drop boxes in their jurisdiction if they wish, starting immediately.

### **2. What does the decision say?**

The Wisconsin Supreme Court determined that the statute that permits voters to return their absentee ballots “to the municipal clerk issuing the ballot or ballots” refers to a person, not a location. The court asserted that this interpretation of state law is consistent with Wisconsin’s highly decentralized system whereby municipal clerks have broad statutory discretion to administer elections in their jurisdiction. Accordingly, since voters may return their absentee ballots to the municipal clerk, or his or her authorized representatives, they may do so via drop box, if that’s a method the municipal clerk chooses to utilize.

### **3. Does the decision change any established practice?**

Yes. The decision reverses a prior Wisconsin Supreme Court decision, in part, and holds that secure drop boxes are a legal method of absentee ballot return under Wisconsin law.

### **4. Do clerks have to use drop boxes?**

No. The decision explicitly states that it does not require clerks to use drop boxes, it just says that the law permits clerks to utilize them if they choose. So if a municipal clerk decides not to use drop boxes in an exercise of clerk election administration discretion, they will not be violating the Priorities USA decision. Clerks should note, however, that choosing not to use drop boxes because of a belief that they are not legal is likely inconsistent with the reasoning of the decision, and raises the risk of a legal challenge.

### **5. Can a clerk be successfully sued if he or she chooses not to utilize drop boxes?**

<sup>8</sup> This guidance was published on the Commission’s website on July 11, 2024, and was distributed to all Wisconsin clerks. It is being incorporated into the manual in this section, but this section is not substantively different than the guidance provided by the Commission on July 11.

Likely not. If a clerk chooses not to use drop boxes in upcoming elections, it is very unlikely that a challenger would be successful in arguing that Priorities USA requires them to be used. 6. Are the Commission’s previous memos related to drop boxes prior to the Teigen decision back in effect? No. The Commission withdrew memoranda dated March 31 and August 19, 2020 relating to drop boxes as part of the Teigen litigation on February 16, 2022. The Priorities USA decision does not mean either of those memoranda are back in effect. This memorandum, dated July 11, 2024, is the Commission’s sole issued guidance document related to drop boxes as of this date.

**7. Did the decision discuss where drop boxes may be located and who can set them up?**

Yes. The decision stated that drop boxes are set up, maintained, secured, and emptied by the municipal clerk, which includes their authorized representatives. A single person need not set up, maintain, secure, and empty all drop boxes in a municipality. The drop boxes may be placed in a location other than the municipal clerk’s office, and may be placed in any location that the municipal clerk, within his or her statutory discretion, designates.

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

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

**Best Practices: Physical Security of the Drop Box Itself**

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

- If located outside, the drop box be sturdy enough to withstand the elements so the ballots inside will remain unspoiled.
- The drop box be secured against unlawful access or emptying.
- The slot of the drop box be appropriately sized so that only an absentee ballot can be deposited and not other objects or liquids.
- Any damage to or tampering with the drop box be documented and the drop box be inspected to ensure that it remains secure for the purpose of depositing absentee ballot envelopes.
- The drop box be clearly marked or labeled that the drop box is for the purpose of collecting absentee ballots in return envelopes.
- The time of final retrieval of ballot return envelopes be clearly marked on or near the drop box. After the time of final retrieval, the drop box be secured to prevent the submission of absentee ballot return envelopes.

### **Best Practices: Security of the Drop Box Surroundings**

- The drop box be located in a safe location with adequate parking and safe access for pedestrians.
- The drop box be located in a well-lit area.
- The drop box be clearly visible, and the path to the drop box be accessible with clear and level ground space in front.

### **Best Practices: Security of Ballot Retrieval/Emptying**

- The drop box be emptied often enough to avoid the box from being filled with ballots, and a record of the times and dates of retrieval, number of ballots retrieved and the person or persons participating in the retrieval be maintained.
- Ballots retrieved from a drop box be securely transported to the office of the clerk.



- The drop box be equipped with unique locks or seals to secure ballots.
- Absentee ballots that are returned via drop box be secured and transported in the same manner as all other absentee ballots received by clerks. Please refer to **page 104** of the Election Administration Manual for guidance on how to secure and transport voted absentee ballots.

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

- EAC Quick Start Guide on Drop Boxes (PDF)
  - [https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Ballot\\_Drop\\_Boxes\\_EAC\\_Quick\\_Start\\_Guide\\_508.pdf](https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Ballot_Drop_Boxes_EAC_Quick_Start_Guide_508.pdf) • EAC Election Management Guidelines, Pages 53, 80, 100 (PDF) ○ [https://www.eac.gov/sites/default/files/electionofficials/EMG/EAC\\_Election\\_Management\\_Guidelines\\_508.pdf](https://www.eac.gov/sites/default/files/electionofficials/EMG/EAC_Election_Management_Guidelines_508.pdf)
- EAC Sample FAQ Language for How Drop Boxes Work that Can be Adapted for Wisconsin
  - <https://www.eac.gov/how-do-drop-boxes-work> • CISA Drop Box Considerations ○ [https://www.cisa.gov/sites/default/files/2023-07/Ballot\\_Drop\\_Box.pdf](https://www.cisa.gov/sites/default/files/2023-07/Ballot_Drop_Box.pdf)

## **9. Does the governing body of the municipality need to be the one to designate drop box locations?**

No. The governing body of the municipality designates the location of alternate absentee voting sites under Wis. Stat. § 6.855. The Priorities USA decision clearly states that state law “...requires only that the ballot be delivered to a location the municipal clerk, within his or her discretion, designates.”<sup>9</sup> The municipal clerk has the authority to designate drop box locations.

## **10. Who can return a ballot to a drop box?**

A voter may return his or her own ballot. An individual may also return the ballot of anyone he or she is lawfully assisting, such as a voter with a disability or a hospitalized voter. An individual is permitted to provide assistance to more than one disabled or hospitalized absentee voter. These principles were issued in Commission guidance following the litigation in Carey v. WEC, and are

<sup>9</sup> Priorities USA v. WEC, 2024 WI 32, P26. The Priorities USA decision also states that Wis. Stat. § 6.855 “...simply does not apply to drop boxes.” Id. at P29.

unchanged by the Priorities USA decision.<sup>10</sup> The decision does not say that drop boxes need to be staffed, nor does the decision require a clerk to ask any questions of a voter who is attempting to return a ballot to a drop box.

### **11. What steps should clerks take if they want to display their drop box locations on MyVote ahead of the August 13, 2024 election?**

Once implemented, clerks will be able to add drop box locations and information to WisVote under Election Specific Absentee Options, which will make the drop box locations viewable to voters in their municipality on MyVote. Registered voters in these municipalities will be able to see the information under “Find My Local Absentee Options” button from the Vote Absentee section (<https://myvote.wi.gov/en-us/VoteAbsentee>). Clerks will receive detailed instructions when this functionality becomes available again. Clerks are encouraged to communicate to voters as to the dates, times, and locations of drop boxes, as well as final retrieval dates and times.

### **12. Does the decision require clerks to track which ballots are received by drop box?**

No. Nothing in the decision requires clerks to track, mark, or otherwise separate or indicate which returned absentee ballots were received via secure drop box.

### **13. May a clerk place an insert informing voters of the availability of drop boxes?**

Yes. Clerks may place an insert informing voters of the availability of drop boxes for the return of absentee ballot envelopes. Those inserts are recommended to include the locations of the drop boxes, dates and times of availability, and date and time of final retrieval of absentee ballot envelopes. Such an insert would be considered additional administrative or logistical instructions pursuant to administrative rule EL § 6.05(2).

### **14. Will there be additional training on drop boxes?**

Yes. Commission staff intend to provide training to clerks in ElectEd that will be consistent with the Commission’s guidance.

<sup>10</sup> Available at: <https://elections.wi.gov/memo/guidance-absentee-ballot-return-options-under-federal-voting-rights-act>.

