

NOTICE OF OPEN MEETING

OPEN SESSION AGENDA

- A. Call to Order**
- B. Administrator’s Report of Appropriate Meeting Notice**
- C. Consideration and Resolution of Wis. Stat. § 5.06 Complaints**
 - 1. EL 24-32 – Patrick Gitzlaff v. Julie Sigmund et al Pgs. 1 and 4**
 - 2. EL 24-35 – Glen Hogan et al v. Celestine Jeffreys Pgs. 1 and 16**
- D. Consideration and Resolution of Wis. Stat. § 5.061 Complaint**
 - 1. Disability Rights Wisconsin v. Suzanne Pinnow et al Pgs. 1 and 59**
- E. Discussion, Review, and Possible Action Pertaining to Clerk Communication on Planning for a Potential Presidential Recount Pg. 82**
- F. Discussion, Review, and Possible Action Pertaining to Clerk Guidance for “Limited Term” and “Non-Domiciled” Designations on Division of Motor Vehicles Products Pg. 119**
- G. Discussion, Review, and Possible Action Pertaining to Extension of the HAVA Federal Subgrant to Reimburse Local Election Offices for the Cost of Absentee Envelopes Provided later**
- H. Adjourn**



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: For the November 1, 2024 Meeting of the Wisconsin Elections Commission

TO: Members, Wisconsin Elections Commission

FROM: WEC Staff

SUBJECT: Commission Review and Consideration of Wis. Stat. § 5.06 Complaints

Appendix 1 – EL 24-32 – Patrick Gitzlaff v. Julie Sigmund et al

Appendix 2 – EL 24-35 – Glen Hogan et al v. Celestine Jeffreys

Commission Review and Consideration of Wis. Stat. § 5.061 Complaint

Appendix 3 – EL 24-85 – Disability Rights Wisconsin v. Suzanne Pinnow et al

Background:

Prior to September 5, 2024, complaints filed pursuant to Wis. Stat. § 5.06 were decided by the Wisconsin Elections Commission (“the Commission”) via delegation of its authority to the Commission Administrator. However, on September 5, the Waukesha County Circuit Court, Branch 8¹, issued an order holding that this delegation of authority was unlawful, and directing the Commission to decide all future Wis. Stat. § 5.06 complaints by a vote of the Commission. There are two Wis. Stat. § 5.06 complaints and draft decisions for the Commission’s review and consideration at today’s meeting, along with a recommended motion for each one.

Additionally, there is one Wis. Stat. § 5.061 (Help America Vote Act, or HAVA) complaint that is also ready for the Commission’s review and consideration. If the Commission finds that the Wis. Stat. § 5.061 complaint is without merit, it shall issue a decision dismissing the complaint. If the Commission finds that the HAVA violation alleged in the complaint has occurred, is occurring, or is proposed to occur, the Commission shall order appropriate relief. Wis. Stat. § 5.061(4).

Appendix 1 - EL 24-32 – Patrick Gitzlaff v. Julie Sigmund et al

The complaint of Patrick Gitzlaff v. Julie Sigmund et al pertains to alleged actions taken by the municipal clerk and election officials of the Village of Wrightstown (Brown and Outagamie Counties) concerning alleged violations of Wis. Stat. § 7.30(2). The complaint alleges that the municipal clerk and election officials including Election Inspector Sigmund (“Respondents”) violated Gitzlaff and others’ rights under Wis. Stat. § 7.30(2) when Respondent Sigmund was an election official while also being a ballot candidate.

¹ Pellegrini v. Wisconsin Elections Commission, Case No. 2022CV001656, Decision and Order (September 5, 2024).

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Commission legal staff reviewed the complaint and the response from Respondent Bowers, as well as the reply. In short, and as detailed more extensively in the proposed draft decision letter, Commission staff believe that the Complainant did not show probable cause to believe that a violation of law or abuse of discretion occurred with relation to the appointment of Respondent Sigmund as an election official.

Recommended Motion for Patrick Gitzlaff v. Julie Sigmund et al: The Commission has reviewed the proposed draft decision letter in **Appendix 1**, and decides this matter pursuant to Wis. Stat. § 5.06(6) by adopting the proposed decision letter in full. The Commission directs staff to immediately transmit a copy of this order to the parties.

Appendix 2 - EL 24-35 – Glen Hogan et al v. Celestine Jeffreys

The complaint of Glen Hogan et al v. Celestine Jeffreys pertains to alleged violations of Wis. Stats. §§ 6.55, 6.56, and similar provisions of Chapter 6, concerning procedures for conducting the post-election audit of all electors who registered to vote using election day registration (“EDR”) processes. The complaint alleges that Clerk Jeffreys has not been complying with the procedures found in Wis. Stat. § 6.56(3) for auditing electors who registered to vote at their polling place on election day for the August 2020, November 2020, February 2021, April 2021, April 2022, August 2022, November 2022, February 2023, and April 2023 elections.

Commission legal staff reviewed the complaint, the response, and the reply. In short, and as detailed more extensively in the proposed draft decision letter, Commission staff believe that the Complaint did show probable cause to believe that a violation of law or abuse of discretion occurred with relation to Clerk Jeffreys’s procedural actions. Clerk Jeffreys admits in her response that she has not been following the statutory requirements in Wis. Stat. § 6.56(3), as alleged, during the identified elections. Clerk Jeffreys is ordered to conform her conduct to the law and is further ordered to certify to the Commission that she has completed her EDR report in accordance with Wis. Stats. §§ 6.275(1)(f) and 6.56(3) and the Commission guidelines at the earliest time practicable after the November 5, 2024 election, but no later than **Monday, February 3, 2025**.

Recommended Motion for Glen Hogan et al. v. Celestine Jeffreys: The Commission has reviewed the proposed draft decision letter in **Appendix 2**, and decides this matter pursuant to Wis. Stat. § 5.06(6) by adopting the proposed decision letter in full. The Commission directs staff to immediately transmit a copy of this order to the parties.

Appendix 3 – EL 24-85 – Disability Rights Wisconsin v. Suzanne Pinnow et al

The complaint of Disability Rights Wisconsin v. Suzanne Pinnow et al concerning alleged past and continuing violations of Section 301 the Help America Vote Act of 2002 (“HAVA”), 52 U.S.C. § 21081. The complaint alleges that for the April 2, 2024, and August 13, 2024, elections, which included federal elections, the Town of Thornapple violated federal law by exclusively using paper ballots completed and tabulated by hand and ceasing to provide HAVA-compliant accessible voting systems at each polling place, and that these alleged violations are expected to continue for the November 5, 2024 election, which also includes federal elections.

Commission legal staff reviewed the complaint. The Respondents did not submit a response. In short, and as detailed more extensively in the proposed draft decision letter, Commission staff believe the Complaint did show probable cause to believe that a violation of law occurred with relation to Clerk Pinnow and the

Town of Thornapple's actions. Clerk Pinnow and the Town of Thornapple are ordered to conform their conduct to the law by providing a HAVA-compliant accessible voting system in all future elections.

Recommended Motion for Peters v. Goergen: The Commission has reviewed the proposed draft decision letter in **Appendix 3**, and decides this matter pursuant to Wis. Stat. § 5.061(4) by adopting the proposed decision letter in full. The Commission directs staff to immediately transmit a copy of this order to the parties.



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

November 1, 2024

Patrick Gitzlaff
562 Clay Street
Wrightstown, WI 54180

Julie Sigmund
352 High Street
Wrightstown, WI 54130

Diane Laabs
352 High Street
Wrightstown, WI 54130

Ruth Aerts
352 High Street
Wrightstown, WI 54130

Shelia Bowers
352 High Street
Wrightstown, WI 54130

Patti Leitermann
352 High Street
Wrightstown, WI 54130

Sent via email to: p.gitzlaff@gmail.com; sbowers@wrightstown.us; pleitermann@wrightstown.us

Re: In the Matter of: **Patrick Gitzlaff v. Julie Sigmund et al (EL 24-32)**

Dear Mr. Gitzlaff, Clerk Bowers, Deputy Clerk Leitermann, Ms. Sigmund, Ms. Laabs, and Ms. Aerts:

This letter is in response to the verified complaint submitted by Patrick Gitzlaff (“the Complainant”) to the Wisconsin Elections Commission (“Commission”), which was filed in reply to actions taken by the municipal clerk and election officials of the Village of Wrightstown (Brown and Outagamie Counties) concerning alleged violations of Wis. Stat. § 7.30(2). The complaint alleges that the municipal clerk and election officials including Election Inspector Sigmund (“Respondents”) violated Gitzlaff and others’ rights under Wis. Stat. § 7.30(2) when Respondent Sigmund was an election official while also being a ballot candidate.

The Commission has reviewed the complaint and the response from Respondent Bowers. The Commission has also reviewed the Complainant’s reply to Respondent Bowers’ response.

The Commission provides the following analysis and decision. In short, the Commission finds that the Complainant did not show probable cause to believe that a violation of law or abuse of discretion occurred with relation to the appointment of Respondent Sigmund as an election official.

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

Under Wis. Stat. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the inherent, general, and specific authority to consider the submissions of the parties to a complaint and to issue findings. In instances where no material facts appear to be in dispute, the Commission may summarily issue a decision and provide that decision to the affected parties. This letter serves as the Commission’s final decision regarding the issues raised in this complaint.

Commissioners

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

Administrator
Meagan Wolfe

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

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

Complaint Allegations

The Complainant alleges that at the Village of Wrightstown board meeting on December 19, 2023, Respondent Sigmund was approved as an election official for the Village of Wrightstown for the 2024–25 election cycle. The Complainant also alleges that Respondent Sigmund was a candidate for the office of village trustee on the ballot at the April 2, 2024, Spring Election. As a result, the Complainant alleges that the appointment of Respondent Sigmund was contrary to Wis. Stat. § 7.30(2)’s requirement that election officials “may not be a candidate for any office to be voted at an election at which they serve.” Wis. Stat. 7.30(2)(a).

The Complainant also submitted the board meeting minutes from the Village of Wrightstown’s meeting on December 19, 2023.

The Response

Respondent Bowers filed a response² to the complaint, countering the allegations by claiming that Respondent Sigmund was “scheduled off” on the day of the April 2, 2024, election and did not serve at that election.

Respondent Bowers admits that Respondent Sigmund was approved as an election official at the December 19, 2024, village board meeting. Respondent Bowers alleges that this appointment complies with Wis. Stat. § 7.30(2) because the statute states that “[a]n individual holding a local public office, as defined in s. 19.42 (7w), may be appointed to serve as an election official under this section without having to vacate the local public office.”

Reply

In the reply, the Complainant asserts that the fact that Respondent Sigmund did not work at the April 2, 2024, election does not matter. The Complainant argues that the only options would have been for Respondent Sigmund to either resign as an election official for the Spring Election cycle or to have not been on the ballot. The Complainant reasons that this result is required because the Spring Election started before election day itself and absentee ballots are “in play” weeks earlier.

¹ All subsequent references to the Wisconsin Statutes are to the 2021–22 version unless otherwise indicated.

² The response seems to have been sworn before a notary public, Respondent Leitemann, who is a party in the case. Under Wis. Stat. § 140.04(2), “[a] notarial officer may not perform a notarial act with respect to a record to which the officer ... is a party” and “[a] notarial act performed in violation of this subsection is voidable.” As such, the response of Respondent Bowers is not considered to be sworn before a notary. In resolving this complaint, however, the commission may still consider the response of Respondent Bowers as part of its investigation into the matter. *See* Wis. Stat. §§ 5.06(4) and (6).

The Complainant suggests that, unless it can be proven that Respondent Sigmund “wasn’t anywhere near” absentee ballots before or on election day, the only solution is to invalidate Respondent Sigmund’s votes in the village trustee election because they shouldn’t have been on the ballot.

Discussion

Appointment and qualifications of election officials

Wisconsin Statute § 7.30(2)(a) provides the necessary qualifications for election officials to be appointed. Specifically, an election official “**may not be a candidate for any office to be voted for at an election at which they serve.**” Wis. Stat. § 7.30(2)(a). (emphasis added).

The statute also describes special considerations for who may qualify for appointment as an election official. Certain local public officials, defined by the list in Wisconsin Statute § 19.42(7w), “may be appointed to serve as an election official under this section without having to vacate the local public office” except in a first class city, where election officials “may hold no public office other than notary public.” *Id.* This subsection of the statute concludes by providing instructions for the appointment and assignment of party-affiliated election officials. *Id.* Additionally, the vacancy provision of the election official qualification statute contemplates that an election official may be temporarily unable to serve due to “candidacy.” Wis. Stat. § 7.30(2)(b).

The Commission has published the following:

It is the opinion of the Commission that election inspectors may not serve at elections where they, their spouse, or immediate family member is a candidate on the ballot or under other circumstances where a candidate’s success or failure to win election would affect the election inspector financially. There may be other laws that specifically prohibit certain individuals from serving as election inspectors. Clerks are encouraged to check with their local municipal attorney if they have any questions as to whether a given individual may serve.

Election Day Manual for Wisconsin Election Officials (August 2024), at 8–9.

Analysis

The material facts in this matter are not in dispute. It is undisputed by the parties that Respondent Sigmund was appointed by the Village of Wrightstown’s Village Board of Trustees to be an election official for the 2024–25 election cycle. The Respondents did not contest the allegation that Respondent Sigmund was also a candidate on the April 2, 2024, Spring Election ballot. The Complainant did not allege that Respondent Sigmund served as an election official at the April 2, 2024, Spring Election. In the Complainant’s reply, they did not dispute the Respondents’ claim that Respondent Sigmund did not serve at the April 2, 2024, Spring Election.

The appointment of Respondent Sigmund as an election official for the 2024–25 election cycle and her presence as a candidate on the ballot for the April 2, 2024 Spring Election do not establish probable cause to believe that a violation of law occurred because there is no allegation, or evidence, that Respondent Sigmund served at the April 2, 2024, Spring Election.

The minutes of the December 19, 2023, board meeting appear to show that Respondent Sigmund is an incumbent member of the village board of trustees. As Respondent Bowers notes, an individual holding local public office including “[a]n elective office of a local governmental unit,” Wis. Stat. § 19.42(7w)(a), “may be appointed to serve as an election official . . . without having to vacate the local public office.” Wis. Stat. § 7.30(2)(a). This does not contradict the requirement that “all officials . . . may not be a candidate for any office to be voted for at an election at which they serve.” *Id.* Reading these consecutive sentences in context show that while an individual holding local public office may be appointed to serve as an election official without having to resign their local public office, such a person is not qualified to serve as an election official for any election at which they are a candidate. Further, the vacancy section provides a specific mechanism to allow a clerk to temporarily replace an election inspector who is not able to serve at an election due to “candidacy.” Wis. Stat. § 7.30(2)(b).

Acts in violation of the election official qualification statute, Wis. Stat. § 7.30(2)(a), such as a candidate working at the polls on election day, could create the appearance of potential influence or electioneering. The clerk’s action to avoid having Respondent Sigmund serve as an election official on April 2, 2024, complied with Wis. Stat. § 7.30(2)(a) because the official running for reelection did not serve during that election. The Complainant’s concerns in their reply about Respondent Sigmund’s potential presence “anywhere near” absentee ballots prior to the election are speculative and not supported by any evidence. The Commission cannot find a violation or the appearance of influence or electioneering when it has not been presented with any reason to believe that Respondent Sigmund served in any capacity in the April 2, 2024, election.

Commission Decision

Based upon the above review and analysis, the Commission does not find probable cause to believe that a violation of law or abuse of discretion occurred regarding the Village of Wrightstown’s scheduling of election officials to serve during the April 2, 2024 Spring Election.

Right to Appeal – Circuit Court

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

If any of the parties should have questions about this letter or the Commission’s decision, please feel free to contact the Commission at 608-266-8005 or elections@wi.gov.

Sincerely,

THE WISCONSIN ELECTIONS COMMISSION

**STATE OF WISCONSIN
ELECTIONS COMMISSION**

COMPLAINT FORM

Please provide the following information about yourself:

Name Patrick Gitzlaff
Address 562 Clay Street, Wrightstown, WI 54180
Telephone Number 920-412-0190
E-mail p.gitzlaff@gmail.com

**State of Wisconsin
Before the Elections Commission**

The Complaint of The village of Wrightstown election committee has a member as a candidate for a village trustee on the ballot for 4-2-2024 spring election, Complainant(s) against Village of Wrightstown / Julie Sigmund, Respondent, whose address is 352 High Street, Wrightstown, WI 54130.

This complaint is under WI. statue 7.30 (2) (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, Patrick Gitzlaff, allege that:

The village of Wrightstown has an elector (Julie Sigmund) on the ballot that is an election official.

Julie Sigmund was approved as an election official at the village board meeting 12-19-2023 per the meeting minutes. This is outlined in the Wisconsin state statue 7.30 (2) Qualifications and procedure

"may not be a candidate for any office to be voted for at an election at which they serve"

Diane Laabs is the Chief Inspector, Ruth Aerts is the backup Chief inspector. Shelia Bowers is the

clerk/treasurer for the Village of Wrightstown.

Patti Lietermann is the deputy clerk/treasurer

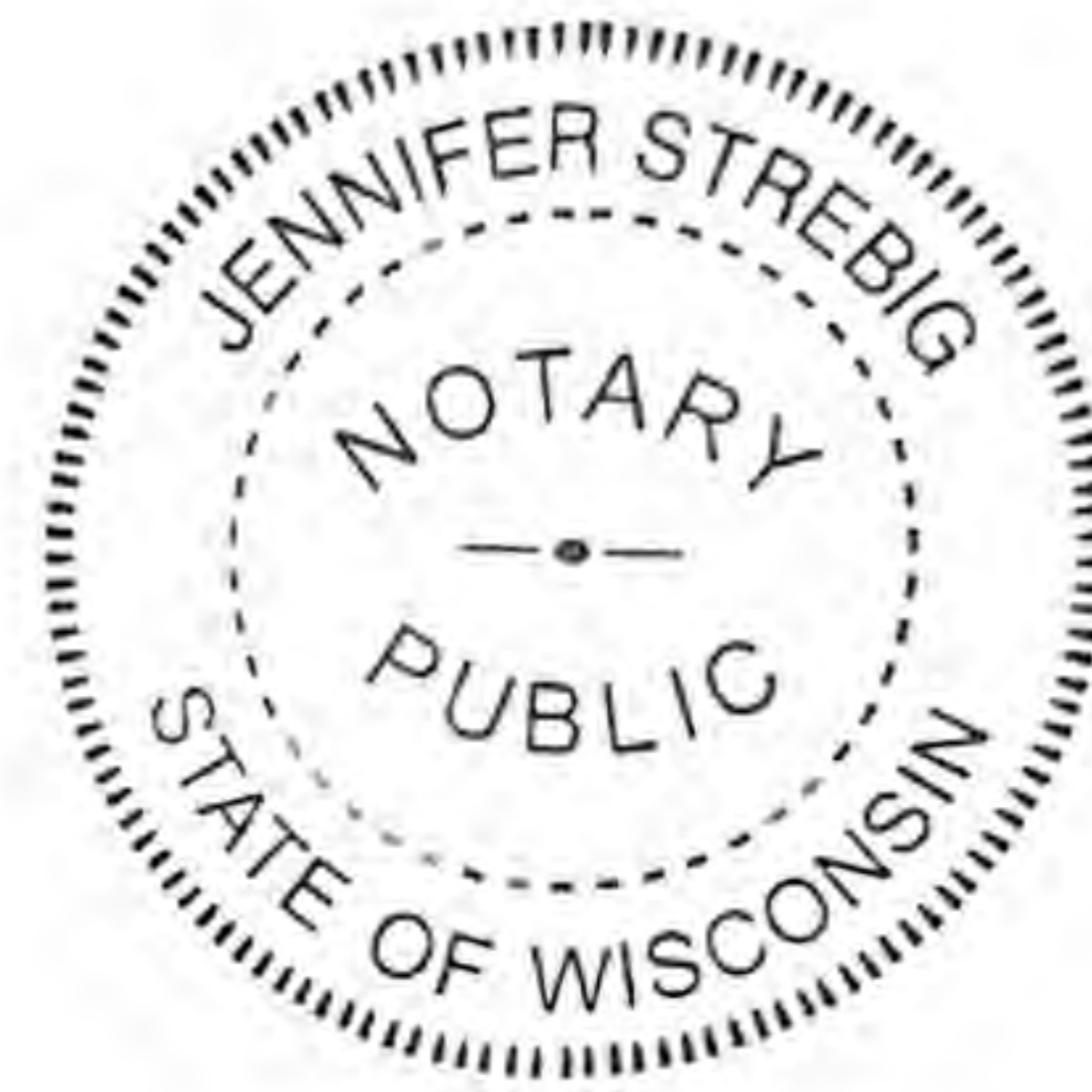
(Set forth in detail the facts that establish probable cause to believe that a violation has occurred. Be as specific as possible as it relates to dates, times, and individuals involved. Also provide the names of individuals who may have information related to the complaint. Use as many separate pages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

Date: 4-2-24 [Signature]
Complainant's Signature

I, Patrick Kitzel, 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.

[Signature]
Complainant's Signature

STATE OF WISCONSIN
County of Calumet
(county of notarization)



Sworn to before me this 2 day of April, 2024.

[Signature]
(Signature of person authorized to administer oaths)

My commission expires 11/19/2024, 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

VILLAGE OF WRIGHTSTOWN
BOARD MEETING MINUTES

The regular bi-monthly meeting of the Village Board of Trustees, of the Village of Wrightstown, was held in the Community Room at Wrightstown Village Hall, 352 High St., Wrightstown, WI, 54180, on **Tuesday, December 19, 2023**, and convened at 6:14 pm at the conclusion of the Committee of the Whole meeting.

Roll Call: Present – Village President Dean J Erickson, Trustees: Sue Byers, Mark Leonard, Andy Lundt, Terry Schaeuble, Dan Segerstrom and Julie Sigmund (virtual).

Also present: Brian Roebke (Wrightstown Area Spirit), Administrator Travis Coenen, Public Works Director Andy Vickman, Police Chief Greg Deike, and Clerk-Treasurer Shelia Bowers. Residents: Tony Decker, Jason Gerend (virtual).

REGULAR SESSION

OPEN MEETING – Motion made by A Lundt with a second made by M Leonard to open the Tuesday, December 19, 2023 Village Board Meeting. **Motion carried.**

MINUTES – Motion made by A Lundt with a second made by D Segerstrom to approve the Tuesday, December 5, 2023 Village Board Meeting Minutes, as submitted. **Motion carried.**

VOUCHERS – Motion made by S Byers with a second made by T Schaeuble to approve the vouchers from December 1, 2023 through December 13, 2023 totaling \$67,262.93. **Motion carried.**

SCHEDULED APPEARANCES: None

WALK INS:

Tony Decker, Resident at 38 Golden Wheat Lane, thanked the members of the Police, Public Works, and Fire Departments for their services. He wished everyone a Merry Christmas and a happy and safe New Year.

CORRESPONDENCE:

- Christmas card received from Immel Construction.
- Christmas card received from Wisconsin Economic Development.

ADMINISTRATOR’S REPORT:

- Alliance rail construction project complete.
- Plum Creek Restoration Project is moving forward with some construction this year in the ravine next to Village Hall.
- Working on development in the River District and TIDs.
- RSP and development moving along in phases 3, 4, and 5.
- Working with DOR to finalize interest free loan agreement.
- The Christmas party was December 19th and a great event.
- Working to finalize annual reviews that are late because of budget.

COMMITTEE REPORTS:

FINANCE/PERSONNEL

Fahrner Asphalt Sealers LLC – Motion made by S Byers with a second made by T Schaeuble to approve Fahrner Asphalt Sealers LLC, Invoice #8300017780 in the amount of \$15,645.00 for 2023 Crack Filling. Call of roll: 7 yes votes. **Motion carried.**

Ameritrack Rail – Motion made by S Byers with a second made by T Schaeuble to approve the Ameritrack Rail Invoice# 14526 in the amount of \$519,498.39 for TID No. 3 Alliance Rail Project. Call of roll: 7 yes votes. **Motion carried.**

2024 Tax Increment District #3 Budget – Motion made by S Byers with a second made by T Schaeuble to approve the 2024 Tax Increment District #3 Budget. Call of roll: 7 yes votes. **Motion carried.**

2024 Tax Increment District #4 Budget – Motion made by S Byers with a second made by T Schaeuble to approve the 2024 Tax Increment District #4 Budget. Call of roll: 7 yes votes. **Motion carried.**

2024 Tax Increment District #5 Budget – Motion made by S Byers with a second made by T Schaeuble to approve the 2024 Tax Increment District #5 Budget. Call of roll: 7 yes votes. **Motion carried.**

Appointment of Election Officials – Motion made by T Schaeuble with a second made by A Lundt on the Appointment of Election Officials for the 2024 – 2025 Election Cycle:

Lena Abrahamson, Ruth Aerts, Karen Bowers, Shelia Bowers, Karen Demerath, Richard Dubois, Les Green, Lois Gremore, Marna Johns, Carol Just, Diane Laabs, Patti Leitermann, Jack Lewis, Delores Meulemans, Heather Rezek, Richard Savela, Jane Ann Schetter, Julie Sigmund, Tina Tregembo, Joan Zahn, Ron Zahn, Lisa Zahorik. **Motion carried.**

Resignation of David G Geurts – Motion made by S Byers with a second made by A Lundt on accepting the resignation of David G Geurts from the Fire Department effective 01/01/2024. **Motion carried.**

PARKS, RECREATION AND REGIONAL PLANNING

2024 Calendars – Motion made by T Schaeuble with a second made by S Byers to approve the 2024 Clerk’s Calendar and 2024 Resident Calendar. **Motion carried.**

2024 Holiday Schedule – Motion made by T Schaeuble with a second made by D Segerstrom to approve the 2024 Holiday Schedule. **Motion Carried.**

PUBLIC SAFETY

Police Department – November Report submitted as Follows:

- This year the Police Lights of Christmas (POLC) Hand-off Event was held at the Lambeau Field House. This year POLC raised over \$187,000.00 to purchase gift cards to help those in our communities that are in need. We had a surprise guest at this year’s event. Quarterback Jordan Love #10 stopped in to show his appreciation to the Officers in attendance. Love’s father, Orbin, was a Sergeant with the Bakersfield Police Department, CA. Sadly, Orbin committed suicide in 2013 according to news reports. Love took time to shake hands and take photos with the Officers. Chief Deike and Officer DeWinter met Jordan personally and thanked him for his time. Love also gave the officers signed autograph pictures.
- Over the past year, Wrightstown Police Department has blessed many people, in and around our community, with the hundreds of dollars in gift cards given to us by the POLC. We would like to thank the POLC for their continued support of Law Enforcement and helping us be a positive light in our communities.
- Over the past weekend, training sessions were conducted at NWTC focusing on use of force

during vehicle contacts. The training aimed to prepare officers for critical and potentially life-altering situations involving potential weapon presentation.

Fire Department – November Report submitted as follows:

- For the month of November the FD responded to 3 calls.
- MABAS Aid with Lawrence for a structure Fire.
- CO Alarm at Apartments on County Road U.
- Semi on Fire, Mutual Aid with Greenleaf.
- November’s training was an in house Fire Fighter Challenge where various skills are tested and timed, both teams and individuals. Also truck preparations were made for the winter weather.
- The department was ready for the Christmas Parade in December and began planning training schedules for 2024.
- In 2024 due to changes in requirements many of the department members who do not meet either “Grandfather Claus” or have already taken the class will be required to attend and be certified as Driver Operators to be able to operate any of the trucks responding to calls.
- Lawrence Fire will be hosting classes that will start in February, running each Wednesday until late April.
- As of November, our current call count has exceeded 50
- Working for opportunities to provide better services as far as EMS goes.

PUBLIC WORKS

- The DPW Garage construction is progressing smoothly and remains under budget and on schedule for its completion.

CLOSED SESSION:

Motion made by A Lundt with a second made by D Segerstrom to proceed into **CLOSED SESSION**, pursuant to Wisconsin State Statute 19.85(1)(e) deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session – **Economic Development – Development Negotiations**

And Wisconsin State Statutes 19.85(1)(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility – **General Staff**. Call of roll: 7 yes votes. **Motion carried.**

OPEN SESSION:

Motion made by S Byers with a second made by T Schaeuble to move into **OPEN** session. Call of roll: 7 yes votes. **Motion carried**

ADJOURN:

Motion made by S Byers with a second made by T Schaeuble to adjourn the meeting at 8:15 pm. **Motion carried.**

Shelia Bowers, Clerk/Treasurer

Posted: 01/03/2024 SB



Office of Village Clerk -Treasurer
352 High Street
Wrightstown, WI 54180-1130
Phone - 920-532-5567 x10
Fax - 920-532-4564
sbowers@wrightstown.us

April 15, 2024

VIA E-MAIL: angela.sharpe@wisconsin.gov; elections@wi.gov
Wisconsin Elections Commission
c/o Angela Sharpe
PO Box 7984
Madison, WI 53707

Re: Complaint EL 24-32, Patrick Gitzlaff v. Julie Signund, et al

Dear Angela:

I reviewed your correspondence dated April 3, 2024 regarding the complaint of Patrick Gitzlaff regarding the April 2, 2024 election. This correspondence shall serve as the Village of Wrightstown's response to said complaint.

Julie Sigmund was approved as an election official at the December 19, 2023 board meeting. This appointment complies with Wis. Stats. Section 7.30 (2) that states "an individual holding a local public office, as defined in s. 19.42 (7w), may be appointed to serve as an election official under this section without having to vacate the local public office." However, Ms. Sigmund was scheduled off on the day of the election held on April 2, 2024 and did not serve at that election.

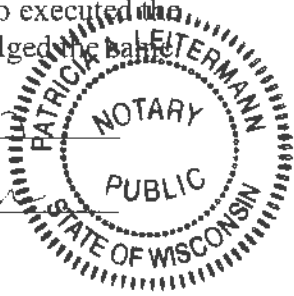
Sincerely,

Shelia Bowers
Shelia Bowers, Village Clerk/Treasurer, Village of Wrightstown

STATE OF WISCONSIN)
) ss
BROWN COUNTY)

Sworn to before me this 15th day of April, 2024,
the above-named Shelia Bowers
to me known to be the person(s) who executed the
foregoing instrument and acknowledged the same

Patricia A Leitermann
* Patricia A Leitermann



Notary Public, State of Wisconsin

My Commission expires: 11/20/26

From: [Patrick Gitzlaff](#)
To: [Sharpe, Angela B - ELECTIONS](#)
Subject: Re: Notice of Response Received - Gitzlaff v. Bowers (EL 24-32)
Date: Wednesday, May 1, 2024 7:09:23 AM
Attachments: [image001.png](#)

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Morning Angela,

This is my response:

The initial complaint was about an election official being on the ballot which is explicitly not allowed. The only option would have been for Ms Sigmund to resign as an election official for the entire spring election cycle or not be on the ballot. The fact that she was "scheduled off" on the day of the election shouldn't matter at all. The election isn't simply one day as there are absentee ballots also in play from weeks earlier.

Since the election started before election day, the only real solution to this is for Ms Sigmund's votes to be invalidated as she legally shouldn't have been on the ballot in the first place as an election official. Unless of course it can be 100% proven that Ms Sigmund wasn't anywhere near previously stated absentee ballots either leading up to election day or on election day itself.

Patrick Gitzlaff

On Mon, Apr 15, 2024 at 4:28 PM Sharpe, Angela B - ELECTIONS
<angela.sharpe@wisconsin.gov> wrote:

Good afternoon, Mr. Gitzlaff,


Today, the Wisconsin Elections Commission ("the Commission") received the verified response of Clerk Bowers in reference to the complaint you filed, Gitzlaff v. Bowers (EL 24-32). I have attached it to this email.

You will now have 13 business days to submit a reply, which would be a deadline of **May 2, 2024**.

Please let me know if you have questions.