## **15. Are private citizens permitted to watch drop boxes if they are located in public?**

Yes, but not if the watching interferes with voting. Whoever “interrupt[s] or disturb[s] the voting...proceedings” may be fined not more than \$1,000, or imprisoned not more than 6 months or both.<sup>11</sup> Additionally, anyone who “by abduction, duress, or any fraudulent device or contrivance, impede[s] or prevent[s] the free exercise of the franchise at an election” is guilty of a Class I felony.<sup>12</sup> Clerks immediately contact law enforcement if anyone tampers with, defaces, destroys, unlawfully empties, or interrupts, impedes, or prevents the use of a drop box.

## **16. What should I do if I still have questions?**

If you have additional questions, please email [elections@wi.gov](mailto:elections@wi.gov).

### *Absentee Voters at the Polling Place*

Election inspectors should follow these procedures if a voter with an absentee designation in the poll book comes to the polling place to vote on Election Day, in addition to the procedures outlined in the Electors section.

Municipalities must track absentee ballots on the pre-printed poll list. The clerk shall also provide each polling place an Absentee Ballot Log (EL-124).

The absentee notation on the pre-printed poll list indicates that an absentee ballot was issued to the voter. The notations may or may not indicate that the ballot was returned.

1. If an individual noted as “absentee” appears at the polling place, the inspectors should check the Absentee Ballot Log (EL-124) to determine if the ballot has been returned.
  - a. If the absentee ballot has been returned and there are no errors that would cause the ballot to be rejected, the voter may not vote at the polling place.

<sup>11</sup> See Wis. Stat. §§ 12.13(3)(x), 12.60(1)(b).

<sup>12</sup> See Wis. Stat. §§ 12.09(2), 12.60(1)(a).





# Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984  
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**DATE:** **July 30, 2024**

**TO:** **Wisconsin Municipal Clerks  
Wisconsin County Clerks  
City of Milwaukee Election Commission  
Milwaukee County Election Commission**

**FROM:** **Wisconsin Elections Commission**

**SUBJECT:** **Application and Interpretation of Wis. Const. art. III, § 7(2)**

**ATTACHMENTS:** **Attorney General Opinion (OAG–01–24)**

Two proposed amendments to the Wisconsin Constitution (“Constitution”) were included as referenda on the ballot at the April 2, 2024, Spring Election. Each referendum was passed by the voters of Wisconsin and ratified into the Constitution as follows:

- **Article III, § 7(1):** No state agency or officer or employee in state government and no political subdivision of the state or officer or employee of a political subdivision may apply for, accept, expend, or use any moneys or equipment in connection with the conduct of any primary, election, or referendum if the moneys or equipment are donated or granted by an individual or nongovernmental entity.
- **Article III, § 7(2):** No individual other than an election official designated by law may perform any task in the conduct of any primary, election, or referendum. (“Subsection 2”)

Based upon subsequent feedback received by the Wisconsin Elections Commission (“Commission”), it became apparent that Wisconsin’s clerks and government officials had confidence in their ability to interpret and apply the first of those two amendments (*e.g.* § 7(1)). However, the Commission also received many questions and general concerns relating to Subsection 2. Similar feedback and questions were received by the Wisconsin Attorney General’s Office, including a request for an attorney general advisory opinion, and the subsequent opinion relating to Subsection 2 was published on June 25, 2024 (*See* attached). The Commission formally agreed with the attorney general’s analysis at its **July 30, 2024**, meeting, and the following communication reflects the Commission’s recommendations for interpreting and applying Subsection 2.

It is necessary to first define and apply the relevant terms used in Subsection 2. These definitions come from statute and from the attorney general opinion:

- **Election Official:** This term has the same meaning in Subsection 2 as it has in Wis. Stat. 5.02(4e). That provision states, “‘Election official’ means an individual who is charged with any duties relating to the conduct of an election.”

*Wisconsin Elections Commissioners*

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

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Administrator  
Meagan Wolfe

- See various examples of election officials in statute, including those specifically cited in the attorney general opinion.
- **Task in the conduct of any primary, election, or referendum:** Refers to work in directing or leading the administration of an election (*See Wis. Stats. §§ 5.02(4) and (16s)*). Subsection 2 does not apply to more ordinary circumstances in which an election official works with, or is assisted by, non-election officials in performing non-administrative election tasks. “Non-election officials” and “non-election tasks,” as they relate to the conduct of a primary, election, or referendum, are further explored below.
- **Non-Election Official:** A person who assists or performs duties that may be adjacent to the conduct of an election, but do not relate to administration of any task in the conduct of a primary, election, or referendum. Practically speaking, a non-election official is a person who is not directly performing duties related to candidate registration or filing officer duties, ballot access challenge or other election complaint processes, voter registration, special voting deputy activities, ballot processing, vote tabulation, or canvassing.
  - Examples include, but are not limited to, print vendors, ballot design vendors, voting equipment and/or software suppliers, IT security consultants, law enforcement personnel (including those transporting ballots or results data across locations), employees or volunteers assisting with mailings or other clerical work, and individuals working in or visiting a polling place that do not perform functions amounting to the administration of election tasks.

The attorney general opinion can be condensed to the following: *If there is a task in the conduct (administration) of any primary, election, or referendum, it must be performed by an election official. A non-election official may not perform substantive tasks in the conduct of any primary, election, or referendum.*

- **Examples of Constitutional Compliance and Non-Compliance**

- Registration and Balloting Activities
  - *Allowed:* A Special Voting Deputy facilitates absentee voting at a care facility, or the local clerk assists a resident who is a qualified elector in registering to vote and requesting an absentee ballot.
  - *Prohibited:* Any individual other than a clerk, deputy clerk, or another official with statutory authority to administer election tasks cannot perform voter registration or absentee voting procedures.
  - *Note:* The law allows an assistor to perform certain functions on behalf of a disabled voter. Nothing in this memorandum is meant to imply that such assistance is prohibited.
- Election Day Activities
  - *Allowed:* A duly-appointed election inspector feeds absentee ballots into the city’s tabulator on Election Day; A voting equipment vendor performs public tests of new systems or is called to a polling place where a tabulator has significantly jammed to perform necessary maintenance.
  - *Prohibited:* The equipment vendor performs the necessary maintenance and then begins opening and tabulating actual voter’s absentee ballots to ensure it is working properly, rather than allowing the election inspectors to do so.
- Canvassing
  - *Allowed:* The local and county board of canvassers perform their statutory canvassing activities; Election officials hire a consultant to perform tasks that are not related to the conduct of any primary, election, or referendum.
  - *Prohibited:* The city hires a consultant to review and improve polling place and canvassing operations. The consultant then begins performing the canvassing functions and logging real election activities to show the board of canvass a better method.
- Election Adjacent Tasks
  - *Allowed:* The county’s designated print vendor provides ballot proofs to the clerks and subsequently prints copies of the approved template.
  - *Prohibited:* The print vendor mails ballots directly to voters.

If you have additional questions, please email [elections@wi.gov](mailto:elections@wi.gov).



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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Attorney General

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June 25, 2024

OAG-01-24

Mr. Carlos A. Pabellón  
Dane County Corporation Counsel  
210 Martin Luther King, Jr. Boulevard  
Madison, WI 53703-3345

Dear Corporation Counsel Pabellón:

¶ 1. You seek an opinion about the meaning of Wis. Const. art. III, § 7(2), which was created through referendum at the April 2024 election following passage of joint resolutions by the Wisconsin Legislature. Article III, section 7(2) provides that “[n]o individual other than an election official designated by law may perform any task in the conduct of any primary, election, or referendum.” I construe your request as asking two questions about the provision: (1) the meaning of “election official designated by law”; and (2) the meaning of “task in the conduct of any primary, election, or referendum.”

¶ 2. I conclude that “election official” has the same meaning in the new constitutional provision as it has in the statutes, *see* Wis. Stat. § 5.02(4e), and that a “task in the conduct of any primary, election, or referendum” refers to work in directing or leading the administration of an election. The legislative record shows that the provision was proposed in response to the perception that a local election official had lost control of the oversight of an election. Article III, section 7(2) does not apply to more ordinary circumstances in which an election official works with or is assisted by non-election officials in ensuring the proper administration of an election, such as work with vendors on the layout and printing of ballots, information technology personnel on software and hardware security, law enforcement personnel on ballot transport, or employees or volunteers assisting with mailings or other clerical work.