Best,

Angela



Angela O'Brien Sharpe
Staff Attorney
Wisconsin Elections Commission

Phone 608-264-6764 **Fax** 608-267-0500

Email angela.sharpe@wisconsin.gov

Web www.elections.wi.gov

201 W Washington Ave, Madison, WI 53703

PLEASE NOTE: While government records are generally subject to disclosure pursuant to the public records law, this email, including any attachments, may contain confidential and/or privileged information exempt from public disclosure. If you are not the intended recipient or believe that you received this email in error, please notify the sender immediately.



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

November 1, 2024

Collective Complainants
c/o Attorney Matt Ferhnolz
1601 E Racine Ave., Suite 200
Waukesha, WI 53186

Celestine Jeffreys
Clerk for the City of Green Bay
100 N. Jefferson St., Room 106
Green Bay, WI 54301

Sent via email to: mmf@cmlawgroup.com; Celestine.Jeffreys@greenbaywi.gov;
Lindsay.Mather@greenbaywi.gov

Re: In the Matter of: **Glen Hogan et al v. Celestine Jeffreys– EL 24-35**

Dear Mr. Hogan, Ms. Lensing, Mr. VanderLeest, and Clerk Jeffreys:

This letter is in response to the verified complaint submitted by Glen Hogan, Joanne Lensing, and David VanderLeest (“the Complainants”) to the Wisconsin Elections Commission (“Commission”), which was filed in reply to actions taken by Clerk Celestine Jeffreys of the City of Green Bay concerning alleged violations of Wis. Stats. §§ 6.55, 6.56, and similar provisions of Chapter 6, concerning procedures for conducting the post-election audit of all electors who registered to vote using election day registration (“EDR”) processes. The complaint alleges that Clerk Jeffreys has not been complying with the procedures found in Wis. Stat. § 6.56(3) for auditing electors who registered to vote at their polling place on election day for the August 2020, November 2020, February 2021, April 2021, April 2022, August 2022, November 2022, February 2023, and April 2023 elections.

The Commission has reviewed the complaint and the response from Clerk Jeffreys. The Commission has also reviewed the Complainants’ reply to Clerk Jeffreys’s response.

The Commission provides the following analysis and decision. In short, and as detailed further in the analysis below, the Commission finds that the Complaint did show probable cause to believe that a violation of law or abuse of discretion occurred with relation to Clerk Jeffreys’s procedural actions. Clerk Jeffreys admits in her response that she has not been following the statutory requirements in Wis. Stat. § 6.56(3), as alleged, during the identified elections. Clerk Jeffreys is ordered to conform her conduct to the law and is further ordered to certify to the Commission that she has completed her EDR report in accordance with Wis. Stats. §§ 6.275(1)(f) and 6.56(3) and the Commission guidelines at the earliest time practicable after the November 5, 2024 election, but no later than **Monday, February 3, 2025**.

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

Under Wis. Stats. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the inherent, general, and specific authority to consider the submissions of the parties to a complaint and to issue findings. In instances where no

Commissioners

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

Administrator
Meagan Wolfe

material facts appear to be in dispute, the Commission may summarily issue a decision and provide that decision to the affected parties. This letter serves as the Commission’s final decision regarding the issues raised in this complaint.

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

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

Complaint Allegations

The Complainants allege that, for the August 2020, November 2020, February 2021, April 2021, April 2022, August 2022, November 2022, February 2023, and April 2023 elections, Clerk Jeffreys failed to comply with the procedures for conducting post-election audit of all electors who registered to vote using the EDR process established under procedure in Wis. Stats. §§ 6.56(3).

The Complainants allege that, under Wis. Stat. § 6.56(3), the Wisconsin Elections Commission mails 1st class postcards to the address provided by all electors who register on election day. They allege that for any postcards which are returned undelivered, the Wisconsin Elections Commission then returns the undelivered postcard to the clerk’s office in the jurisdiction where the elector is registered to vote. They allege Wis. Stat. § 6.56(3) contains mandatory language (“shall”) obligating the clerk to perform three actions. First, the clerk shall “change the status of the elector from eligible to ineligible on the registration list. Second, the clerk shall “mail the elector a notice of the change in status. Third, the clerk shall “provide the name of the elector to the district attorney for the county where the polling place is located and the election commission.”

The Complainants further allege that the February 9, 2023 Wisconsin Elections Commission guidance on Election Day Registration Postcard Instructions (“EDR guidance”) confirms that the Wis. Stat. § 6.56(3) requirements are mandatory and are to be performed by municipal clerks.

The Complainants allege that the EDR guidance instructs clerks to “[r]eview the address on the undeliverable audit postcards for any missing information or other obvious error of an election official or the post office.” They allege that the guidance incorporates the standard found in Wis. Stat. § 6.325, which requires a “beyond a reasonable doubt” standard to be met that “the person does not qualify as an elector or is not properly registered” before the person can be disqualified as an elector. They allege that if the address review reveals no errors, the EDR guidance recommends that clerks “investigate if the elector deliberately gave an invalid address, or if some other circumstances apply, such as the elector moving between Election Day and when the postcard was delivered, the elector being homeless, the elector making a minor error when filling out the registration, or another circumstance leading to a legitimate address being undeliverable.”

The Complainants allege that if the investigation provides “reason to believe that an elector moved between Election Day and when the postcard was delivered,” the EDR Guidance instructs clerks to “mail the voter a 30-day notice letter under Wis. Stat. § 6.50(3) to confirm the registration or update the registration if the elector moved within the municipality.” They allege that if the investigation causes “belie[f] beyond a reasonable doubt that the individual does not qualify as an elector or is not properly registered, the postcard and any other

materials related to the clerk’s investigation should be forwarded to the District Attorney” and the record’s inactivation should be recorded in WisVote.

The Complainants allege that Wis. Stat. § 6.275(1)(f) requires municipal clerks to submit to the Wisconsin Elections Commission a report of actions taken pursuant to Wis. Stat. § 6.56(3) no later than 90 days after each election. They allege that Wis. Stat. § 6.275(2) requires the Wisconsin Elections Commission to publish and update the EDR postcard data received from municipal clerks under Wis. Stat. § 6.275(1)(f).

The Complainants allege that Clerk Jeffreys has not been performing these mandatory duties as required by Wis. Stat. § 6.56(3) and instructed by the EDR guidance. Referencing several Wis. Stat. § 6.275(2) reports published on the Wisconsin Elections Commission website, the Complainants allege that between the August 2020 election and April 2023 election, Clerk Jeffreys has received over 200 postcards returned “undeliverable,” but has inactivated only two registrants and referred only one registrant to the district attorney. They allege that in seven of the nine identified elections where Clerk Jeffreys received at least one postcard returned “undeliverable,” that Clerk Jeffreys inactivated zero registrants and referred zero registrants to the district attorney.

They allege that Clerk Jeffrey’s current procedure, when receiving postcards returned “undeliverable,” is to record the postcards as undeliverable in WisVote and take no further action. They allege that Clerk Jeffreys’s practices do not comply with Wis. Stat. § 6.56(3)’s three mandatory requirements to change the status of the elector from eligible to ineligible on the registration list, mail the elector a notice of the change in status, and provide the name of the elector to the district attorney for the county where the polling place is located and the elections commission. They further allege that Clerk Jeffreys does not perform the address review, investigation, address confirmation, or district attorney referral as instructed by the EDR guidance.

The Complainant requested as relief that Clerk Jeffreys be directed to conform her conduct to the law as described in Wis. Stat. § 6.56(3) and the EDR guidance, an award of all costs and fees incurred in bringing the matter, and such equitable or other relief as is just and appropriate.

The Response

Clerk Jeffreys admits that she has not been strictly adhering to the statutory requirements in Wis. Stat. § 6.56 during the elections alleged. She claims that her failure to do so was inadvertent and due to a lack of awareness of the statutory requirements, and not the result of any willful violation of state law. Clerk Jeffreys claims that her practice, upon receiving undeliverable EDR postcards, has been to review them for typographical or other errors that may have prevented their delivery to the voter, and engaging in other investigations of the errors where appropriate, such as registration using on-campus addresses at the University of Wisconsin-Green Bay, where there may be differences between a voter’s physical address and their mailing address.

Clerk Jeffreys admits that she has not been conducting thorough investigations into all voters with undeliverable EDR postcards according to the procedure recommended in the EDR guidance. She claims that to address this problem in the future, she has begun formulating a plan for addressing postcards returned “undeliverable” going forward that aligns with both the statutory requirements and guidance from the Wisconsin Elections Commission.

The Respondent describes the new process that she will follow in compliance with Wis. Stat. § 6.56(3) and the EDR guidance as follows:

First, Clerk Jeffreys will review the postcard for administrative errors in the voter’s address (such as typographical errors, differences from what is on the registration form, etc.), and if such errors are found she will email the WEC to have new postcards sent and update WisVote accordingly. If an error is not found in the first step, Clerk Jeffreys will investigate the situation to the extent possible to determine the reason for the undeliverability of the EDR postcard in a manner consistent with the latest WEC guidance. The reason for the undeliverability will govern the next step(s). For example, if Clerk Jeffreys can verify that the voter moved after Election Day, that voter’s status would be changed and the voter would be informed of the change, but their name would not be forwarded to the District Attorney and the WEC. However, if Clerk Jeffreys believes beyond a reasonable doubt that the voter deliberately used an invalid address, that voter would be referred to the District Attorney and the WEC in addition to being informed of their status change. Clerk Jeffreys will make the appropriate changes in WisVote depending on the result of these investigations.

The Respondent did not oppose Complainants’ first request for relief, that Clerk Jeffreys be directed to conform her conduct to statute and EDR guidance.

Reply

In their reply, the Complainants acknowledged the Respondent’s statement that she “does not oppose Complainants’ first request for relief.” The Complainants requested that the Wisconsin Elections Commission issue an order finding that Clerk Jeffreys has violated Wis. Stat. § 6.56(3) and the Wisconsin Elections Commission Guidance and ordering Clerk Jeffreys to conformer her conduct to the law. The Complainants waived any entitlements they may have to recover costs and fees incurred in bringing this matter in their second request for relief.

Discussion

Given Clerk Jeffreys’ admissions, it appears as if the parties agree that she failed to follow the procedures established in Wis. Stat. § 6.56(3) and the EDR guidance for auditing electors who registered to vote at their polling place on election day on nine separate occasions.

As a preliminary matter, the Complainant does correctly cite that Wis. Stat. § 6.56(3) contains the statutory procedure for clerks to follow when they receive undeliverable EDR postcards. The statute directs clerks, in part, to “...change the status of the elector from eligible to ineligible on the registration list, mail the elector a notice of the change in status, and provide the name of the elector to the district attorney for the county where the polling place is located and the elections commission.”

However, on February 2, 2023, the Commission provided updated EDR postcard guidance¹ to clerks to ensure that voters were not being inactivated or referred for prosecution due to errors or other reasonable explanations as to why the EDR postcard was returned as undeliverable. To be fully compliant with § 6.56(3), when a clerk receives an undeliverable EDR postcard they should:

1. First check for data entry or post office errors before even considering the post card undeliverable.
2. If the address on the undeliverable postcard is complete and correct and matches what the voter put on their registration form, investigate the circumstances to determine beyond a reasonable doubt that the individual does not qualify as an elector or is not properly registered.
3. If there is belief beyond a reasonable doubt that the individual does not qualify or is not properly registered, the clerk should refer such cases to the District Attorney.

¹ Available at: <https://elections.wi.gov/memo/updated-election-day-registration-edr-postcard-guidance>.

4. If there is not believe beyond a reasonable doubt that the voter committed any kind of election fraud but the clerk has reason to believe that the elector has moved between Election Day and when the postcard was delivered, mail the voter a 30-day notice letter under Wis. Stat. § 6.50(3).
5. If the voter fails to respond to the 30-day notice letter, the clerk should inactivate the voter record.

Based on Clerk Jeffrey’s response, it appears that while she may consistently complete step (1) above, she has not been completing steps (2) – (5), and has instead been reporting that she has zero inactivations and zero referrals to the Green Bay District Attorney.

The only remaining discussions will focus on the remedies to ensure future compliance.

Municipal clerks are required to submit to the Wisconsin Elections Commission a report of actions taken pursuant to Wis. Stat. § 6.56(3) no later than 90 days after each election. Wis. Stat. § 6.275(1)(f). They are also required to accurately report this data based on completing the recommended process steps laid out by the Commission in the updated EDR postcard guidance from February 2023. Clerk Jeffreys is accordingly ordered to conform her conduct to Wis. Stats. § 6.56(3) and is further ordered to certify to the Commission that she has completed her EDR report in accordance with Wis. Stat. § 6.56(3) and the Wisconsin Elections Commission guidelines at the earliest time practicable after the November 5, 2024 election, but no later than **Monday, February 3, 2025** to ensure her compliance with the deadlines in that statute.

Commission’s Findings

Pursuant to the analysis above, the Commission hereby issues this order restraining Clerk Jeffreys from taking any action inconsistent with the analysis in this decision. Wis. Stat. § 5.06(6).

Clerk Jeffreys is ordered to take affirmative steps to comply with Wis. Stat. § 6.56(3) by utilizing the Commission’s updated EDR postcard guidance from February 2023. She is further ordered to certify to the Commission that she has completed her upcoming EDR report in accordance with Wis. Stat. § 6.56(3) and the Wisconsin Elections Commission guidelines at the earliest time practicable after the November 5, 2024 election, but no later than **Monday, February 3, 2025**, while also continuing to complete these responsibilities for future elections.

Right to Appeal – Circuit Court

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

If any of the parties should have questions about this letter or the Commission’s decision, please feel free to contact the Commission at 608-266-8005 or elections@wi.gov.

Sincerely,

WISCONSIN ELECTIONS COMMISSION

**STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION**

Glen Hogan
2740 Englewood Rd.
Green Bay, WI 54311,

Joanne Lensing
2140 King James Dr.
Green Bay, WI 54304,

and

David A. VanderLeest
146 Alpine Dr.
Green Bay, WI 54302

Complainants,

v.

Celestine Jeffreys,
Clerk for the City of Green Bay
100 N. Jefferson St.
Room 106
Green Bay, WI 54301

Respondent.

VERIFIED COMPLAINT

The Complainants alleges the following:

1. Complainants are registered Wisconsin voters, and each qualifies as an “elector” within the meaning of Chapters 5 and 6 of the Wisconsin Statutes. Complainants reside in the City of Green Bay, Wisconsin.

2. Respondent, Celestine Jeffreys, is the City Clerk for the City of Green Bay. Clerk Jeffreys is an “election official” within the meaning of Chapters 5 and 6 of the Wisconsin Statutes and is sued in that capacity. Clerk Jeffreys was appointed to the office by Mayor Eric Genrich in

January 2021. <https://www.greenbaypressgazette.com/story/news/2021/01/13/green-bay-mayor-eric-genrich-appoints-celestine-jeffreys-city-clerk/6641714002/>.

JURISDICTION

3. This Complaint is brought against Clerk Jeffreys under Wisconsin Statute § 5.06, which provides:

Whenever any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections is contrary to law, or the official has abused the discretion vested in him or her by law with respect to any such matter, the elector may file a written sworn complaint with the commission requesting that the official be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law. The complaint shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur. The complaint may be accompanied by relevant supporting documents. The commission may conduct a hearing on the matter in the manner prescribed for treatment of contested cases under ch. 227 if it believes such action to be appropriate.

COMPLAINT

4. Wisconsin allows residents to register and vote on Election Day at their polling place. *See* Wis. Stat. § 6.55(2)(a) (“Election Day Registration”).

5. Residents using Election Day Registration must provide documentary proof of residence, Wis. Stat. § 6.55(2)(b), and must affirm in writing that they have resided at their residence “for at least 28 consecutive days immediately preceding this election,” Wis. Stat. § 6.55(2)(a).

6. Wisconsin requires a post-election “audit” of all electors who registered to vote using Election Day Registration. Wis. Stat. § 6.56(3).