¶ 3. Your first question relates to the position that does the work described in Wis. Const. art. III, § 7(2): “an election official designated by law.” You ask whether “election official designated by law” is synonymous with “[e]lection official” as defined in Wis. Stat. § 5.02(4e). It is.

¶ 4. “The constitution means what its framers and the people approving of it have intended it to mean, and that intent is to be determined in light of the circumstances in which they were placed at the time.” *Dairyland Greyhound Park, Inc. v. Doyle*, 2006 WI 107, ¶ 19, 295 Wis. 2d 1, 719 N.W.2d 408 (quoting *State ex rel. Bare v. Schinz*, 194 Wis. 397, 404, 216 N.W. 509 (1927)). In construing a provision of the constitution, courts examine three primary sources: “the plain meaning, the constitutional debates and practices of the time, and the earliest interpretations of the provision by the legislature, as manifested through the first legislative action following adoption.” *Id.*

¶ 5. The plain language of Wis. Const. art. III, § 7(2) answers your first question. That constitutional provision requires “election official[s] designated by law” to carry out the work described. Wis. Const. art. III, § 7(2). The provision does not create its own definition of “election official,” but simply defines the role by reference to other “law” that designates a position as an election official.

¶ 6. That law exists in Wisconsin statutes. The definitional section of the election statutes broadly defines “[e]lection official” as “an individual who is charged with any duties relating to the conduct of an election.” Wis. Stat. § 5.02(4e). “Election” is defined to include public primaries, elections, and referenda. Wis. Stat. § 5.02(4), (16s).

¶ 7. Numerous officials are charged with “duties relating to the conduct of an election” within the meaning of Wis. Stat. § 5.02(4e). Among others, they include village clerks, who “perform any duties prescribed by law relative to elections,” Wis. Stat. § 61.25(1); municipal clerks, including city clerks, who have “charge and supervision of elections and registration in the municipality,” Wis. Stat. § 7.15(1); county clerks, who are designated as “the chief election officer[s] of the county,” Wis. Stat. § 59.23(2)(i); municipal and county boards of canvassers, Wis. Stat. §§ 7.53, 7.60, 9.01; and school district clerks, Wis. Stat. §§ 120.05(1)(b), 120.06(8).

¶ 8. Because the statutes impose “duties relating to the conduct of an election” on all these officials, they are “[e]lection official[s]” within the meaning of Wis. Stat. § 5.02(4e). And because they are thus each an “election official designated by law,” they are election officials within the meaning of Wis. Const. art. III, § 7(2).



¶ 9. You mention Wis. Stat. § 7.30, which states that “[o]nly election officials appointed under this section or s. 6.875 may conduct an election.”<sup>1</sup> Wis. Stat. § 7.30(2)(a). But Wis. Stat. § 7.30 regulates eligibility for and the appointment and tenure in office of specific election officials. *See, e.g.*, Wis. Stat. §§ 7.30(1) (specifying number of inspectors for each polling place), 7.30(2)(a) (specifying qualification of a chief inspector), 7.30(2)(am) (allowing 16- and 17-year-olds to serve as inspectors), 7.30(3) (providing for municipal clerk or director of the board of election commissioners to select tabulators). It does not negate the statutes empowering clerks and other election officials to run elections or create a competing definition of “election official” that is narrower than the definition in Wis. Stat. § 5.02(4e), and it does not change the meaning of “election official” in Wis. Const. art. III, § 7(2).

¶ 10. Your second question relates to the activities that Wis. Const. art. III, § 7(2) requires to be performed by election officials: “any task in the conduct of any primary, election, or referendum.” As you point out, the word “task” does not appear in Wisconsin’s elections statutes, and there are many non-election officials and entities that perform activities relating to an election, such as commercial printers who help lay out and create ballots; information technology staff responsible for the software and hardware security of the voter registration system and voting tabulation; vendors who provide technical guidance and troubleshooting regarding the equipment’s operation and maintenance; law enforcement personnel who transport sealed ballots to the office of the clerk; and designated employees or volunteers who are assigned to assist with absentee ballot mailings or other clerical work.

¶ 11. I conclude that Wis. Const. art. III, § 7(2) does not require such work to be performed by election officials. It also does not apply to activities that are distinct from *the administration* of an election, such as the kinds of efforts by non-election officials to encourage voting that commonly take place in connection with elections. Instead, Wis. Const. art. III, § 7(2) applies to activities in directing or leading the administration of the election.

¶ 12. To begin with, the legislative record associated with the adoption of this new provision of the Wisconsin Constitution supports a narrow interpretation of its scope. *See generally Dairyland Greyhound Park*, 295 Wis. 2d 1, ¶ 19 (constitutional debates are relevant to construing a constitutional provision). In written testimony, the lead author in the state senate of the joint resolutions that included then-proposed Wis. Const. art. III, § 7(2), State Senator Eric Wimberger, described

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<sup>1</sup> Wisconsin Stat. § 6.875 discusses special voting deputies.

concerns regarding the conduct of the 2020 general election in the City of Green Bay, asserting in part:

[T]he City Clerk . . . found herself excluded from elections meetings by the “grant team.” Due to the stipulations of the grant [an outside consultant] orchestrated the fall election and acted as a city clerk would act, though paid by [the grantor], including managing staff and having access to ballots.<sup>2</sup>

¶ 13. While there is a dispute as to the circumstances of that situation, this context illustrates that the prohibition on having non-election officials “perform any task in the conduct of any primary, election, or referendum” was aimed at preventing election officials from losing control of the oversight of the administration of elections. There is no indication that Wis. Const. art. III, § 7(2) was intended to sweep much more broadly and change the way in which election officials work with or are assisted by non-election officials in the vast majority of jurisdictions.

¶ 14. The plain language of the amendment further supports the conclusion that its application is limited to activities in directing or leading the administration of an election. The word “task” must be read not in isolation, but rather in the context of the words around it. The Wisconsin Supreme Court has recognized that “terms in . . . constitutional provisions, should be construed to give effect ‘to each and every word, clause and sentence’ and ‘a construction that would result in any portion

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<sup>2</sup> Wis. Legis. Council, Hearing Materials for 2023 Wis. S.J. Res. 78, Testimony of State Sen. Eric Wimberger, J. Comm. on Shared Revenue, Elections & Consumer Prot. and Assemb. Comm. on Campaigns & Elections, *Testimony on Senate Joint Resolution 78 Senate* (Oct. 24, 2023), [https://docs.legis.wisconsin.gov/misc/lc/hearing\\_testimony\\_and\\_materials/2023/sjr78/sjr0078\\_2023\\_10\\_24.pdf](https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2023/sjr78/sjr0078_2023_10_24.pdf); *accord* Wis. Legis. Council, Hearing Materials for 2021 Wis. S.J. Res. 101, Testimony of State Sen. Eric Wimberger, S. Comm. on Elections, Election Process Reform & Ethics, *Testimony on Senate Joint Resolution 101* (Feb. 7, 2022), [https://docs.legis.wisconsin.gov/misc/lc/hearing\\_testimony\\_and\\_materials/2021/sjr101/sjr0101\\_2022\\_02\\_07.pdf](https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2021/sjr101/sjr0101_2022_02_07.pdf); *see also* Cosponsorship Memorandum from State Reps. August and Bodden and State Sen. Wimberger to All Wisconsin Legislators (Sept. 19, 2023), [https://www.wheelerbilltracking.com/upload/files/lrb/doc\\_5409532596509ff713b6884.44232304.pdf](https://www.wheelerbilltracking.com/upload/files/lrb/doc_5409532596509ff713b6884.44232304.pdf) (“In at least one case, private employees played a concerning role in the administration of the presidential election.”); Cosponsorship Memorandum Email from State Reps. August and Vorpapel and State Sen. Wimberger to All Wisconsin Legislators (Feb. 2, 2022 09:04 CST) (on file with the Wisconsin Department of Justice) (“In at least one instance, private individuals from [the grantor] played a concerning role in the administration of the election.”).

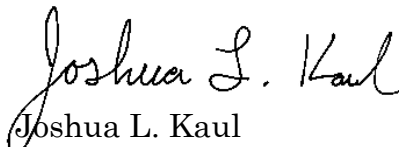
of a statute being superfluous should be avoided wherever possible.” *Wagner v. Milwaukee Cnty. Election Comm’n*, 2003 WI 103, ¶ 33, 263 Wis. 2d 709, 666 N.W.2d 816 (citation omitted).

¶ 15. In Wis. Const. art. III, § 7(2), the word “task” is limited by the prepositional phrase that follows it: “in the conduct of any primary, election, or referendum.” “[T]ask[s] in the conduct of . . . election[s]” refers to the work of conducting an election. Wis. Const. art. III, § 7(2). And the noun “conduct,” in this context, means “the act, manner, or process of carrying on: MANAGEMENT.”<sup>3</sup> “Tasks in the conduct of an election” are thus not everything relating to the election more broadly, but activities in directing or leading the administration of the election.

### CONCLUSION

¶ 16. In sum, I conclude that the meaning of “election official” is the same under Wis. Const. art. III, § 7(2) and Wis. Stat. § 5.02(4e) and that the work that Wis. Const. art. III, § 7(2) requires to be performed by election officials is work in directing or leading the administration of an election.

Sincerely,

  
Joshua L. Kaul  
Attorney General

JLK:NJZ:jrs

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<sup>3</sup> *Conduct*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/conduct> (last visited June 20, 2024); *see also id.* (meanings of “conduct” when used as a transitive verb include “to direct or take part in the operation or management of,” “to direct the performance of,” and “to lead from a position of command”).





# Wisconsin Elections Commission

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(608) 266-8005 | elections@wi.gov | elections.wi.gov

**DATE:** For the June 27, 2024, Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Prepared and Presented by:  
Riley Vetterkind, Public Information Officer

**SUBJECT:** External Use of Agency Materials, Logos, and Branding

## 1. Purpose

The Wisconsin Elections Commission maintains several logos and a wealth of agency-produced materials and branding published on the agency’s public platforms. The agency currently lacks a policy to determine the extent to which members of the public, media organizations, commercial entities, political campaigns, and/or other third-parties may use agency-produced materials for political, commercial, educational, personal, or other uses, with or without attribution to the agency.

The goal of this memorandum is to solicit Commission feedback on whether development of such a policy is needed, and if so, what the Commission wants staff to consider in researching and developing such a policy.

## 2. Background

The WEC’s logos act as symbols to distinguish and lend authority to the agency and the various programs it administers. These include the main agency logo; and logos identifying MyVote Wisconsin, a website that provides Wisconsin voters with registration, absentee, sample ballot, municipal clerk, and polling place information; Elections 101, a voter education video series; ElectEd, the agency’s new learning management system; Badger Voters, the agency’s website that facilitates the purchase of voter data; and Bring It, a website that explains photo ID requirements to vote.

Additionally, the WEC develops graphics, videos, photos, and other media materials to assist local clerks, voters, lawmakers, external organizations, political parties, candidates, and other members of the public to better understand Wisconsin’s electoral process and the underlying laws and regulations that govern it. Recent highlights include the Elections 101 election education video series, which teaches about the basics of election administration; a series of brief videos developed ahead of the 2020 General Election that answer frequently asked voter questions; clerk training videos; social media graphics for use by the WEC and local clerks; and more. The WEC frequently publishes its videos, photos, and graphics on its websites, and on Vimeo, a video sharing website.

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Administrator  
Meagan Wolfe

The WEC's website, [elections.wi.gov](https://elections.wi.gov), serves as a hub for all information related to the WEC and election administration in Wisconsin. This includes information about the WEC's general structure and purpose, its meetings and decisions, along with clerk communications, election calendars, fact-checks, and other FAQs for voters.

It is common for external groups to link to or otherwise reference general election-related information on the WEC's platforms. As an official source of election information in the State of Wisconsin, the WEC encourages this practice, and it is not anticipated that a policy would need to address such use.

Rather, staff anticipate that the development of a policy would instead focus on guidelines for use of the agency's intellectual property.

Recently, staff have received requests from candidates and others to place the MyVote logo on their campaign literature or other materials. Staff have also received requests from third-party groups who are interested in translating the agency's video resources into other languages for use by non-English speakers.

Without a formal policy, agency staff have adhered to certain informal practices in response to these requests.

Agency staff have generally not attempted to restrict external entities linking to or using general information or materials on the agency's main website, as the WEC is an official source of election information. It is staff's understanding that the WEC retains copyright and trademark rights for its logos and agency-produced media, including media produced for the WEC by outside vendors. Copyright symbols are featured on all agency websites.

The WEC has also refrained from granting political campaigns or others permission to use the MyVote logo or other agency logos or materials until a policy is in place and has refrained from granting permission to outside groups to translate or otherwise alter agency-developed videos or graphics.

In cases where the WEC wants to promote a program or message, the agency has encouraged the widespread use of agency-produced materials by external entities. Specifically, the agency has and continues to promote the widespread use of the agency's "Elections 101" educational video series and accompanying materials by organizations that may find them useful. While the Commission does not make original video files available to these entities, it does keep them on the agency website and Vimeo, a video sharing website, and encourages external entities to stream and link to these videos with or without attribution to the agency. The agency logo is displayed in each video.

### **3. Policy Considerations**

The Commission may wish to pursue one policy that incorporates guidelines for use of agency logos, media, and materials, or the Commission could pursue multiple policies that address each of these areas separately.

In general, two principles are relevant to policies of this nature: a.) protecting the integrity of the WEC's identity and brand, and b.) encouraging the public to use materials developed by the WEC, the State of Wisconsin's official source of trusted election information.

If directed to develop a policy, staff will evaluate and apply the principles above and provide the Commission an analysis examining the multiple criteria described below.

- a) **Priorities.** Balancing the protection of the WEC’s identity and brand against the importance of building upon the agency’s role as a source of trusted election information by promoting the widespread use of agency-produced materials.
- b) **Scope.** What elements are to be protected (logos, branding, videos, graphics, etc.).
- c) **Terms of Use.** The conditions under which third parties may use agency products.
- d) **Permissions.** Whether external entities must seek permission to use the materials for their specific project, or whether the Commission would prefer to set terms and conditions of use, but otherwise not require permission or approval.
- e) **Credit.** Whether entities using WEC materials must credit the WEC when they use them, or whether such a requirement is not necessary. The Commission may wish to watermark certain agency materials, such as agency-produced videos, to make it more difficult for others to use WEC materials without permission.
- f) **Enforceability.** The ability of the agency to enforce any published terms of use, considering various legal and ethical considerations.

#### 4. Recommended Motion

The Commission directs staff to conduct further research and create a draft policy for the use of the agency’s logos and media by external organizations based upon the guidelines provided by the Commission at the June 27, 2024 quarterly meeting. The Commission directs staff to bring the draft policy back to the Commission at a future meeting for further consideration and/or approval.







# Wisconsin Elections Commission

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**DATE:** For the June 27, 2024, Commission Meeting

**TO:** Commissioners, Wisconsin Elections Commission

**FROM:** Brandon Hunzicker, Staff Attorney

**SUBJECT:** Potential Complaint Form Updates

## Introduction:

The Wis. Stat. Chapter 5 administrative complaint form available on the Commission’s website, the EL-1100, has not been significantly updated since the Commission was formed in 2016. The EL-1100 is used by most complainants who submit complaints under Wis. Stats. §§ 5.05, 5.06, and 5.061, although it is not required that complainants to use this form. Staff propose redesigning the form. Over the last several years, the number of complaints submitted to the WEC has increased significantly. Many complaints are deficient, and the design of the form itself may be contributing to some of these deficiencies. Staff believe that a clear, step-by-step process on the complaint form would encourage individuals filing a complaint to provide all information required by statute. Staff also propose developing a set of instructions to accompany the new form, likely on the complaint website page.

The purpose of this memo is to seek guidance from the Commission concerning a redesign of the complaint form. Specifically, staff seek guidance concerning: A) whether the form should be redesigned; B) how many new forms should be designed; and C) whether the complaint form should include the option for complainants to make an unsworn declaration in place of a notarized signature.