7. The audit’s requirements are provided in Wis. Stat. 6.56(3) and are the following:

The audit shall be made by 1st class postcard. The postcard shall be marked in accordance with postal regulations to ensure that it will be returned to the clerk, board of election commissioners, or elections commission if the elector does not reside at the address given on the postcard. If any postcard is returned undelivered, or if the clerk, board of election commissioners, or elections commission is informed of a different address than the one specified by the elector which was apparently improper on the day of the election, the clerk, board of election commissioners, or elections commission shall change the status of the elector from eligible to ineligible on the registration list, mail the elector a notice of the change in status, and provide the name of the elector to the district attorney for the county where the polling place is located and the elections commission.

Wis. Stat. § 6.56(3).

8. The “postcard” described in Wis. Stat. § 6.56(3) is mailed by the Wisconsin Election Commission (“WEC”).

9. If the “postcard” is undeliverable as addressed, it is returned to the clerk’s office in the jurisdiction where the elector registered to vote. *See, e.g.,* <https://elections.wi.gov/resources/newsletters/wec-newsletter-volume-iii-issue-viii> (last accessed April 5, 2024) (“As clerks enter their Election Day Registrations from the 2023 Spring Election, the WEC sends postcards to these voters informing them of their district information and their polling place. If the postal service is unable to deliver these postcards they are returned to the clerk’s mailing address that the WEC has on file for that jurisdiction.”).

10. The duty to “change the status of the elector from eligible to ineligible on the registration list, mail the elector a notice of the change in status, and provide the name of the elector to the district attorney for the county where the polling place is located and the elections

commission” is performed by the clerk of each jurisdiction. Wis. Stat. § 6.56(3). This duty is mandatory (“shall”). *See* Wis. Stat. § 6.56(3).

11. On February 9, 2023, WEC issued “updated guidance regarding the handling and processing of Election Day Registration postcards returned to a clerk’s office after an election.”

<https://elections.wi.gov/sites/default/files/documents/Updated%20EDR%20Postcard%20Guidance%20clerk%20memo.pdf> (clerk memo);

<https://elections.wi.gov/sites/default/files/documents/EDR%20Postcard%20Instructions%20Final%20Revision.pdf> (instructions) (together, “EDR Guidance”) (last accessed April 5, 2024).

12. The EDR Guidance confirmed that the Wis. Stat. § 6.56(3)’s requirements are mandatory and are performed by municipal clerks. *See* EDR Guidance ¶ 3 (“If an EDR audit postcard is returned as undeliverable, Wisconsin Statute § 6.56(3) requires municipal clerks to inactivate the voter record, mail the voter a notice of change of status, and notify the District Attorney and the Elections Commission.”).

13. The EDR Guidance further explained that Wis. Stat. 6.56(3) incorporates the standard found in Wis. Stat. § 6.325, which “requires a ‘beyond a reasonable doubt’ standard to be met that ‘the person does not qualify as an elector or is not properly registered’ before the person can be disqualified as an elector.” EDR Guidance ¶ 3 (quoting Wis. Stat. § 6.325).

14. The EDR Guidance provides ways for clerks to comply with Wis. Stat. 6.56(3)’s requirements.

15. First, the EDR Guidance instructs clerks to “[r]eview the address on the undeliverable audit postcard for any missing information or other obvious error of an election official or the post office.” EDR Guidance ¶ 1 (hereafter “Address Review”).

16. Second, if the Address Review reveals no errors, the EDR Guidance instructs clerks to “investigate if the elector deliberately gave an invalid address, or if some other circumstances apply, such as the elector moving between Election Day and when the postcard was delivered, the elector being homeless, the elector making a minor error when filling out the registration, or another circumstance leading to a legitimate address being undeliverable.” EDR Guidance ¶ 3 (“Investigation”).

17. If the Investigation provides “reason to believe that an elector moved between Election Day and when the postcard was delivered,” the EDR Guidance instructs clerks to “mail the voter a 30-day notice letter under Wis. Stat. § 6.50(3) to confirm the registration or update the registration if the elector moved within the municipality.” EDR Guidance ¶ 3 (“Address Confirmation”).

18. If the Investigation causes “belie[f] beyond a reasonable doubt that that the individual does not qualify as an elector or is not properly registered, the postcard and any other materials related to the clerk’s investigation should be forwarded to the District Attorney” and the record’s inactivation should be recorded in WisVote. EDR Guidance ¶ 3 (“DA Referral”).

19. Wis. Stat. § 6.275(1)(f) requires municipal clerks to submit to WEC a report of actions taken pursuant to Wis. Stat. § 6.56(3) no later than ninety (90) days after each election. *See also, e.g.,* <https://elections.wi.gov/event/deadline-clerks-submit-election-day-registration-postcard-data> (providing deadline for clerk’s to submit EDR postcard data for the 2023 Spring Primary) (last accessed April 5, 2024).

20. Wis. Stat. § 6.275(2) requires WEC to publish and update the EDR postcard data received from municipal clerks under Wis. Stat. § 6.275(1)(f) (hereafter, “WEC EDR Report”).

21. According to the most recent WEC EDR Report for the 2020 Partisan Primary Election (dated August 13, 2021), the City of Green Bay reported 153 Election Day Registrations. <https://elections.wi.gov/resources/statistics/2020-partisan-primary-election-voting-and-registrations-statistics-report> (last accessed April 5, 2024).
22. Of the postcards WEC mailed to those 153 electors pursuant to Wis. Stat. § 6.56(3), fourteen (14) were returned “undeliverable” to the City of Green Bay Clerk’s office. *See id.*
23. According to the WEC EDR Report, the City of Green Bay Clerk’s office inactivated zero registrants and referred zero registrants to the district attorney. *See id.*
24. According to the most recent WEC EDR Report for the 2020 General Election (dated January 24, 2022), the City of Green Bay reported 3,497 Election Day Registrations. <https://elections.wi.gov/resources/statistics/2020-general-election-voting-and-registration-statistics-report-formerly-el> (last accessed April 5, 2024).
25. Of the postcards WEC mailed to those 3,497 electors pursuant to Wis. Stat. § 6.56(3), one-hundred and seventy (170) were returned “undeliverable” to the City of Green Bay Clerk’s office. *See id.*
26. According to the WEC EDR Report, the City of Green Bay Clerk’s office inactivated zero registrants and referred zero registrants to the district attorney. *See id.*
27. According to the most recent WEC EDR Report for the 2021 Spring Primary (dated February 24, 2022), the City of Green Bay reported 22 Election Day Registrations. <https://elections.wi.gov/resources/statistics/2021-spring-primary-voting-and-registration-statistics-report-formerly-el> (last accessed April 5, 2024).
28. Of the postcards WEC mailed to those 22 electors pursuant to Wis. Stat. § 6.56(3), one (1) was returned “undeliverable” to Clerk Jeffreys’ office. *See id.*

29. According to the WEC EDR Report, Clerk Jeffreys inactivated zero registrants and referred zero registrants to the district attorney. *See id.*

30. According to the most recent WEC EDR Report for the 2021 Spring Election (dated February 24, 2022), the City of Green Bay reported 89 Election Day Registrations. <https://elections.wi.gov/resources/statistics/2021-spring-election-voting-and-registration-statistics-report-formerly-el> (last accessed April 5, 2024).

31. Of the postcards WEC mailed to those 89 electors pursuant to Wis. Stat. § 6.56(3), one (1) was returned “undeliverable” to Clerk Jeffreys’ office. *See id.*

32. According to the WEC EDR Report, Clerk Jeffreys inactivated zero registrants and referred zero registrants to the district attorney. *See id.*

33. According to the most recent WEC EDR Report for the 2022 Spring Election (dated March 27, 2023), the City of Green Bay reported 329 Election Day Registrations. <https://elections.wi.gov/resources/statistics/2022-spring-election-voting-and-registration-statistics-report-0> (last accessed April 5, 2024).

34. Of the postcards WEC mailed to those 329 electors pursuant to Wis. Stat. § 6.56(3), five (5) were returned “undeliverable” to Clerk Jeffreys’ office. *See id.*

35. According to the WEC EDR Report, Clerk Jeffreys inactivated two (2) registrants and referred zero registrants to the district attorney. *See id.*

36. According to the most recent WEC EDR Report for the 2022 Partisan Primary (dated August 2, 2023), the City of Green Bay reported 477 Election Day Registrations. <https://elections.wi.gov/resources/statistics/2022-partisan-primary-voting-and-registration-statistics-report> (last accessed April 5, 2024).

37. Of the postcards WEC mailed to those 477 electors pursuant to Wis. Stat. § 6.56(3), five (5) were returned “undeliverable” to Clerk Jeffreys’ office. *See id.*

38. According to the WEC EDR Report, Clerk Jeffreys inactivated zero registrants and referred zero registrants to the district attorney. *See id.*

39. According to the most recent WEC EDR Report for the 2022 General Election (dated January 2, 2024), the City of Green Bay reported 3,433 Election Day Registrations. <https://elections.wi.gov/resources/statistics/2022-general-election-voting-and-registration-statistics-report> (last accessed April 5, 2024).

40. Of the postcards WEC mailed to those 3,433 electors pursuant to Wis. Stat. § 6.56(3), forty-nine (49) were returned “undeliverable” to Clerk Jeffreys’ office. *See id.*

41. According to records produced by Clerk Jeffreys, the number of undeliverable EDR postcards is seventy-six (76). *See* Affidavit of Logan Churchwell ¶¶ 25-27.

42. According to the WEC EDR Report, Clerk Jeffreys inactivated zero registrants and referred zero registrants to the district attorney. *See id.*

43. According to the most recent WEC EDR Report for the 2023 Spring Primary Election (dated April 1, 2024), the City of Green Bay reported 146 Election Day Registrations. <https://elections.wi.gov/resources/statistics/2023-spring-primary-election-voting-and-registration-statistics-report> (last accessed April 5, 2024).

44. Of the postcards WEC mailed to those 146 electors pursuant to Wis. Stat. § 6.56(3), one (1) was returned “undeliverable” to Clerk Jeffreys’ office. *See id.*

45. According to the WEC EDR Report, Clerk Jeffreys inactivated zero registrants and referred zero registrants to the district attorney. *See id.*

46. According to the most recent WEC EDR Report for the 2023 Spring Election (dated April 1, 2024), the City of Green Bay reported 672 Election Day Registrations. <https://elections.wi.gov/resources/statistics/2023-spring-election-voting-and-registration-statistics-report> (last accessed April 5, 2024).

47. Of the postcards WEC mailed to those 672 electors pursuant to Wis. Stat. § 6.56(3), twenty-four (24) were returned “undeliverable” to Clerk Jeffreys’ office. *See id.*

48. According to records produced by Clerk Jeffreys, the number of undeliverable EDR postcards is five (5). *See* Affidavit of Logan Churchwell ¶¶ 25-26, 28, Exhibit 5.

49. According to the WEC EDR Report, Clerk Jeffreys inactivated zero registrants and referred one registrant to the district attorney. *See id.*

50. When Clerk Jeffreys receives undeliverable Election Day Registration postcards, her current procedure is to record the postcards as undeliverable in WisVote and take no further action. *See also* Affidavit of Logan Churchwell ¶ 21-23.

51. When Clerk Jeffreys receives undeliverable Election Day Registration postcards, she currently does not comply with Wis. Stat. § 6.56(3)’s mandatory requirement to “change the status of the elector from eligible to ineligible on the registration list, mail the elector a notice of the change in status, and provide the name of the elector to the district attorney for the county where the polling place is located and the elections commission.” *See also* Affidavit of Logan Churchwell ¶ 21-23.

52. When Clerk Jeffreys receives undeliverable Election Day Registration postcards, Clerk Jeffreys currently does not perform Address Review, Investigation, Address Confirmation, or DA Referral, as instructed by WEC’s EDR Guidance, or take any other similar action. *See also* Affidavit of Logan Churchwell ¶ 21-23.

53. Clerk Jeffreys is thus currently failing to act in accordance with Wisconsin law.

PRAYER FOR RELIEF

WHEREFORE, the Complainants requests the following relief:

- A. That Clerk Jeffreys be directed to conform her conduct to the law as described in Wis. Stat. § 6.56(3) and the EDR Guidance.
- B. An award of all costs and fees incurred in bringing this matter.
- C. Such equitable or other relief as is just and appropriate.

For the Complainants:

Dated this 8th day of April, 2024.

CRAMER MULTHAUF LLP
Attorneys for Complainants,

BY: Electronically signed by Matthew M. Fernholz
MATTHEW M. FERNHOLZ
(State Bar No. 1065765)

CRAMER MULTHAUF LLP
1601 East Racine Avenue • Suite 200
P.O. Box 558
Waukesha, WI 53187-0558
(262) 542-4278
mmf@cmlawgroup.com

PUBLIC INTEREST LEGAL FOUNDATION, INC.
Attorneys for Complainants,

BY: Electronically signed by Noel H. Johnson
NOEL H. JOHNSON
(State Bar No. 1068004)

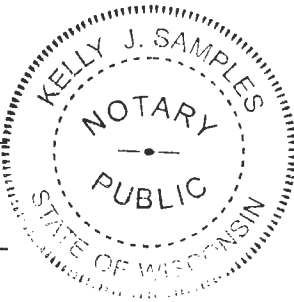
Public Interest Legal Foundation, Inc.
107 S. West Street, Suite 700
Alexandria, VA 22314
Tel. (703) 745-5870
njohnson@PublicInterestLegal.org

The Complainant, GLEN HOGAN, being first duly sworn, states that he has personally read the above complaint, and that the above allegations are based on information and belief and the complainant believes them to be true to the best of his knowledge.

Glen J Hogan
Complainant

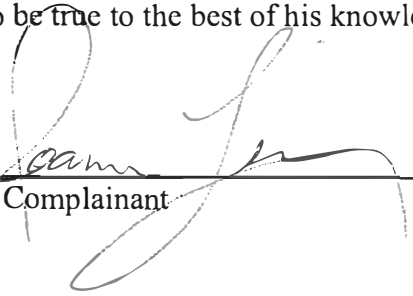
Subscribed and sworn to before me
this 15th day of March, 2024.

Kelly J Samples
Notary Public, State of Wisconsin
My commission expires 12/12/2026



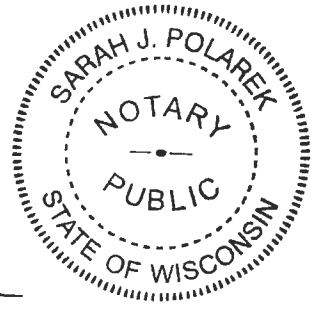
State of Wisconsin
County of Brown
My Commission Expires
12/12/2026

The Complainant, Joanne Lensing, being first duly sworn, states that he has personally read the above complaint, and that the above allegations are based on information and belief and the complainant believes them to be true to the best of his knowledge.


Complainant

Subscribed and sworn to before me
this 18th day of March, 2024.


Notary Public, State of Wisconsin



My commission expires 09/16/2027

The Complainant, David A. VanderLeest, being first duly sworn, states that he has personally read the above complaint, and that the above allegations are based on information and belief and the complainant believes them to be true to the best of his knowledge.

David VanderLeest
Complainant

Subscribed and sworn to before me

this 15 day of March, 2024.

MEENAKSHI AGARWAL
NOTARY PUBLIC
STATE OF WISCONSIN

Meenakshi Agarwal
Notary Public, State of Wisconsin

My commission expires 03-17-2025

request on EDRs

Celestine Jeffreys <Celestine.Jeffreys@greenbaywi.gov>

Fri 11/3/2023 1:46 PM

To: Logan Churchwell <LChurchwell@publicInterestLegal.org>;

Mr. Churchwell,

I've forwarded your request to our Law Department. They will be in touch.

Celestine Jeffreys

Clerk, City of Green Bay

920.448.3010

greenbaywi.gov/clerk

Statewide election dates

February 20, 2024: Spring primary

April 2, 2024: Spring general election and Presidential preference primary

August 13, 2024: Fall primary

November 5, 2024: Fall general election

EXHIBIT 1

Re: Response from Green Bay

Celestine Jeffreys <Celestine.Jeffreys@greenbaywi.gov>

Thu 11/9/2023 2:09 PM

Inbox Rescue

To: Logan Churchwell <LChurchwell@publicInterestLegal.org>;

Mr. Churchwell,

I can no longer view those elections in the state database, where that information is housed.