## Discussion:

### A. Should the Commission’s complaint form be redesigned?

Staff recommend the complaint form be redesigned to address common deficiencies. The current form, which follows this memo in Appendix 1, does not show what information is required to submit a sufficient complaint, asks for the same information multiple times, and contains at least one ambiguous section. As a result, complaints often lack required information, and staff spend significant time communicating with potential complainants about procedural requirements. Staff propose redesigning the form as a step-by-step list with 7 required parts to clarify how to properly complete the form. An initial draft follows this memo in Appendix 2. Staff seek the Commission’s feedback concerning the draft.

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Administrator  
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B. How many new forms should be designed?

Currently, the Commission uses one combined form for each of the three complaint types that may be filed with the Commission under Chapter 5 of the Wisconsin Statutes.<sup>1</sup> Because each complaint type requires a different statutory procedure, any ambiguity concerning the type of complaint prevents staff from accepting a complaint as properly filed. The draft form in Appendix 2 is also a combined form, and the first step is to specify a “Complaint Type,” which is intended to ensure that each potential complainant specifies which complaint type, and therefor which complaint procedure, applies to the form. The revised form includes an important instruction that complainants cannot use one form to submit complaints under more than one statutory basis.

Another option would be to design three different forms. The benefits of this option include designing each form to only obtain required information for that specific type of complaint and providing information on the form itself concerning the procedures that will accompany that complaint type. A drawback of creating different complaint forms is that potential complainants may submit the wrong type of form for the complaint they wish to file, though the design of the Commission’s complaint page may reduce that possibility.

C. Should the complaint form include the option of an unsworn declaration instead of a notarized signature?

This year, 2023 WI Act 245 amended Wis. Stat. § 887.015 to provide all individuals with the opportunity to make an "unsworn declaration." An unsworn declaration is made under penalty of perjury and may be used to satisfy the requirement for a sworn declaration in all circumstances other than depositions, oaths of office, oaths required to be made before an official other than a notary, declarations required for certain real estate transactions, or declarations required to self-prove a will. An unsworn declaration must be in substantially the following form:

I declare under penalty of false swearing under the law of Wisconsin that the foregoing is true and correct.

Signed on the \_\_\_ day of \_\_, \_\_\_ (year), at \_\_\_ (city or other location and state or country).

Printed Name  
Signature

All § 5.05, § 5.06, and § 5.061 complaints must be sworn (§ 5.061 says “verified”). Staff do not believe that complaints filed under § 5.05, § 5.06, or § 5.061 fall under an exception to the amended § 887.015, and the law expressly includes requirements found in administrative rules. Wis. Stat. § 887.015(2)(b). As a result, staff believes that complainants may already use an unsworn declaration to satisfy the swearing requirements for all complaints.

If the Commission wished, it could amend the complaint form or forms to allow individuals to make an unsworn declaration on the form itself. While Wis. Admin. Code EL 20.03(4) requires

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<sup>1</sup> This memo does not address ballot access challenges. The Commission has authorized rulemaking concerning ballot access challenges, and any form related to those processes should accompany that rulemaking, likely as guidance. In any case, ballot access challenges have not historically been submitted to the WEC using the EL-1100.

that the complaint form for § 5.06 complaints contain the certification statement with the specific language at the bottom of the current and redesigned forms, nothing in either statute or administrative code prevents the Commission from adding language for an unsworn declaration. Language which currently informs complainants that they must have their complaint sworn before a notary could, instead, explain that complainants have the option to make an unsworn declaration. If the Commission determines that separate forms should be used, the Commission could design forms for § 5.05 and § 5.061 complaints which only require an unsworn declaration and contain no space for a notarized signature. The Commission is not, however, required to add any option for an unsworn statement to complaint forms.

**Conclusion:**

Staff recommend redesigning the complaint form in a manner similar to that suggested in Appendix 2. Staff seek guidance from the Commission concerning whether one or three complaint forms should replace the current form, and whether the form should include the language for an unsworn declaration.

If the Commission believes that the draft presented is sufficient, or would be sufficient with small changes, the following motion could be adopted. If the Commission would like a more significant change, staff suggest presenting the Commission with a second draft of the form or forms at the next Commission meeting. If the Commission would prefer to keep the current form, no motion would be necessary.

**Possible Motion:** The Commission approves the complaint form attached as Appendix 2 after staff edit the form in a manner consistent with the discussion during today's meeting. Staff shall make the form available on the Commission website and update the instructions to facilitate proper use of the form.



# Appendix 1

## STATE OF WISCONSIN *ELECTIONS COMMISSION*

### COMPLAINT FORM

**Please provide the following information about yourself:**

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

E-mail \_\_\_\_\_

### State of Wisconsin Before the Elections Commission

The Complaint of \_\_\_\_\_

\_\_\_\_\_, Complainant(s) against

\_\_\_\_\_, Respondent, whose

address is \_\_\_\_\_.

This complaint is under \_\_\_\_\_ (Insert the applicable sections of law in chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing)

I, \_\_\_\_\_, allege that:

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(Set forth in detail the facts that establish probable cause to believe that a violation has occurred. Be as specific as possible as it relates to dates, times, and individuals involved. Also provide the names of individuals who may have information related to the complaint. Use as many separate pages as needed and attach copies of any supporting documentation.)

Date: \_\_\_\_\_  
Complainant's Signature

I, \_\_\_\_\_, being first duly sworn, on oath, state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

\_\_\_\_\_  
Complainant's Signature

STATE OF WISCONSIN

County of \_\_\_\_\_,  
(county of notarization)

Sworn to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Signature of person authorized to administer oaths)

My commission expires \_\_\_\_\_, or is permanent.

Notary Public or \_\_\_\_\_  
(official title if not notary)

**Please send this completed form to:**

Mail: Wisconsin Elections Commission  
P.O. Box 7984  
Madison, WI 53707-7984

Fax: (608) 267-0500

Email: [elections@wi.gov](mailto:elections@wi.gov)

# Official Election Complaint Form



## STEP 1 Complaint Type

Please select the statutory process that governs your complaint:

**Choose only one statutory process per complaint.** If you feel that your allegations fall under more than one statutory process, you should submit separate complaints under each process.

- 5.05 (Election Law Violation)
- 5.06 (Violations of or Appeals of Decisions of Election Officials)
- 5.061 (Help America Vote Act Violation)

## STEP 2 Complainant Contact Information

Please provide the following information about yourself.

**Note:** Anyone filing this complaint with you can add their information on a separate page (see page 4).

<input type="text" value="First Name"/>	<input type="text" value="Last Name"/>
<input type="text" value="Residential Address"/>	
<input type="text" value="Mailing Address (if different)"/>	
<input type="text" value="Telephone (optional)"/>	<input type="text" value="Email"/>

## STEP 3 Respondent

Please provide the following information about the individual or individuals whom you allege violated or improperly administered election laws:

**Note:** If there are multiple respondents, you can add their information on a separate page (see page 5).

<input type="text" value="Respondent Name"/>	<input type="text" value="Respondent Title (5.06 complaints)"/>
<input type="text" value="Mailing Address"/>	
<input type="text" value="Telephone (if available)"/>	<input type="text" value="Email (if available)"/>

**STEP 4**

**Applicable Statutes**

Please cite each statute within Chapters 5 to 10 and 12 of the Wisconsin Statutes, as well as any other laws relating to elections, other than laws relating to campaign financing, that you allege were violated or improperly administered.

**Note:** The Commission cannot accept a complaint that does not cite specific provisions, including the correct subsections, of election law.

**STEP 5**

**Allegations**

Set forth in detail the facts that establish probable cause to believe that a violation occurred. Be as specific as possible as it relates to dates, times, individuals, and actions involved. Use as many separate pages as needed and attach copies of any supporting documentation, evidence, or affidavits.



**STEP 6**

**Sworn Statement (to be completed in the presence of a notary)**

I, \_\_\_\_\_, being first duly sworn, on oath, state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

Complainant's Signature

**Note:** Each complainant listed above in section 2 must have this form sworn before a notary or other official able to swear oaths.

**STATE OF WISCONSIN**

County of, \_\_\_\_\_ (county of notarization)

Sworn to before me this day of, \_\_\_\_\_ .

Stamp Here

(Signature of person authorized to administer oaths)

My commission expires on \_\_\_\_\_, or is permanent.

Notary Public or \_\_\_\_\_ (official title if not notary)

**STEP 7**

**Filing the Complaint**

Please send this completed form to the Wisconsin Elections Commission

**Email:**  
[elections@wi.gov](mailto:elections@wi.gov)

Please put your name and "Complaint" in the email subject field

**Mail:**  
Wisconsin Elections Commission  
P.O. Box 7984  
Madison, WI 53707-7984

**Fax:**  
608-267-0500

## Additional Complainants

First Name

Last Name

Residential Address

Mailing Address (if different)

Telephone (optional)

Email

First Name

Last Name

Residential Address

Mailing Address (if different)

Telephone (optional)

Email

First Name

Last Name

Residential Address

Mailing Address (if different)

Telephone (optional)

Email

## Additional Respondents

Respondent Name

Respondent Title (5.06 complaints)

Mailing Address

Telephone (if available)

Email (if available)

Respondent Name

Respondent Title (5.06 complaints)

Mailing Address

Telephone (if available)

Email (if available)

Respondent Name

Respondent Title (5.06 complaints)

Mailing Address

Telephone (if available)

Email (if available)

Respondent Name

Respondent Title (5.06 complaints)

Mailing Address

Telephone (if available)

Email (if available)



# Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8005 | elections@wi.gov | elections.wi.gov

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**DATE:** Prepared for the July 30, 2024, Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Prepared and Presented by:  
Angela O'Brien Sharpe, Staff Attorney

**SUBJECT:** Commission Review and Issuance of Guidance following *Oldenburg v. WEC*

**ATTACHMENTS:** **Attachment A:** Draft Clerk Communication and FAQ

## Introduction:

On July 29, 2024, the Marinette County Circuit Court issued an oral ruling in *Oldenburg v. WEC*<sup>1</sup>, lifted a previously-issued temporary injunction and granted summary judgment in favor of the Wisconsin Elections Commission (“the Commission”) on all claims.

Staff recommend that the Commission review, consider, and issue guidance to clerks that answer anticipated questions ahead of the August 13, 2024 Partisan Primary. A draft guidance document is included in Attachment A.

**Recommended Motion:** The Wisconsin Elections Commission approves and issues the Clerk Communication and FAQ in **Attachment A**, including questions 1 through 9 in the FAQ, as revised and edited during today’s meeting and reflected in the minutes.

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<sup>1</sup> Marinette County Circuit Court Number: 2024CV000043

Wisconsin Elections Commissioners

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

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Administrator  
Meagan Wolfe



# Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8005 | elections@wi.gov | elections.wi.gov

**DATE:** July 30, 2024

**TO:** Wisconsin Municipal Clerks  
Wisconsin County Clerks  
City of Milwaukee Election Commission  
Milwaukee County Election Commission

**FROM:** The Wisconsin Elections Commission

**SUBJECT:** **Litigation Update: *Oldenburg v. WEC***<sup>1</sup>  
RE: Official Absentee Ballot Application/Certification (EL-122); absentee ballot return envelope

On July 30, 2024, the Wisconsin Elections Commission (“the Commission”) held a public meeting to review and issue guidance following the Marinette County Circuit Court’s decision in *Oldenburg v. WEC*. The Commission passed the following motion:

[Insert Motion Language]

The Commission is issuing this guidance in the interest of providing guidance to clerks ahead of the August 13, 2024 Partisan Primary. This guidance document is intended to update the Commission’s previous guidance issued on June 10, 2024.<sup>2</sup>

## ***Oldenburg v. WEC*** **Frequently Asked Questions** **July 30, 2024**

**Oral Ruling Issued:** On July 29, 2024, Judge David Weber issued an oral ruling on the merits in the case of *Oldenburg v. WEC*, which challenged the use of the Official Absentee Ballot Application/Certification (EL-122) that is printed on the absentee ballot return envelope. In his oral ruling, Judge Weber held that Mr. Oldenburg waited too long to bring his claims, and even if he had brought them sooner, his interpretations of the law were incorrect. Finally, Judge Weber lifted the temporary injunction that was previously issued in this case on May 17, 2024. The Commission expects to receive a final, written order from the court in the coming days, based entirely on the judge’s oral ruling, and will send it to clerks once it is received.

<sup>1</sup> Marinette County Circuit Court Number: 2024CV000043

<sup>2</sup> Available at: <https://elections.wi.gov/memo/frequently-asked-questions-regarding-use-form-el-122-official-absentee-ballot-certificate>.

### **1. Does this decision apply to all municipal clerks?**

Not directly. The order is only legally binding on the Commission, but its reasoning and analysis could be applicable statewide. Therefore, we recommend municipal clerks be aware of the reasoning of the court's oral ruling, especially in the wake of the volume of mis- and disinformation that has been circulating around the state since this lawsuit was filed in February 2024.

### **2. What does the decision say?**

The main holding of the oral ruling was that Mr. Oldenburg waited too long to bring his lawsuit, and accordingly, all of his claims are barred. The court noted that the statute at issue has been in effect since 2005, and that certain voters have been using MyVote to request absentee ballots via email as early as 2012. Judge Weber stated that Mr. Oldenburg could have raised his lawsuit much earlier, and the fact that he did so in a major election year is likely to cause widespread confusion, and risks disenfranchisement of voters who rely on absentee voting.

The court also ruled that even if Mr. Oldenburg had brought his lawsuit sooner, his interpretations of law are still incorrect. Judge Weber agreed with the Commission's position that the EL-122 is both an absentee ballot application and a certificate, and serves both of these purposes. The court also ruled that state law does not require the voter to enclose a duplicate of her absentee ballot request in the envelope with her ballot. The court agreed that the Commission's interpretation of "copy" is a better read of the statute, and that all relevant information from the application appears on the EL-122. The court also ruled that there is no difference whether the application information appears on or in the envelope—it is a distinction without a difference because municipal clerks receive all of the information they need to verify an absentee ballot request on the EL-122. Finally, the court accepted the Commission's arguments that the EL-122 is not a promulgated administrative rule.

### **3. Does the decision change any established practice?**

Yes. The oral ruling explicitly lifts a temporary injunction that prohibited the Commission from requiring clerks to utilize the EL-122 for absentee voting. The oral ruling also affirms that the EL-122 fully complies with Wisconsin law, and that it is not required for a voter to include a signed copy of her request with her ballot inside the EL-122.

### **4. Does this decision mean I have to use the EL-122?**

Yes. As noted above, the court found that the EL-122 fully complies with Wisconsin law. It is therefore unlikely that a challenge based on the same grounds as those brought by Mr. Oldenburg would be successful.

Now that the temporary injunction has been lifted, the Commission's previous guidance on use of the EL-122 is back in effect. On April 28, 2023, the Commission unanimously directed staff to implement the new EL-122 design for the February 20, 2024 primary, and also stated that "[o]ld envelope designs shall not remain in use."

### **5. I'm still sending out and receiving absentee ballots, and in-person absentee voting for the August primary starts tomorrow. Do I need to change any of my procedures?**

No. The court's ruling affirms what the bipartisan Wisconsin Elections Commission has always said: The EL-122 constitutes both an absentee ballot application and a certificate.

**6. What if I have already taken remedial steps to comply with the previous *Oldenburg* temporary injunction?**

If you have taken any steps in response to the *Oldenburg* temporary injunction, or in response to this litigation in general, you should immediately review those steps with your local counsel to assess compliance. The temporary injunction has been lifted as of July 29, and other remedial steps may now be inconsistent with the court's reasoning.

**7. What should I do if I receive questions or claims that the outcome of the *Oldenburg* litigation doesn't matter because the statute still requires a copy of the request to be included in the envelope?**

No court of law has ever held that a voter must include a copy of her absentee ballot request inside of the envelope along with her ballot, and the judge in this case just ruled against that argument. The court ruled that the EL-122 constitutes a copy of the voter's request, and that it need not be in the envelope because all of the required information is included on the envelope.

**8. How final is the order? Are there any next steps in the case?**

The case is almost concluded, but an appeal is possible. The oral ruling was made on the record, but in the coming days, the court will issue a written order that is being prepared by the parties. Once a final order has been issued, it's possible that Mr. Oldenburg may appeal the decision. The Commission will provide further updates, if any, as they become available.