Celestine Jeffreys

Clerk, City of Green Bay

920.448.3010

greenbaywi.gov/clerk

Statewide election dates

February 20, 2024: Spring primary

April 2, 2024: Spring general election and Presidential preference primary

August 13, 2024: Fall primary

November 5, 2024: Fall general election

From: Logan Churchwell <LChurchwell@publicInterestLegal.org>

Sent: Thursday, November 9, 2023 9:29 AM

To: Celestine Jeffreys <Celestine.Jeffreys@greenbaywi.gov>

Subject: Re: Response from Green Bay

Alright, setting the WEC reports aside, can you confirm from your offices records that the following is correct?

For the 2022 General, your office handled 3,433 EDRs, of which 49 were returned undeliverable. Of those, 0 were set to inactive status and 0 were referred to the appropriate district attorney for further review.

For the 2020 General, your office handled 3,497 EDRs, of which 170 were returned undeliverable. Of those, 0 were set to inactive status and 0 were referred to the appropriate district attorney for further review.

Thank you for your help.

From: Celestine Jeffreys <Celestine.Jeffreys@greenbaywi.gov>

Sent: Tuesday, November 7, 2023 12:37 PM

To: Logan Churchwell

Subject: RE: Response from Green Bay

EXHIBIT 2

Mr. Churchwell,

We are still unable to verify information from another entity.

Thank you,

Celestine Jeffreys

Clerk, City of Green Bay

920.448.3010

greenbaywi.gov/clerk

Statewide election dates

February 20, 2024: Spring primary

April 2, 2024: Spring general election and Presidential preference primary

August 13, 2024: Fall primary

November 5, 2024: Fall general election

From: Logan Churchwell <LChurchwell@publicInterestLegal.org>

Sent: Tuesday, November 7, 2023 11:34 AM

To: Celestine Jeffreys <Celestine.Jeffreys@greenbaywi.gov>

Subject: Re: Response from Green Bay

Ms. Jeffreys: Thank you for your response. This ought to clear matters up. Published on the WEC website (linked below) are the reports I referenced.

<https://elections.wi.gov/resources/statistics/2022-general-election-voting-and-registration-statistics-report>

<https://elections.wi.gov/resources/statistics/2020-general-election-voting-and-registration-statistics-report-formerly-el>

From: Celestine Jeffreys <Celestine.Jeffreys@greenbaywi.gov>

Sent: Tuesday, November 7, 2023 12:16:53 PM

To: Logan Churchwell

Subject: Response from Green Bay

Dear Mr. Churchwell,

This email is our response to your request for "Election Day Registration Report Question."

Dear Clerk:

I'm writing to confirm the accuracy of recent Election Day Registration Postcard Reports published by WEC.

For the 2022 General, WEC shows that your office handled 3,433 EDRs, of which 49 were returned undeliverable. Of those, 0 were set to inactive status and 0 were referred to the appropriate district attorney for further review. These figures were taken from the "2022 General Election EDR Postcard Report 2023-10-02" edition of that election's postcard report.

For the 2020 General, WEC shows that your office handled 3,497 EDRs, of which 170 were returned undeliverable. Of those, 0 were set to inactive status and 0 were referred to the appropriate district attorney for further review. These figures were taken from the "2020_20General_20Election_20EDR_20Postcard_20Report_202022-01-24" edition of that election's postcard

report.

Can you confirm the accuracy of these figures published by WEC?

Logan Churchwell

Research Director

Public Interest Legal Foundation

lchurchwell@publicinterestlegal.org

107 S. West Street, Suite 700

Alexandria, VA 22314

This is a request for information, and we cannot provide confirmation regarding records you received from another entity.

If you have other questions, please reach out.

Celestine Jeffreys

Clerk, City of Green Bay

920.448.3010

greenbaywi.gov/clerk

Statewide election dates

February 20, 2024: Spring primary

April 2, 2024: Spring general election and Presidential preference primary

August 13, 2024: Fall primary

November 5, 2024: Fall general election



VIA EMAIL

November 29, 2023

ATTN: Elections
Celestine Jeffreys
Green Bay City Clerk
100 N Jefferson Street, Room 106
Green Bay, WI 54301
Email: Celestine.Jeffreys@greenbaywi.gov

EXHIBIT 3

RE: WisVote query, procedures request

Dear Ms. Jeffreys:

I write today seeking records related to your office's handling of election day registration in relation to Wis. Stat. § 6.56. The Public Interest Legal Foundation is a nonpartisan, nonprofit, public-interest law firm that studies voter list maintenance procedures throughout the nation. Pursuant to the Wisconsin Open Records Law, I request that your office provide the following:

1. A WisVote query report covering your jurisdiction which shows the total number of registered voters using EDR for the April 4, 2023, election whose confirmation postcards were returned undeliverable and therefore marked inactive and logged "Undeliverable Mailing" in WisVote (an example query screenshot is provided below); and finally,



2. A copy of any written procedure your office follows to comply with the requirements set forth under Wis. Stat. § 6.56.

Informational Interests

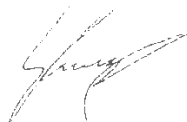
The Public Interest Legal Foundation is a non-profit organization that specializes, in part, in voting and election related research. The Foundation regularly utilizes state and federal open records laws that require government records be made available to the public. Using records and data compiled through these open records laws, the Foundation produces and disseminates reports, press releases, newspaper opinion articles, blog and social media posts, podcasts, and newsletters to advance the public education aspect of its organizational mission. This request is made in furtherance of the Foundation's newsgathering and educational purposes.

Accordingly, I would like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of matters touching on the right to vote and the government's responsiveness to inquiries regarding the same.

If there are any copying expenses, please let me know in advance. Otherwise, please send responsive records to: lchurchwell@publicinterestlegal.org.

Thank you for your attention to this matter.

Sincerely,



Logan Churchwell
Research Director
Public Interest Legal Foundation

RE: ORR 289-2023 Churchwell, Logan

Deanna Debruler <Deanna.Debruler@greenbaywi.gov>

Thu 12/14/2023 1:36 PM

Inbox Rescue

To: Logan Churchwell <LChurchwell@publicInterestLegal.org>;

EXHIBIT 4

Dear Mr. Churchwell,

The response covered both parts of the request. The Clerk's Office does not have a separate procedure other than what is in the WisVote manual.

Thank you,

[Deanna K. DeBruler](mailto:deanna.debruler@greenbaywi.gov)

Legal Assistant

City of Green Bay

Law Department

920.448.3122

deanna.debruler@greenbaywi.gov

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From: Logan Churchwell <LChurchwell@publicInterestLegal.org>**Sent:** Thursday, December 14, 2023 11:38 AM**To:** Deanna Debruler <Deanna.Debruler@greenbaywi.gov>**Subject:** Re: ORR 289-2023 Churchwell, Logan

Thank you, what is your response to Request 2 in the letter?

From: Deanna Debruler <Deanna.Debruler@greenbaywi.gov>**Sent:** Monday, December 11, 2023 4:56:53 PM**To:** Logan Churchwell**Subject:** ORR 289-2023 Churchwell, Logan

Dear Mr. Churchwell:

This email is in response to your open records request received November 29, 2023 (see attached). Pursuant to a review of our available records, there are no records responsive for your request. The records custodian for such records would be WisVote or BadgerVote.

Please note, open records law does not require for a record to be created to respond to a records request.

The determination not to release certain records is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to the Attorney General or District Attorney.

Thank you for your cooperation in this matter.

[Deanna K. DeBruler](#)

Legal Assistant

City of Green Bay

Law Department

920.448.3122

deanna.debruler@greenbaywi.gov

LEGAL DISCLAIMER: This message and all attachments may be confidential or protected by privilege. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of the information contained in or attached to this message is strictly prohibited. Please notify the sender of the delivery error by replying to this message, and then delete it from your system. Thank you.

From: Logan Churchwell <LChurchwell@publicInterestLegal.org>

Sent: Wednesday, November 29, 2023 2:11 PM

To: Celestine Jeffreys <Celestine.Jeffreys@greenbaywi.gov>

Subject: Records Request - PILF

Dear Disclosure Officer: Please review the attached request letter and advise on next steps. Thank you.

Logan Churchwell

Research Director

Public Interest Legal Foundation

lchurchwell@publicinterestlegal.org

107 S. West Street, Suite 700

Alexandria, VA 22314



ARR 50-2024

2/26/24
enj

February 26, 2024

Celestine Jeffreys
City of Green Bay Clerk
100 N Jefferson, Room 106
Green Bay, WI 54301

Dear Disclosure Officer:

I write today seeking clarification about data published by the Wisconsin Elections Commission ("WEC") referencing your jurisdiction.

For the 2022 General Election, WEC shows that your office handled 3,433 EDRs, of which 49 were returned undeliverable. Of those, 0 were set to inactive status and 0 were referred to the appropriate district attorney for further review. These figures were taken from the January 2024 edition of that election's postcard report.

For the 2023 Spring General Election, WEC shows that your office handled 672 EDRs, of which 24 were returned undeliverable. Of those, 0 were set to inactive status and 0 were referred to the appropriate district attorney for further review. These figures were taken from the January 2024 edition of that election's postcard report. Therefore, please provide:

1. Documents confirming or denying the accuracy of these figures published by WEC; and,
2. A copy of any written procedure your office follows to comply with the requirements set forth under Wis. Stat. § 6.56.

If there are any copying expenses, please let me know in advance. Otherwise, please send responsive records to: lchurchwell@publicinterestlegal.org.

Thank you for your attention to this matter.

Sincerely,

Logan Churchwell
Research Director
Public Interest Legal Foundation

EXHIBIT 5

**STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION**

Glen Hogan
2740 Englewood Rd.
Green Bay, WI 54311,

Joanne Lensing
2140 King James Dr.
Green Bay, WI 54304,

and

David A. VanderLeest
146 Alpine Dr.
Green Bay, WI 54302

Complainants,

v.

Celestine Jeffreys,
Clerk for the City of Green Bay
100 N. Jefferson St.
Room 106
Green Bay, WI 54301

Respondent.

AFFIDAVIT OF LOGAN CHURCHWELL

I, Logan Churchwell, state the following based on personal knowledge:

1. I am over the age of 18 and reside in Edmond, Oklahoma.
2. I have personal knowledge of the matters in this affidavit and if called upon to testify, I can testify as to these statements.
3. I am the Research Director for Public Interest Legal Foundation, Inc.
4. As part of my job duties, I review and analyze publicly available data concerning voter registration, voting, and voter list maintenance.

5. I have reviewed various Wisconsin Election Commission (“WEC”) reports concerning Election Day registration and undeliverable Election Day registration postcards.

6. During my reviews in late 2023, I worked to confirm the accuracy of the published WEC reports by first communicating via phone with appropriate WEC staff in October 2023. During that time, WEC instructed me to perform any desired due diligence by speaking with local clerks, given that WEC only published figures provided to the office by the local clerks.

7. The City of Green Bay was one jurisdiction in which I intended to seek clarification on the accuracy of the WEC data.

8. On November 3, 2023, I wrote to City of Green Bay Clerk Celestine Jeffreys to “confirm the accuracy of recent Election Day Registration Postcard Reports published by WEC.” Exhibit 2 at 2.

9. Specifically, I asked Clerk Jeffreys to confirm that for the 2022 General Election, her office “handled 3,433 EDRs, of which 49 were returned undeliverable” and that “[o]f those, 0 were set to inactive status and 0 were referred to the appropriate district attorney for further review.” These figures were taken from the “2022 General Election EDR Postcard Report 2023-10-02” published on WEC’s website. Exhibit 2 at 2.

10. Additionally, I asked Clerk Jeffreys to confirm that for the 2020 General Election, her office “handled 3,497 EDRs, of which 170 were returned undeliverable” and that “[o]f those, 0 were set to inactive status and 0 were referred to the appropriate district attorney for further review.” These figures were taken from the “2020_20General_20Election_20EDR_20Postcard_20Report_202022-01-24” published on WEC’s website. Exhibit 2 at 2.

11. I asked that Clerk Jeffreys to “confirm the accuracy of these figures published by WEC[.]” Exhibit 2 at 3.

12. On November 3, 2023, Clerk Jeffreys acknowledged the request and informed me that the Law Department would be in touch with me. Exhibit 1.

13. On November 7, 2023, Clerk Jeffreys responded to my request and informed me that her office could not “provide confirmation regarding records you received from another entity.” Exhibit 2 at 3.

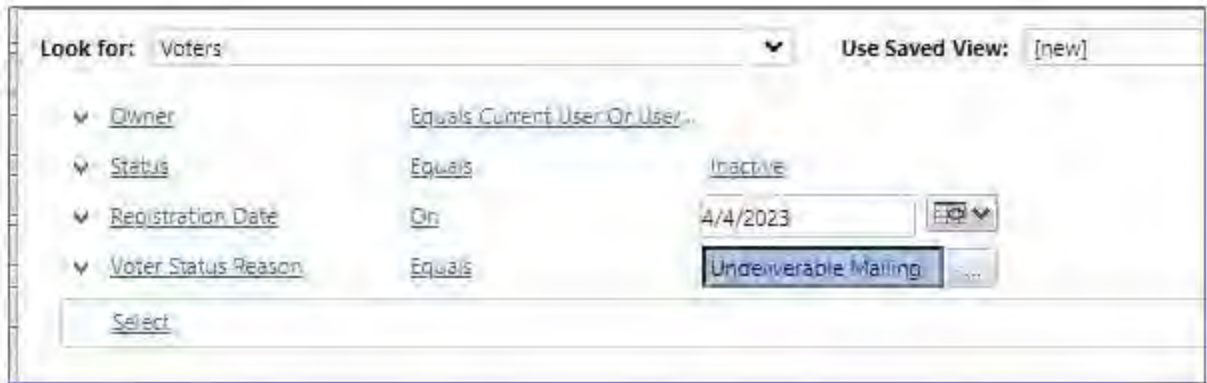
14. Later on November 7, 2023, I attempted to clarify the matter via email by sending the public hyperlinks to the specific WEC reports in question. Exhibit 2 at 2.

15. Later on November 7, 2023, Clerk Jeffreys responded, reasserting that she is “still unable to verify information from another entity.” Exhibit 2 at 2.

16. Later on November 7, 2023, I reframed the inquiry in the following way: “[S]etting the WEC reports aside, can you confirm from your office’s records that the following is correct?” and re-stated the figures described in paragraphs 9 and 10. Exhibit 2 at 1.

17. On November 9, 2023, Clerk Jeffreys claimed “I can no longer view those elections in the state database, where that information is housed.” Exhibit 2 at 1.

18. On November 29, 2023, I submitted a new request to Clerk Jeffreys, in part, seeking “a WisVote query report covering your jurisdiction which shows the total number of registered voters using EDR for the April 4, 2023, election whose confirmation postcards were returned undeliverable and therefore marked inactive and logged ‘Undeliverable Mailing’ in WisVote... .” The request letter included the following WisVote screenshot to provide a visual guide. Exhibit 3.



19. On December 11, 2023, the City of Green Bay’s Legal Department responded, stating that it had no responsive records and added that Wisconsin law “does not require for a record to be created to respond to a records request.” Exhibit 4 at 1-2.

20. On February 26, 2024, I visited Clerk Jeffreys’ office with the hope of finally answering my due diligence concerns via personal conversation. I was able to get clarity on why more recent WEC reports regarding EDR verification mailing reports showed zeroes for Inactivations in the City of Green Bay.

21. Clerk Jeffreys verbally explained her process for what happens when an EDR verification card initially mailed by WEC arrives undeliverable at her office: Jeffreys looks up the elector in question in WisVote and marks the undeliverable EDR mailing in the elector’s profile.

22. When I asked if she inactivates registrants after undeliverable postcards arrive at her office, Jeffreys claimed that it was not her responsibility to do so—explaining that it was WEC’s responsibility and “I should talk to WEC about it.”