**9. What should I do if I still have questions?**

If you have additional questions, please email [elections@wi.gov](mailto:elections@wi.gov).



# Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8005 | elections@wi.gov | elections.wi.gov

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**DATE:** For the July 30, 2024 , Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Wisconsin Elections Commission Staff

**SUBJECT:** ERIC Eligible but Unregistered (EBU) Exemption Request

This memo relates to the Electronic Registration Information Center (ERIC) and the Eligible But Unregistered (EBU) mailer. The WEC is required by state law to be a member of ERIC and abide by ERIC’s membership agreement. Part of that agreement is that WEC will pay dues to ERIC and that WEC will abide by the two main goals of ERIC:

- 1) using ERIC data to conduct list maintenance, and
- 2) using ERIC data to encourage voter registration.

WEC uses all ERIC reports available to conduct regular list maintenance, such as identifying voters who may have moved, identifying voters who are deceased or have duplicate records out-of-state, and identifying instances of double voting in and out of state.

In terms of encouraging voter registration, the ERIC agreement requires states to use ERIC data that identifies voters with a DMV product who are not on the voter rolls and to send them a mailer explaining registration opportunities. WEC has done the EBU mailer, as required, since becoming members of ERIC. The ERIC membership agreement also offers states the option to ask for an exemption from the EBU requirement, if they can show that they have other ways to more effectively encourage voter registration.

This proposal lays out the reasons why WEC staff believe that by seeking an exemption from the ERIC EBU requirement, we can accomplish two very important goals. The first goal being to use EBU funds to conduct more effective voter outreach and the second goal of using the funds saved from the EBU mailings to avoid going over budget paying for our newly increased ERIC dues, which have increased by more than \$35,000. We believe this proposal not only allows us to be prudent with our budget but to more effectively and consistently educate all Wisconsin voters on opportunities to register to vote.

Attached is a draft letter to the ERIC board of directors, seeking an exemption, for your consideration. If approved by the Commission, the letter would be sent to the ERIC board who would then vote on the proposal as described below. Then, the WEC staff would return to the Commission, in open session, to announce the granting of the exemption and to seek the Commission’s approval on the specifics of public outreach efforts we would engage in using the funds reserved for EBU’s after our dues have been paid.

*Wisconsin Elections Commissioners*

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

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Administrator  
Meagan Wolfe



## **ERIC EBU Exemption Request Process**

Under Section 4(a) of the ERIC’s mission, exemptions from the EBU requirements can occur when a state can prove they have “legislation, policies, and/or programs” that fulfill the same mission. Specific language from Section 4(a) states:

“If a Member adopts legislation or policies that have the potential to accomplish the objectives of this section by alternative means, Member may apply to ERIC for an exemption from the requirements of this section of the Membership Agreement by sending a written request to the Executive Director of ERIC and the Chair of the Board. Such written application shall explain the basis for Member’s assertion that the alternative means will effectively achieve the objectives of this section. If the Executive Director of ERIC and the Chair of the Board believe the request is reasonable, it shall be presented to the Board for a vote and, if granted, a determination on the timing of implementation of the exemption.”

To initiate the EBU exemption process, a member must submit a written request to the Executive Director and the Chair, demonstrating that their legislation or policies can achieve the EBU objectives through alternative means. The Chair and ED will review the request according to “Reasonableness Review” Guidelines and communicate their decision to the members. If determined to be reasonable, the request and decision are shared with the Board of Directors, who will discuss and vote on it. The requesting member can participate in the meeting but will be recused during the discussion and vote. The review aims to determine if the member’s alternative means can effectively achieve the EBU Reports objectives.

Currently, more than half of the ERIC member states have been granted an EBU exemption by the ERIC board as they have been able to show they are able to more effectively educate voters on registration opportunities using other means.

### **Impact on Budget**

The budget for ERIC is divided into two main areas: \$33,100 for membership dues and \$141,000 for the quarterly MOVERS mailing. In the 2019-2021 biennial budget, the Commission had requested an additional \$81,300 for the EBU mailer, but this funding was not continued in subsequent biennia. During the following biennium, EBU costs were covered by leftover funds from the ERIC mailer.

Recently, ERIC membership dues have significantly increased from \$33,100 to \$70,800. The additional \$37,700 will have to be reallocated from the \$141,300 set aside for the ERIC mailer, leaving \$103,000 to cover both the ERIC mailer and EBU costs.

While this initiative aims to encourage voter participation, it entails significant expenses without representative data supporting its effectiveness. The costs of the program, including mailing, printing, and staff time, raise concerns about its feasibility and efficiency. Below is a table showing the overall associated costs with the EBU mailer for 2020 and 2022, along with projected costs for 2024. Note that staff costs are excluded due to their variability. These costs encompass external contractor support, internal personnel, and developer time.

<b>EBU Costs</b>	<b>2020</b>	<b>2022</b>	<b>2024 (estimate)</b>
<b>Mailing Costs</b>	\$ 27,822.71	\$ 53,782.69	\$83,800
<b>Printing Costs</b>	\$ 3,420.39	\$ 6,988.62	\$8,750

While the EBU aims to raise voter awareness, the financial burden of the program raises serious concerns. The substantial costs associated with mailing, printing, and staff time make the program an expensive endeavor with questionable efficiency. Additionally, with the increase in ERIC dues, finding money in the budget to cover any overages will be more challenging than in previous years.

With the funds saved from receiving an exemption, staff are proposing utilizing alternative methods of reaching unregistered voters, such as digital campaigns, community outreach, and partnerships with local organizations, may provide more cost-effective and target solutions. These methods can achieve similar or better outcomes without incurring the high expenses associated with traditional methods. Methods for consideration are included in the draft exemption request attached to this memorandum.

**Recommended Motion:** The Wisconsin Elections Commission approves staff to seek exemption from the 2024 Eligible by Unregistered (EBU) mailing. The Commission directs staff to provide the approved *Exemption from the Eligible but Unregistered Requirement letter* to ERIC.



# Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984

July 31, 2024

**To:** Mr. Shane Hamlin  
Executive Director, Electronic Registration Information Center (ERIC)

Mr. Blake Evans  
Chair, ERIC Executive Committee

Mr. David Maeda  
Vice Chair, ERIC Executive Committee

**Re:** Exemption from the Eligible but Unregistered Requirement

Dear Executive Director Hamlin, Chair Evans, and Vice Chair Maeda,

## **Request and Background**

Pursuant to Section 4(a) of the Membership Agreement, the State of Wisconsin Elections Commission (“WEC”) is requesting an exemption from the Eligible but Unregistered (EBU) mailing. The six-member, bi-partisan WEC met on July 30, 2024 to discuss this request, and passed the following motion:

The Wisconsin Elections Commission approves staff to seek exemption from the 2024 Eligible but Unregistered (EBU) mailing. The Commission directs staff to provide the approved *Exemption from the Eligible but Unregistered Requirement Letter* to ERIC no later than July 31, 2024.

The State of Wisconsin offers numerous effective voter registration opportunities as evidenced by our high registration rates. These opportunities include online voter registration, election day registration, and minimizing the duration of registration closure. Wisconsin supports ERIC’s mission for the EBU mailing; however, given the lack of proven effectiveness, reallocating any financial savings from the exemption would allow our staff to undertake more impactful voter outreach and education efforts. This approach will achieve ERIC’s objectives by ensuring that all Wisconsin voters are informed about their registration opportunities as detailed below.

## **Voter Registration in Wisconsin**

### **Election Day Registration**

Wisconsin adopted Election Day Registration in 1975 and it has been a staple to ensuring individuals do not have registration as a barrier to their right to vote. In current active voter registrations, more than 55% of Wisconsin’s voter registration records have either been updated or created using Election Day Registration. Same-day voter registration is a reliable way for Wisconsinites to ensure they can register for the first time or update their registration. Election Day

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Administrator  
Meagan Wolfe

Registration is a proud Wisconsin tradition that is embedded in the way that Wisconsin voters interact with the election process. It should be noted that voters can also register to vote the same day that they cast an in-person absentee ballot. Many Wisconsin municipal clerks also make opportunities for voters to complete their registration using MyVote.wi.gov (see below) either at the polls or during in-person absentee voting.