23. I then explained what other Wisconsin jurisdictions explained to me about the steps they take to determine why a postcard failed delivery before they would decide to inactive an elector. Clerk Jeffreys was resolute: it was not her responsibility to investigate or inactivate – only record the undeliverable mailing in WisVote.

24. I then asked how we could best determine the actual numbers of EDRs, undeliverable postcards, inactivations, and district attorney referrals for the 2022 General and 2023 Spring General Elections. Clerk Jeffreys said she did not have the records necessary to resolve those questions at the moment.

25. I then submitted to Clerk Jeffreys a written records request for the following records:

1. Documents confirming or denying the accuracy of these figures published by WEC; and,
2. A copy of any written procedure your office follows to comply with the requirements set forth under Wis. Stat. § 6.56.

Exhibit 5.

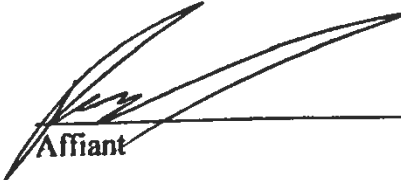
26. Thereafter, Clerk Jeffreys' office produced responsive records.

27. For the 2022 General Election, Clerk Jeffreys produced copies of 76 purportedly undeliverable EDR postcards.

28. For the 2023 Spring Election, Clerk Jeffreys produced copies of 5 purportedly undeliverable EDR postcards.

29. Clerk Jeffreys produced no additional records.

The affiant, LOGAN CHURCHWELL, being first duly sworn, states that he has personally read the above affidavit, and that the above allegations are based on information and belief and the affiant believes them to be true to the best of his knowledge.



Affiant

Subscribed and sworn to before me
this 3 day of April, 2024.

K. D. Donoghue

Notary Public, State of Oklahoma

My commission expires 10 | 4 | 2026



**STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION**

Glen Hogan,
Joanne Lensing, and
David A. VanderLeest,

Complainants,

v.

Celestine Jeffreys,
Clerk for the City of Green Bay,


Respondent.

AFFIDAVIT OF MAILING

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)


The undersigned, being first duly sworn on oath, deposes and says that on April 8, 2024, he sent via U.S. Mail, a true and correct copy of correspondence from Attorney Matthew M. Fernholz to the Wisconsin Elections Commission, Complainants' Verified Complaint, and the Affidavit of Logan Churchwell with exhibits 1 through 5 to:

Celestine Jeffreys
Clerk for the City of Green Bay
100 N. Jefferson St., Room 106
Green Bay, WI 54301

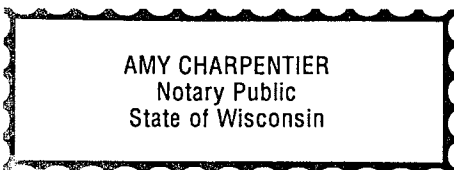


Ty Mrioued

Subscribed and sworn to before
me this 8th day of April, 2024.



Notary Public, State of Wisconsin
My Commission Expires 11/16/2024



**STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION**

GLEN HOGAN, JOANNE LENSING,
and DAVID VANDERLEEST,

Complainants,

v.

CELESTINE JEFFREYS, in her capacity
as City Clerk of the City of Green Bay,

Respondent.

RESPONSE OF RESPONDENT CELESTINE JEFFREYS

Respondent Celestine Jeffreys, in her capacity as City Clerk of the City of Green Bay, by and through Assistant City Attorney Lindsay Mather, hereby submits the following response to the Complaint filed by Glen Hogan, Joanne Lensing, and David Vanderleest with the Wisconsin Elections Commission (WEC).

BACKGROUND

In her role as City Clerk for the City of Green Bay, Celestine Jeffreys has received postcards which were mailed to voters who registered to vote at the polls on Election Day but which were returned to her office as undeliverable. Upon receiving those undeliverable Election Day Registration (“EDR”) postcards, Clerk Jeffreys’s practice has been to review them for typographical or other errors that may have prevented their delivery to the voter, and she has engaged in other investigations of the errors where appropriate. For example, 33 of the undeliverable EDR postcards were for voters who registered using on-campus addresses at the University of Wisconsin-Green Bay. Clerk Jeffreys investigated the situation and discovered there is a difference between the voters’ physical on-campus addresses (at which they register) and their mailing addresses (at which they receive the EDR postcards). Clerk Jeffreys confirmed the issue with the University and confirmed the appropriate

mailing addresses associated with the physical on-campus addresses, and updated the voters' records accordingly. To date, since investigating and resolving the issue, Clerk Jeffreys has not received any additional undeliverable EDR postcards for voters registered at UWGB.

Although she has conducted certain investigations upon receipt of the undeliverable EDR postcards, Clerk Jeffreys has not been conducting thorough investigations into all voters with undeliverable EDR postcards in the manner recommended by the WEC. Similarly, she has not been inactivating the voters' registrations or referring their names to the district attorney. Clerk Jeffreys was unaware that she was required to do each of these things, but plans to do so going forward, and is in the process of drafting written procedures for doing so. In the future, in accordance with statute and with the WEC guidance, Clerk Jeffreys will take the following actions when her office receives an undeliverable EDR postcard.

First, Clerk Jeffreys will review the postcard for administrative errors in the voter's address (such as typographical errors, differences from what is on the registration form, etc.), and if such errors are found she will email the WEC to have new postcards sent and update WisVote accordingly. If an error is not found in the first step, Clerk Jeffreys will investigate the situation to the extent possible to determine the reason for the undeliverability of the EDR postcard in a manner consistent with the latest WEC guidance. The reason for the undeliverability will govern the next step(s). For example, if Clerk Jeffreys can verify that the voter moved after Election Day, that voter's status would be changed and the voter would be informed of the change, but their name would not be forwarded to the District Attorney and the WEC. However, if Clerk Jeffreys believes beyond a reasonable doubt that the voter deliberately used an invalid address, that voter *would* be referred to the District Attorney and the WEC in addition to being informed of their status change. Clerk Jeffreys will make the appropriate changes in WisVote depending on the result of these investigations.

ARGUMENT

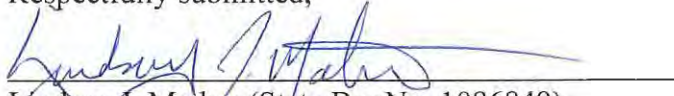
Clerk Jeffreys concedes that she has not been strictly adhering to the statutory requirements in Wisconsin Statutes Section 6.56, but the failure to do so was inadvertent and due to a lack of awareness of the statutory requirements, and not the result of any willful violation of state law. Upon receipt of this complaint, Clerk Jeffreys began formulating a plan for addressing the undeliverable postcards going forward that aligns with both the statutory requirements and the guidance from the Wisconsin Elections Commission, and she will comply with both for all future elections.

CONCLUSION

For the foregoing reasons, Clerk Jeffreys does not oppose Complainants' first request for relief—i.e., that she be directed to conform her conduct to statute and WEC guidance.

Dated this 29th day of April, 2024.

Respectfully submitted,

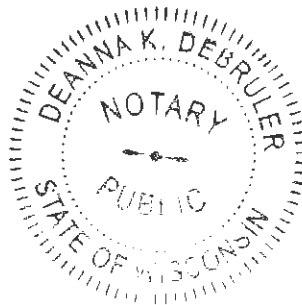


Lindsay J. Mather (State Bar No. 1086849)
Attorney for Celestine Jeffreys, City Clerk
CITY OF GREEN BAY
100 N. Jefferson Street, Room 200,
Green Bay, WI 54301
Telephone: (920) 448-3080
Facsimile: (920) 448-3081
Lindsay.Mather@greenbaywi.gov

Subscribed and sworn to before me
this 29th day of April, 2024.




Notary Public, Brown County
State of Wisconsin
My commission expires 1/2/2027



VERIFICATION

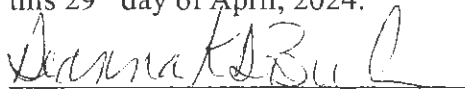
I, Celestine Jeffreys, being first duly sworn on oath, state that I personally read the above verified Response to the Complaint of Glen Hogan, Joanne Lensing, and David Vanderleest, and that the above Response is true and correct based upon my personal knowledge.

Dated this 29th day of April, 2024.



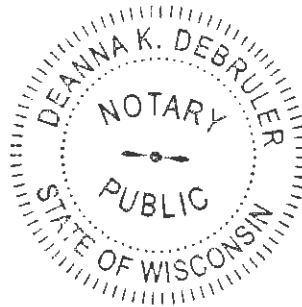
Celestine Jeffreys
City Clerk, City of Green Bay

Subscribed and sworn to before me
this 29th day of April, 2024.



Notary Public, Brown County
State of Wisconsin

My commission expires 1/2/2027



**STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION**

Glen Hogan, Joanne Lensing,
and David A. VanderLeest

Complainants,

v.

Celestine Jeffreys, in her capacity as
Clerk for the City of Green Bay

Respondent.

COMPLAINANTS' REPLY

Complainants submit the following reply in response to Respondent Celestine Jeffreys's Response (dated April 29, 2024), and in support of their Complaint:

In her response, Clerk Jeffreys concedes that she does not comply with the requirements of Wisconsin Statutes Section 6.56 concerning undeliverable EDR postcards. *See* Response at 3. Clerk Jeffreys also states that she "does not oppose Complainants' first request for relief," Response at 3, which is the following: "That Clerk Jeffreys be directed to conform her conduct to the law as described in Wis. Stat. § 6.56(3) and the EDR Guidance," Complaint at 10, Prayer for Relief, para. A.

Accordingly, Complainants request that WEC issue an order (1) finding that Clerk Jeffreys has violated Wis. Stat. § 6.56(3) and the EDR Guidance, and (2) ordering Clerk Jeffreys to conform her conduct to the law as described in Wis. Stat. § 6.56(3) and the EDR Guidance.

Complainants shall waive any entitlement they may have to recover costs and fees incurred in bringing this matter.

Dated this 15th day of May, 2024.

CRAMER MULTHAUF LLP
Attorneys for Complainants,

BY: Electronically signed by Matthew M. Fernholz
MATTHEW M. FERNHOLZ
(State Bar No. 1065765)

CRAMER MULTHAUF LLP
1601 East Racine Avenue • Suite 200
P.O. Box 558
Waukesha, WI 53187-0558
(262) 542-4278
mmf@cmlawgroup.com

PUBLIC INTEREST LEGAL FOUNDATION, INC.
Attorneys for Complainants,

BY: Electronically signed by Noel H. Johnson
NOEL H. JOHNSON
(State Bar No. 1068004)

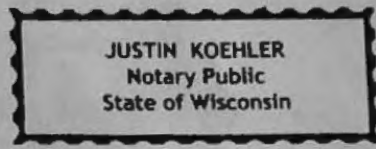
Public Interest Legal Foundation, Inc.
107 S. West Street, Suite 700
Alexandria, VA 22314
Tel. (703) 745-5870
njohnson@PublicInterestLegal.org

The Complainant, David VanderLeest, being first duly sworn, states that he has personally read the above document, and that the above allegations are based on information and belief and the complainant believes them to be true to the best of his knowledge.

David VanderLeest
Complainant

Subscribed and sworn to before me
this 4th day of May, 2024.

Justin Koehler
Notary Public, State of Wisconsin



My commission expires 2-18-2028

The Complainant, Glen L. Hogan being first duly sworn, states that he has personally read the above document, and that the above allegations are based on information and belief and the complainant believes them to be true to the best of his knowledge.

Complainant

Subscribed and sworn to before me
this 13th day of May, 2024.



Kura Wipperfurth
Notary Public, State of Wisconsin

My commission expires 4-7-2026

The Complainant, Jeanne Lensing being first duly sworn, states that he has personally read the above document, and that the above allegations are based on information and belief and the complainant believes them to be true to the best of his knowledge.

Jeanne Lensing
Complainant

Subscribed and sworn to before me
this 13th day of May, 2024.

Connie Behrendt
Notary Public, State of Wisconsin
My commission expires 08/03/2026
County of Brown





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

November 1, 2024

Disability Rights Wisconsin
c/o Scott B. Thompson & Jeff Mandell
222 W. Washington Ave., Suite 250
Madison, WI 53703

Suzanne Pinnow
Clerk for the Town of Thornapple
P.O. Box 83
Ladysmith, WI 54848

Town of Thornapple
N4502 CTH E
Bruce, WI 54819

Sent via email to: Anna.Anderson@drwi.org, lisah@drwi.org, sthompson@lawforward.org,
jmandell@lawforward.org, thornappleclerk@mail.com, suzannep_townoft@yahoo.com

Re: In the Matter of: **Disability Rights Wisconsin v. Suzanne Pinnow and Town of Thornapple**
EL 24-85

Dear Disability Rights Wisconsin, Clerk Pinnow, and Town of Thornapple:

This letter is in response to the verified complaint submitted by Disability Rights Wisconsin (“the Complainant”) to the Wisconsin Elections Commission (“Commission”), which was filed in reply to actions taken by Clerk Pinnow and the Town of Thornapple (“the Respondents”) concerning alleged past and continuing violations of Section 301 the Help America Vote Act of 2002 (“HAVA”), 52 U.S.C. § 21081. The complaint alleges that for the April 2, 2024, and August 13, 2024, elections, which included federal elections, the Town of Thornapple violated federal law by exclusively using paper ballots completed and tabulated by hand and ceasing to provide HAVA-compliant accessible voting systems at each polling place, and that these alleged violations are expected to continue for the November 5, 2024 election, which also includes federal elections.

The Commission has reviewed the complaint. The Respondents did not submit a response.

The Commission provides the following analysis and decision. In short, and as detailed further in the analysis below, the Commission finds that the Complaint did show probable cause to believe that a violation of law occurred with relation to Clerk Pinnow and the Town of Thornapple’s actions. Clerk Pinnow and the Town of Thornapple are ordered to conform their conduct to the law by providing a HAVA-compliant accessible voting system in all future elections.

Commissioners

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

Administrator
Meagan Wolfe

Clerk Pinnow and the Town of Thornapple are further ordered to certify to the Commission, no later than 24 hours after the transmission of this letter ahead of the November 5, 2024 election, **Thursday, February 13, 2025, Thursday, March 27, 2025, Thursday, February 12, 2026, Thursday, April 2, 2026, Thursday, August 6, 2026** and **Thursday, October 29, 2026** that the HAVA-compliant electronic voting systems the Town of Thornapple will use for the respective November 5, 2024, February 18, 2025, April 1, 2025, February 17, 2026, April 6, 2026, August 11, 2026 and November 3, 2026 elections have been publicly tested with at least 48 hours' public notice in accordance with Wis. Stat. § 5.84(1) and the Commission guidelines, and that the systems will be available and ready for use on Election Day.

The Commission takes notice of the United States District Court for the Western District of Wisconsin order granting a preliminary injunction against the Town of Thornapple with similar relief granted for the November 5, 2024, election. Order Granting Prelim. Inj., *United States v. Town of Thornapple*, No. 3:24-cv-664-jdp, 2024 WL ___, at *2–3 (W.D. Wis. Oct. 4, 2024) (“(5) Thornapple Defendants shall certify to this Court by filing, no later than close of business on October 31, 2024, a statement that the HAVA-Compliant voting system Thornapple will use for the November 5, 2024 Election has undergone all pre-election testing required by state law, *see* Wisc. [sic] Stat. § 5.84(1), and is otherwise fully prepared for use on Election Day . . . (7) Thornapple Defendants shall cooperate fully with the State of Wisconsin and any State agency’s efforts to enforce federal law regarding the provision of accessible voting systems for use in elections . . .”).

Commission Authority and Role in Resolving Complaints Filed Under Wis. Stat. § 5.061

Under Wis. Stat. §§ 5.061(3) and (4), the Commission is provided with the authority to consider the submissions of the parties to a complaint and to issue findings. If the Commission finds the complaint to be without merit, it shall issue a decision dismissing the complaint. In instances where the Commission finds that the violation alleged in the complaint has occurred, is occurring, or is proposed to occur, the Commission shall order appropriate relief, except that the commission shall not issue any order affecting the right of any person to hold an elective office or affecting the canvass of an election on or after the date of that election. This letter serves as the Commission's final decision regarding the issues raised in this complaint.

The Commission’s role in resolving verified complaints filed under Wis. Stat. § 5.061, which allege violations of Title III of P.L 107-252 (HAVA), is to determine whether the alleged violations have occurred, are occurring, or are proposed to occur with respect to an election for federal office, and to order appropriate relief. *See* 52 U.S.C. § 21112(a).

Unlike complaints filed under Wis. Stat. § 5.05, which allege violation of Chapters 5 through 10 and 12 of the Wisconsin Statutes, and complaints filed under Wis. Stat. § 5.06, challenging the decisions or actions of local election officials, the text of Wis. Stat. § 5.061 does not specify what legal standard should be applied for determining whether the alleged violations have occurred, are occurring, or are proposed to occur. Both Wis. Stat. §§ 5.05 and 5.06 complaints are governed by a probable cause standard. Wis. Stat. §§ 5.05(2m)(c), 5.06(1). Probable cause is defined in Wis. Admin. Code § EL 20.02(4) to mean “the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.” It is the Commission’s belief that the probable cause standard is

appropriate for determining whether the alleged violations in a Wis. Stat. § 5.061 “HAVA complaint” have occurred, are occurring, or are proposed to occur.

Complaint Allegations

The Complainant alleges that by ceasing to use electronic voting equipment and, instead, exclusively using paper ballots completed and tabulated by hand for the April 2, 2024, and August 13, 2024, elections, Clerk Pinnow and the Town of Thornapple failed to make HAVA-compliant voting systems accessible to voters with disabilities in violation of both state and federal law.

The Complainant alleges that Wisconsin municipalities must provide voting systems that make voting accessible to voters with disabilities under both state and federal law. Wis. Stat. § 5.25(4)(a); 52 U.S.C. § 21081(a)(3). The Complainant alleges that Section 301(a)(3) of HAVA, 52 U.S.C. § 21081(a)(3), requires that each voting system used in an election for federal office shall “(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters” and “(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.” The Complainant alleges that HAVA further requires that voting systems be capable of alerting voters when they have selected more than one candidate for a single office and the effect of such an overvote, along with an opportunity to address the issue. 52 U.S.C. § 21081(a)(1)(A).

The Complainant alleges that, prior to the April 2, 2024, election, the Town of Thornapple used HAVA-compliant voting systems.

The Complainant alleges that on April 2, 2024, a voter in the Town of Thornapple observed that there was not an accessible voting system available at their polling place and reported this information to the Disability Rights Wisconsin Voter Hotline. The Complainant alleges that, as reported by the Milwaukee Journal Sentinel in a May 13, 2024, article, Town of Thornapple supervisor Tom Zelm confirmed that Thornapple decided to cease using electronic voting equipment for the April 2, 2024, election.

The Complaint alleges that the May 13, 2023, Milwaukee Journal Sentinel article further states that the United States Department of Justice had previously sent a letter to Clerk Pinnow, “Thornapple’s chief election official, seeking information about the decision to remove electronic voting machines and information on how the township is accommodating voters with disabilities.” The Complainant alleges that on July 8, 2024, the United States Department of Justice sent a subsequent letter to Clerk Pinnow and others, stating that after their investigation, the United States Department of Justice has concluded that the Town of Thornapple “failed to make at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities available at each polling place, including during the April 2, 2024, federal primary election, in violation of Section 301(a)(3)(A) of HAVA.”

The Complainant alleges that, as reported in an August 7, 2024, Ladysmith News article, the town of Thornapple planned not to use electronic voting equipment for the August 13, 2024, election. The

Complainant alleges that on August 13, 2024, the Disability Rights Wisconsin Voter Hotline received a report from the same individual that called on April 2, 2024, that the Town of Thornapple again did not provide an accessible voting system at their polling place. The Complainant alleges that during an August 20, 2024, call with Disability Rights Wisconsin Voting Rights Coordinator Anna Anderson, Rusk County Chief Deputy Clerk Jill Buchholz-Jones stated that Thornapple did not collect, and therefore did not possess, the necessary equipment to operate an electronic voting system for the August 13, 2024, election.

The Complainant alleges that both the April 2, 2024, and August 13, 2024, elections included elections for federal office.

The Complainant alleges two counts of violation of Section 301 of HAVA. First, the Complainant alleges that Respondents' failure to provide electronic voting equipment violated HAVA's accessibility requirements that voting systems used in federal elections (A) provide voters with disabilities "the same opportunity for access and participation (including privacy and independence) as for other voters," and (B), that subsection (A) be satisfied by using "at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place." 52 U.S.C. § 21081(a)(3). The Complainant alleges that for voters with disabilities who cannot see a paper ballot, or use their hands to complete a paper ballot, that the failure to provide HAVA-compliant electronic voting systems would require these voters to receive some other form of assistance to vote that would not afford them the opportunity to vote privately or independently.

Second, the Complainant alleges that Respondents' exclusive use of paper ballots and failure to provide electronic voting equipment violated HAVA's "overvoting" notification requirement, that voting systems used in federal elections:

- (ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and
- (iii) if the voter selects votes for more than one candidate for a single office-
 - (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;
 - (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and
 - (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

52 U.S.C. § 21081(a)(1)(A). The Complainant alleges that the exclusive use of paper ballots prevented Respondents from being able to "(1) check for overvoting and (2) alert the voter in such a way that would permit the voter to address the error without reviewing the completed ballot in such a way that would deprive the voter of the privacy of their votes."

The Complainant further alleges that "Respondents also appear to be violating Section 301(a)(4) [of HAVA], which requires a voting system to 'provide alternative language accessibility pursuant to the requirements of section 10503 of this title.' 52 U.S.C.A. § 21081."

The Complainant alleges that the Commission may hear and decide complaints regarding violations of HAVA and, where merited, order appropriate relief, pursuant to Wis. Stat. § 5.061(3)–(4) and 52 U.S.C. § 21112.

The Complainant requested as relief that the Commission issue an order requiring Respondents to use a voting system complying with the requirements of Section 301 of HAVA for all future elections which include selections for federal office and that the Commission take any other action that has the effect of restraining Respondents from acting contrary to law.

The Response

The Respondents did not submit a response.

Discussion

The § 5.061 “HAVA complaint” process may be initiated whenever any person believes that a violation of HAVA “has occurred, is occurring, or is proposed to occur with respect to an election for national office in this state.” Wis. Stat. § 5.061(1). Disability Rights Wisconsin is a “person” within the meaning of Wis. Stat. § 5.061(1). Wis. Stat. § 990.01(26). The Complaint correctly states that both the April 2, 2024, and August 13, 2024, elections in the Town of Thornapple included federal elections (presidential preference primary and congressional primaries respectively). Accordingly, the Complaint satisfies the requirement that the alleged violations of HAVA have occurred with respect to an election for national office.

As elaborated below, the federal standards set forth in HAVA, 52 U.S.C. § 21081(a)(3)(A), have been adopted into Wis. Stat. § 5.25(4)(a) and are mandatory regardless of whether or not an election includes elections for federal office. While not required to resolve this complaint, a person who believes that a violation of § 5.25(4)(a) has occurred or is occurring *with respect to an election without federal offices* may still file a § 5.061 complaint *if they believe such violations are proposed to continue occurring for a future election for federal office*.

Wisconsin and federal law require accessible electronic voting equipment to be tested and made available at every polling place for every election.

Prior to either election where the alleged HAVA violations occurred, on March 19, 2024, the Commission sent an accessibility reminder memorandum¹ to clerks, including the clerk for the Town of Thornapple. The memorandum stated that “[a]ll polling places must be accessible to voters with disabilities” and encouraged clerks to consult the Commission’s Polling Place Accessibility page.² The Polling Place Accessibility page begins with an explanation that “the Help America Vote Act (HAVA) requires that every polling place in the State of Wisconsin meet Americans with Disabilities Act (ADA) standards and that all voters are provided with an equal opportunity to cast a ballot.” The Polling Place Accessibility page then provides several checklists and toolkits for clerks to use to ensure that they are complying with HAVA, the ADA, and state

¹ Available at: <https://elections.wi.gov/memo/422024-accessibility-reminders>.

² Available at: <https://elections.wi.gov/clerks/election-topics-z/polling-place-accessibility>.

law. These resources include the New Polling Place Accessibility Self-Assessment,³ the Polling Place Accessibility Toolkit,⁴ and the Election Day Accessibility Checklist⁵ created by Disability Rights Wisconsin. All three resources ask clerks to verify that they have accessible voting equipment available, turned on, tested, and in proper working order.

The Commission restated its position regarding the use of electronic voting equipment in Wisconsin elections in a June 14, 2024, memorandum⁶ to clerks, including the clerk for the Town of Thornapple.

Wisconsin's statutes implementing HAVA's standards were enacted through 2003 Act 265 ("Act 265"). Among other changes, Act 265 created the § 5.061 complaint process and amended Wis. Stat. § 5.25(4) to comply with HAVA's accessible polling place requirements. Wis. Stat. § 5.25(4)(a) states, in part:

Each polling place shall be accessible to all individuals with disabilities. The commission shall ensure that the voting system used at each polling place will permit all individuals with disabilities to vote without the need for assistance and with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place.

The language of § 5.25(4)(a) closely mirrors that found in HAVA, 52 U.S.C. § 21081(a)(3)(A) (The voting system shall "be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters[.]"). Both statutes require each polling place to be accessible to all individuals with disabilities, allow individuals with disabilities to vote independently or without assistance, and allow individuals with disabilities to vote with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place. Additionally, the plain language of § 5.25(4)(a) does not distinguish between federal and non-federal elections. Accordingly, Wis. Stat. § 5.25(4)(a) adopts the federal standards set forth in HAVA, 52 U.S.C. § 21081(a)(3)(A) for all elections in Wisconsin.

While 52 U.S.C. § 21081(a)(3)(B) separately requires that subparagraph (A) be satisfied "through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place," Wis. Stat. § 5.25(4)(a) itself incorporates the requirement that accessible voting systems must be included at every polling place, stating: "the voting system used at each polling place will permit all individuals with disabilities to vote without the need for assistance[.]"

The Commission interprets § 5.25(4)(a) to require the use of at least one accessible electronic voting system at each polling place because some voters have disabilities that prevent them from voting by paper ballot or mechanical voting machine, and their right to vote independently, "without the need for assistance and with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place," can only be satisfied through the provision of accessible electronic voting equipment.

³ Available at: <https://elections.wi.gov/wec-form/new-polling-place-accessibility-self-assessment>.

⁴ Available at: <https://elections.wi.gov/resources/quick-reference-topics/polling-place-accessibility-toolkit>.

⁵ Available at: <https://elections.wi.gov/resources/quick-reference-topics/election-day-accessibility-checklist>.

⁶ Available at: <https://elections.wi.gov/memo/frequently-asked-questions-regarding-use-electronic-voting-equipment-wisconsin-elections>.

HAVA, 52 U.S.C. § 21081(a)(1)(A) imposes additional, specific requirements on voting systems used in federal elections to notify and allow voters to correct “overvotes,” when a voter impermissibly selects more than one candidate for a single office on the ballot. Under § 21081(a)(1)(A), voting systems used in federal elections must:

- (i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;
- (ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and
- (iii) if the voter selects votes for more than one candidate for a single office-
 - (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;
 - (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and
 - (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

52 U.S.C. § 21081(a)(1)(B) provides an exemption from the requirements of § 21081(a)(1)(A)(iii) for jurisdictions using paper ballot voting systems, if they:

- (i) establish[] a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and
- (ii) provid[e] the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

Nothing in the record indicates that Respondents have met the requirements of § 21081(a)(1)(B) to be exempted from the requirements of § 21081(a)(1)(A)(iii).

The Respondents did not respond to the allegations contained in the Complaint. The Complaint correctly states that prior to the April 2, 2024, election, the Town of Thornapple used HAVA-compliant voting systems, specifically, the Dominion ImageCast Evolution. The voter’s reports to the Disability Rights Wisconsin hotline, Town of Thornapple supervisor Tom Zelm’s statements to the Milwaukee Journal Sentinel, and Rusk County Chief Deputy Clerk Jill Buchholz-Jones’s statements to Disability Rights Wisconsin all substantiate the fact that Respondents failed to provide accessible electronic voting equipment at each polling place for both the April 2, 2024, and August 13, 2024, elections. Therefore, the Commission finds probable cause that the Respondents violated the requirements of Wis. Stat. § 5.25(4)(1), and HAVA by failing to ensure that the voting system used at each of their polling places permitted all individuals with disabilities to vote without the need for assistance and with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place.

The lack of accessible voting equipment in the Town of Thornapple the April 2, 2024 and August 13, 2024 elections also means that no voting system was in place that could notify a voter that they have selected more

than one candidate for a single office on the ballot, notify a voter before their ballot is cast and counted of the effect of casting multiple votes for an office, or provide a voter with the opportunity to correct their ballot before it is cast and counted without intruding into the voter’s privacy and independence, thus amounting to a separate violation of 52 U.S.C. § 21081(a)(1)(A)(iii).

Commission’s Findings

Pursuant to the analysis above, the Commission hereby issues this order restraining Clerk Pinnow and the Town of Thornapple from taking any action inconsistent with the analysis in this decision. Wis. Stat. § 5.061(4).

Clerk Pinnow and the Town of Thornapple are ordered to take affirmative steps to comply with Wis. Stat. § 5.25(4)(a) regarding the use of accessible electronic voting equipment in Wisconsin elections as described in this decision. The Respondents are further ordered to certify to the Commission that they have complied with HAVA and the relief ordered above for future elections.

Right to Appeal – Circuit Court

This letter constitutes the Commission’s resolution of these complaints. Wis. Stat. § 5.061(4). Pursuant to Wis. Stats. §§ 227.52, 227.53(1)(a)(2m), any aggrieved party may appeal this decision to circuit court no later than 30 days after personal service or mailing of this decision by the Commission.

It is also the Commission’s belief that Wis. Stat. § 5.06(8) appellate rights may be applied to Wis. Stat. § 5.061 “HAVA Complaints.” Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If any of the parties should have questions about this letter or the Commission’s decision, please feel free to contact the Commission at 608-266-8005 or elections@wi.gov.

Sincerely,

WISCONSIN ELECTIONS COMMISSION

WISCONSIN ELECTIONS COMMISSION

DISABILITY RIGHTS WISCONSIN,

Complainant,

v.

Case No. _____

SUZANNE PINNOW
TOWN CLERK, TOWN OF THORNAPPLE,

and

TOWN OF THORNAPPLE,

Respondents.

**COMPLAINT
EXPEDITED CONSIDERATION REQUESTED**

Pursuant to Wis. Stat. § 5.061, Disability Rights Wisconsin alleges under oath as follows:

1. Under state and federal law, Wisconsin municipalities must provide voting systems that make voting accessible to voters with disabilities. Wis. Stat. § 5.25(4)(a); 52 U.S.C.A. § 21081(a)(3).

2. In addition, federal law requires that voting systems be capable of alerting voters when they have selected more than one candidate for a single office and the effect of such an overvote, along with an opportunity to address the issue. 52 U.S.C.A. § 21081(a)(1)(A).

3. Despite these requirements, Respondents Respondent Suzanne Pinnow, Town Clerk of the Town of Thornapple, and the Town of Thornapple, have ceased using any form of electronic voting equipment, and have made no provision for

compliance with their obligations under either state or federal law. Thornapple did not provide any accessible voting systems for voters during either the April 2 or August 13, 2024 elections.

4. Complainant Disability Rights Wisconsin (“DRW”) therefore brings this complaint under Wis. Stat. § 5.061 and requests that the Wisconsin Elections Commission (“WEC”) issue an appropriate order to Respondents Pinnow and the Town of Thornapple, requiring them to resume the use of accessible voting equipment which complies with the requirements of the Help America Vote Act.