### Online Voter Registration and MyVote

Online voter registration was added to the MyVote Wisconsin website in January 2017 as authorized by 2015 Wisconsin Act 261. Wis. Stat. § 6.30(5). Over the past seven years, online voter registrations have increased to the point where a vast majority of all voter registrations have been completed using the MyVote website. A review of voter registration activity for July 2024 shows 81% of all voter registrations were completed online.

Local civic groups have incorporated MyVote into their own voter outreach and registration drives and the Wisconsin Department of Motor Vehicles and public libraries have added computer kiosks to some of their offices to allow voters to access the MyVote site after updating or obtaining their license or state ID card. The availability and accessibility of the MyVote Wisconsin site has been a major success in improving voter registration outcomes for Wisconsin residents.

### Voter Registration Cycle

Individuals can register to vote online or by mail up to 20 days before the election. If a voter has a valid State of Wisconsin Driver License or State of Wisconsin ID card issued by the Wisconsin Department of Motor Vehicles (DMV) he or she can register to vote online at MyVote. If a voter prefers to register in-person he or she can register in-person in his or her municipal clerk's office up until the Friday before the election or at his or her polling place on Election Day. In special circumstances, there are instances where an individual who is either a hospitalized elector or military can register for an extended period. And of course, voters can register on Election Day at the polling place. This leaves just two days in the election cycle where voter registration would be unavailable to most voters.

### Election Performance Indicators

Wisconsin consistently demonstrates the effectiveness of its voter registration methods. According to the Election Performance Indicator, Wisconsin achieved an 87.64% voter registration rate in 2020, closely aligning with the national average of 87.34%. Moreover, according to the same report, Wisconsin's voter turnout in 2020 stood at 75.77%, exceeding the national average of 67.87%. Wisconsin is a national leader in minimizing issues that prevent individuals from voting<sup>1</sup>.

### Pre-Registration

Wisconsin allows individuals that are 17 years old but will be 18 on or before the next election to register. In these instances, the individual can complete a paper copy of a voter registration application and provide it to their clerk's office, who then can enter them into the statewide voter registration system so that their name will appear on the poll book for the

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<sup>1</sup> <https://elections.mit.edu/#/data/map?view=state-profile&state=WI&year=2020>

next election for which they are eligible to vote. Wisconsin also allows 16 and 17 year olds to serve as poll workers, which has been an effective way to engage future voters with understanding how the election and registration process work.

### **Additional Current Outreach Efforts**

#### *Public Information Efforts*

An equally important pillar of access to voter registration is ensuring that eligible electors have readily available public information about the options available to them.

In this vein, the WEC provides a diverse range of outreach and public information programs geared toward making the voter registration process easy to understand and access.

The cornerstone of the WEC's voter registration information are two agency-maintained websites: [MyVote.wi.gov](https://www.MyVote.wi.gov) and [elections.wi.gov](https://www.elections.wi.gov). The voter-facing [MyVote Wisconsin](https://www.MyVote.wi.gov) provides voters with an engaging and informative online resource to register to vote online. Additionally, MyVote Wisconsin informs voters whether and where they are registered to vote; allows the voter to update their name or address on their voter registration; and provides a detailed review of what is necessary to register online or by mail.

In addition, the [WEC maintains an entire webpage](https://www.elections.wi.gov) hosted at [elections.wi.gov](https://www.elections.wi.gov) that provides voters with detailed information about how to register to vote online, by mail, or in the municipal clerk's office. It also provides details about providing a driver license or ID card number, along with proof of residence requirements for registration.

In 2022, the WEC launched the [award-winning Elections 101 voter education program](https://www.elections.wi.gov/101), which aims to educate the public, and especially younger individuals, about how Wisconsin's election system works, along with the basics of voter registration. The Elections 101 series of four videos, along with accompanying educational materials, were made available in classrooms across Wisconsin, hosted on newspaper websites, and streamed on radio and television. They continue to be hosted online at [elections.wi.gov/101](https://www.elections.wi.gov/101).

During each election cycle, the WEC posts social media messages and graphics [on X \(formerly Twitter\)](https://www.elections.wi.gov) and [Facebook](https://www.facebook.com/elections.wi.gov) to inform Wisconsin voters of online, by-mail, and in-person registration options and deadlines, where to find voter registration resources, and the basics of what is required to register to vote. [The Commission also sends a calendar of templated social media posts and accompanying graphics](https://www.elections.wi.gov) to municipal and county clerks to encourage them to share information with their constituents about how to register and/or vote in upcoming elections.

Further, WEC staff is developing a "speakers bureau" of agency staff who are interested in regularly speaking to civic groups and other third-party organizations about voter registration and other election-related topics.

### **Additional Efforts Possible with EBU Exemption**

While Wisconsin already engages in several voter outreach projects described above, it has become clear that granting Wisconsin an exemption from the EBU requirement would allow the state to conduct more effective and consistent outreach that could result in exceeding the number of new voter registrations generated by the EBU mailings.

With the additional funding freed up from the EBU exemption, the Commission hopes to launch a voter outreach campaign that can meet eligible but unregistered electors where they are and provide them with easily accessible and engaging information about voter registration options. The agency may choose to contract with a digital advertising firm to assist with developing the campaign and making ad placements. The firm could also ensure the agency places advertisements in markets that are likely to have a significant population of eligible but unregistered voters.

The campaign, which would be implemented ahead of the November General Election, would include both digital and traditional advertisements. It is anticipated that the main message of the advertisements would be to direct individuals to voter registration and other election information resources, such as the MyVote Wisconsin website.

Digital strategies are likely to include paid social media advertisements, advertisements on video platforms such as YouTube or Hulu, and search engine marketing. Digital strategies may also include social media posts made at no cost by participating third party organizations who are interested in providing non-partisan voter registration and election-related information to their audiences.

Traditional media strategies could also be incorporated into the campaign. Strategies may include paid advertisements, or free or lower cost public service announcements hosted by broadcasters, newspapers, or other media outlets. The WEC has previously been successful at partnering with the Wisconsin Broadcasters Association and Wisconsin Newspaper Association on the Elections 101 promotional project, where dozens of participating media outlets placed advertisements for the program across their various channels.

Select outdoor advertising is also likely to be a component of the campaign, and the WEC is already aware of lower public service rates on billboard advertisements via select companies. The agency may explore partnering with counties or municipalities by providing matching funds for the billboard placements.

While digital and traditional advertising strategies are an important component to reach electors, the WEC also believes a public information strategy for voter registration must include options beyond paid advertisements, both due to the cost limitations of paid advertising and the necessity of reaching voters who may be less receptive to the above marketing methods.

A core component of this approach would be to develop an “election ambassador” program similar to those implemented in a number of other states and jurisdictions. This program would provide interested members of the public, along with partner institutions and their members, a toolkit containing graphics, flyers, posters, templated social media posts, videos, fact sheets, and other resources on mis- and disinformation, media literacy, and requirements of the voting process, including voter registration resources and even voter registration applications. The goal would be for participating individuals and institutions to share these materials widely across their networks.

In the development of this program, the WEC would be sure to invite local clerks, public libraries, universities, the major political parties, and other outreach organizations across the political spectrum to share the voter registration and other election information with the populations they serve.

In addition, depending on the final dollar amount allowed for this project, the WEC would consider hiring a firm to translate the materials into other languages widely spoken in Wisconsin, such as Spanish.

While WEC will not be able to finalize the specifics of our outreach plan until we know if our exemption has been granted, we fully intend to implement the outreach efforts in the full spirit of the ERIC EBU. It is WEC's goal to ensure that all voters in the state of Wisconsin know how to register to vote or update their voter record. This additional outreach will be more comprehensive in providing information than our current EBU postcards can possibly be, in that we can not only provide information about how to register, but detailed information about eligibility requirements, and voting information. We will also be able to tailor our outreach to meet voters where they are rather than relying on a mailing, which can easily be lost or ignored by voters during a busy election year.

Thank you for your consideration, the WEC looks forward to hearing your decision. Once a decision has been rendered, the WEC will convene in a meeting open to the public to discuss plans for using the EBU savings to launch an effective public outreach program.

Sincerely,

The State of Wisconsin Elections Commission