5. **Due to the imminence of the November 2024 General Election, DRW respectfully requests that WEC treat this matter on an expedited basis and issue an order in sufficient time to ensure that all voters in the Town of Thornapple can vote in accordance with law.**

PARTIES

6. Complainant DRW is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin. DRW maintains offices across the state of Wisconsin, including in Madison, Green Bay, and Milwaukee, with its principal office located at 1502 West Broadway, Suite 201, Madison, Wisconsin.

7. DRW is a member of the National Disability Rights Network and is designated by the Governor of the State of Wisconsin to act as the congressionally mandated Protection and Advocacy system for Wisconsin citizens. The Protection and Advocacy system is a combination of federally funded programs that serve people across the spectrum of disabilities pursuant to Wis. Stat. § 51.62, 29 U.S.C. § 794e, 42 U.S.C. §§ 15041, *et. seq.*, and 42 U.S.C. §§ 10801, *et. seq.*

8. DRW is a “person” within the meaning of Wis. Stat. § 5.061. Wis. Stat. 990.01(26).

9. Respondent Suzanne Pinnow is the Town Clerk for the Town of Thornapple, Wisconsin.¹ Clerk Pinnow’s mailing address is P.O. Box 83, Ladysmith, Wisconsin 54848. Under Wis. Stat. § 7.15(1), Respondent Pinnow has “has charge and supervision of elections and registration” within the Town of Thornapple, including the duty to equip polling places. Wis. Stat. § 7.15(1)(a).

10. Respondent Town of Thornapple is a body corporate and politic, organized under Chapter 60 of the Wisconsin Statutes.

BACKGROUND

11. Signed into law over 20 years ago, Section 301 of the Help America Vote Act (“HAVA”), imposed requirements for voting systems used in federal elections. Two such requirements are relevant here.

12. *First*, Section 301 requires that each voting system “(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters” and “(B) satisfy the requirement of subparagraph (A) through the use of at least one direct

¹ The Rusk County website currently lists Angela Johnson as the Town Clerk for the Town of Thornapple, and indicates that Pinnow is the Treasurer. <https://ruskcounty.org/index.asp?SEC=98F9F8DC-169A-4A83-9DD6-1D6729011A1A&DE=700C788A-6C10-1786-9CA5-11A66C06766B>. Pinnow, however, told a representative of DRW that she is the clerk, so Pinnow is the proper Respondent. In the event that Pinnow is not, or ceases to be, the clerk in the Town of Thornapple, her successor would automatically become the proper respondent. Wis. Stat. § 803.10(4)(a).

recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.”

13. *Second*, Section 301 also requires that each voting system meet the following requirements regarding overvoting:

(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

(iii) if the voter selects votes for more than one candidate for a single office—

(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

(III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

52 U.S.C.A. § 21081(a)(1)(A).

14. WEC may hear and decide complaints regarding violations of HAVA and, where merited, order appropriate relief. Wis. Stat. § 5.061(3)–(4); *see also* 52 U.S.C.A. § 21112.

STATEMENT OF FACTS

15. Prior to the April 2, 2024 Spring Election, the Town of Thornapple used voting systems that complied with Section 301 of HAVA.

16. On April 2, 2024, a voter in the Town of Thornapple observed there was not an accessible voting system in use for the Spring Election and Presidential Preference and reported the same to the DRW Voter Hotline.

17. Town of Thornapple supervisor Tom Zelm confirmed that Thornapple had decided to cease using electronic voting equipment in a May 13, 2024 article

published in the Milwaukee Journal Sentinel.² The article states: “Zelm said Thornapple carried out the April presidential primary election without electronic voting machines.”

18. According to the May 13, 2024, Milwaukee Journal Sentinel article, the United State Department of Justice (“USDOJ”) had previously “sent a letter to Suzanne Pinnow, Thornapple's chief election official, seeking information about the decision to remove electronic voting machines and information on how the township is accommodating voters with disabilities.”

19. On July 8, 2024, USDOJ sent a letter to Respondent Pinnow and others, stating that after their investigation, “...we have concluded that the State of Wisconsin and the Towns of Thornapple and Lawrence, located in Rusk County, Wisconsin, failed to make at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities available at each polling place, including during the April 2, 2024, federal primary election, in violation of Section 301(a)(3)(A) of HAVA.” A true and correct copy of the July 8, 2024 letter is attached as Exhibit A.

20. In its letter, USDOJ noted Section 301’s accessibility requirement. The letter also referenced Thornapple’s failure to “make at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities available at each polling place.”

² Molly Beck, *A small Wisconsin town eliminated its electronic voting machines, leading to a federal review*, Milwaukee Journal Sentinel (May 13, 2024), <https://www.jsonline.com/story/news/politics/2024/05/13/wisconsin-town-under-federal-review-after-eliminating-voting-machines/73615195007/>

21. According to an August 7, 2024 article in the Ladysmith News, Thornapple planned not to use electronic voting equipment for the August 13, 2024 election. A true and correct copy of this article is attached as Exhibit B.

22. On August 13, 2024, the DRW Voter Hotline received another call with a report from the same individual that Thornapple did not provide an accessible voting system for voters for the August 13, 2024 fall partisan primary election.

23. On August 20, 2024, Rusk County Chief Deputy Clerk, Jill Buchholz-Jones stated in a call with DRW Voting Rights Coordinator Anna Anderson that Thornapple did not collect (and therefore did not possess) the necessary equipment to operate an electronic voting system for the August 13, 2024 election.

24. Both the April 2, 2024 and August 13, 2024 elections included elections for federal office.

COUNT I

VIOLATION OF SECTION 301(a)(3)

52 U.S.C.A. § 21081(a)(3)

25. All preceding paragraphs are incorporated by reference.

26. Section 301(a)(3) of HAVA, 52 U.S.C.A. § 21081(a)(3), requires that each voting system “(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters” and “(B) satisfy the requirement of subparagraph (A) through the use

of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.”

27. By ceasing to use electronic voting equipment and, instead, exclusively using paper ballots completed and tabulated by hand, Respondents are no longer using voting systems that are accessible for individuals with disabilities in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

28. For example, a voter without a disability that prevented them from seeing the ballot, or using their hands to complete it, would require some other form of assistance that would not afford them the opportunity to vote privately or independently.

29. Furthermore, by failing to use any electronic voting equipment or equivalent, Respondents are failing to comply with Section 301(a)(3)(B) by using “at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.”³

COUNT I

VIOLATION OF SECTION 301(a)(1)(A)

52 U.S.C.A. § 21081(a)(1)(A)

30. All preceding paragraphs are incorporated by reference.

³ Respondents also appear to be violating Section 301(a)(4), which requires a voting system to “provide alternative language accessibility pursuant to the requirements of section 10503 of this title.” 52 U.S.C.A. § 21081.

31. In addition to the accessibility requirements described in Count I, Section 301(a)(1)(A) of HAVA, 52 U.S.C.A. § 21081(a)(1)(A), contains requirements regarding how a voting system must alert voters when they have selected more than one voter for an office.

32. Specifically, the law requires that the voting system:

(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

(iii) if the voter selects votes for more than one candidate for a single office—

(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

(III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

52 U.S.C.A. § 21081(a)(1)(A).

33. By ceasing to use electronic voting equipment and, instead, exclusively using paper ballots completed and tabulated by hand, Respondents are no longer using voting systems that comply with Section 301(a)(1)(A)'s requirements regarding overvoting.

34. By exclusively using paper ballots completed and tabulated by hand, there is no way for Respondents to (1) check for overvoting and (2) alert the voter in such a way that would permit the voter to address the error without reviewing the completed ballot in such a way that would deprive the voter of the privacy of their votes. See Wis. Const. art. III, § 3.

WHEREFORE, Complainant requests relief pursuant to Wis. Stat. § 5.061 as follows:

- A. Issue an order requiring Respondents to use a voting system complying with the requirements of Section 301 of HAVA, 52 U.S.C. § 21081, for all future elections which include selections for federal office.
- B. Take any other action that has the effect of restraining Respondents from acting contrary to law as described in this Complaint.

Dated August 16, 2024

Complaint prepared by:

Daniel S. Lenz, SBN 1082058
 Scott B. Thompson, SBN 1098161
 Law Forward, Inc.
 222 W. Washington Ave, Suite 250
 Madison, WI 53703
Attorneys for Complainant Disability Rights Wisconsin

VERIFICATION

I, Kristin Kerschensteiner, being first duly sworn, depose and states as follows:

- 1. I am authorized to execute this verification on behalf of Disability Rights Wisconsin.
- 2. I have read the foregoing complaint and verify that the facts alleged herein are true and correct to the best of my knowledge.

Signed in Dane Co, Wisconsin this 26 day of August, 2024

This signature was acknowledged before me

Subscribed and sworn to before me this 26 day of August, 2024

on (date) Aug. 26, 2024

by (name) Trent Einbeck

Exp: 10/30/26





U.S. Department of Justice
Civil Rights Division

July 8, 2024

Attorney General Josh Kaul
Wisconsin Department of Justice
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kauljl@doj.state.wi.us

Administrator Meagan Wolfe
Wisconsin Elections Commission
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Angela Johnson
Town Clerk
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thornappleclerk@mail.com

Charidy Ludescher
Town Clerk
Town of Lawrence
W3570 Walrath Rd.
Glen Flora, WI 54526
cludeschertownclerk@gmail.com

Dear Attorney General Kaul, Administrator Wolfe, Ms. Johnson, and Ms. Ludescher:

This is to notify you that I have authorized the filing of a lawsuit on behalf of the United States against the State of Wisconsin, the Wisconsin Elections Commission, the Commission Administrator, the Town of Thornapple, the Town of Lawrence, and the Town Clerks and Town Board Supervisors of Thornapple and Lawrence, pursuant to Section 301 of the Help America Vote Act of 2002 ("HAVA"), 52 U.S.C. § 21081. HAVA authorizes the Attorney General to bring an action in federal district court for such declaratory and injunctive relief as is necessary to carry out the requirements of Title III of HAVA. 52 U.S.C. § 21111.

Section 301 of HAVA sets forth standards for all states for each voting system used in an election for federal office. Among other things, Section 301 requires that each voting system "be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation

EXHIBIT A

(including privacy and independence) as for other voters.” 52 U.S.C. § 21081(a)(3)(A). To satisfy this requirement, any voting system currently in use for federal elections must include “at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.” *Id.* § 21081(a)(3)(B). States and their subjurisdictions are required to comply with Section 301 of HAVA. *Id.* § 21081(d).

Based on our investigation, we have concluded that the State of Wisconsin and the Towns of Thornapple and Lawrence, located in Rusk County, Wisconsin, failed to make at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities available at each polling place, including during the April 2, 2024, federal primary election, in violation of Section 301(a)(3)(A) of HAVA.

We hope to resolve this matter amicably and to avoid protracted litigation. Accordingly, we are prepared to delay filing the complaint briefly to permit us time to negotiate a consent decree to be filed with the complaint. Margaret Turner, an attorney with the Civil Rights Division’s Voting Section, will call your offices to discuss your interest in settlement. Ms. Turner may be reached at (771) 217-6882 or by email at margaret.m.turner@usdoj.gov.

We look forward to working with you to resolve this matter promptly.

Sincerely,



Kristen Clarke
Assistant Attorney General
Civil Rights Division

cc: Chairman Ralph C. Kenyon, Town of Thornapple, WI
Supervisor Tom Zelm, Town of Thornapple, WI
Supervisor Jack Zupan, Town of Thornapple, WI
Chairman Bob Nawrocki, Town of Lawrence, WI
Supervisor Stacy Zimmer, Town of Lawrence, WI
Supervisor Duane Biller, Town of Lawrence, WI

TOP STORY

Thornapple town board sticks with paper ballots

Laura Jennerman

Aug 7, 2024



When it comes to the 2020 elections, there are two worlds of belief about what really happened. Did President Biden win the election fair and square? Or, was Donald Trump really the winner and the Democrats organized the theft of an election? The issue has become contentious right here in Rusk County. On the day of the spring election this year, April 2, the Township of Thornapple did not use electronic voting machines to record votes at its town hall. Instead, they had their constituents vote using paper ballots. And according to a board spokesperson, voting will again be by paper ballot in The Tuesday, Aug. 13, primary election.

EXHIBIT B

Erin Webster, the Chair of the Rusk County Democrats, lives in the Thornapple Township. She is known in local government circles for her efforts to make the County government more transparent, and has been video recording most Rusk County Board meetings since late 2022. On April 2, after she saw that the Thornapple polling place did not have voting machines available, Webster called Jack Zupan, a supervisor on the Thornapple Township Board, who agreed with the board's decision against the use of voting machines, and instead opted to count the votes by hand—due in part to the board's belief the 2020 election was stolen. According to Zupan, the voting machines are “full of error.”

In the ten-minute audio recording of the conversation between Webster and Zupan, which may be viewed on YouTube, Webster expressed frustration about the lack of voting machines in her polling place and accused Zupan of being a conspiracy theorist. She claimed her right to vote using a machine—which she trusts more than a paper ballot—was denied and that her paper ballot somehow would not get counted. Webster stated dropping a paper ballot in a box was “1980.”

When Webster accused the board of breaking Federal election laws, Zupan denied it and defended the board's decision. “There are court cases right now that show that anybody can hack and manipulate that machine within a couple minutes.” Zupan assured her that they do want her vote to count. The Ladysmith News contacted several officials from the Town of Thornapple, who did not respond.

On May 13, 2024, the Milwaukee Journal-Sentinel ran an article titled “A small Wisconsin town eliminated its electronic voting machines, leading to a federal review” about the Town of Thornapple election issue. The article describes the situation as potentially violating federal election law, and says that federal officials are looking into the matter. The Towns of Thornapple and Lawrence have both reportedly received the same letter from the U.S. Department of Justice about the matter, asking for information about how the April 2 election was conducted.

Jefferson Davis is the Spokesperson for the Statewide Election Integrity for Wisconsin Ad Hoc committee formed three years ago to investigate alleged election fraud that may have affected the outcome of the 2020 election. Davis pointed to a number of different legal documents that spell out voting law in regards to voting machines, including Wisconsin State Statutes 5.40 and 7.15., the U.S. Constitution, and the Help America Vote Act (HAVA).

Wisconsin State Statute 5.40 states that only municipalities with populations over 7,500 are required to use an electronic voting system. In Wisconsin there are a total of 1,852 municipalities. Of that number, only 126 communities have populations larger than 7,500. That means that 1728 Wisconsin municipalities (93%) are not required to use voting machines. Under this law, even the City of Ladysmith is not required to use electronic voting equipment.

It also states in sub (4) of statute 5.40 that "Notwithstanding sub. (1), a municipality which utilizes voting machines. . . shall not utilize a voting machine to receive the ballot of an elector who receives assistance under WI Statute 6.82", which addresses voting by disabled persons. And in sub. (5), it states; "A municipality which utilizes voting machines at a polling place shall not utilize the machines to receive the vote of an elector who declares to the chief inspector that, due to physical disability, the elector is unable to depress a button or lever on a machine"..

In Wisconsin State Statute 7.15, subheading (14) is about voting accommodations for individuals with disabilities. It states that "Each municipal clerk shall make reasonable efforts to comply with requests for voting accommodations made by individuals with disabilities whenever feasible".

Article 1, Section 4, Clause 1 of the United States Constitution is called the "States and Elections Clause". It lays out that state legislatures establish the times, places and manner of holding elections for the U.S. House of Representatives, subject to Congress making changes to those state regulations. Supreme Court interpretations of the Elections Clause have given the authority to the states to "provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns", according to the Constitution Annotated website.

The Help America Vote Act (HAVA) was passed in 2002 in response to the problems that were identified in the 2000 national elections. HAVA states: "The voting system shall be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters." And in order to satisfy that, HAVA requires "the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place".

It is clear that municipalities with populations under 7,500 are not required to use electronic voting systems; they are allowed to count paper ballots by hand. What is unclear is whether every municipality is required to have at least one voting machine set up for disabled voters. The sentence about the voting machine requirement for disabled persons in HAVA seems to allow for non-electronic systems when it says "or other voting system equipped for individuals with disabilities."

Because of this evidence, it doesn't appear that the use of voting machines is required in townships with fewer than 7,500 people. The laws surrounding the need for having machines available for the disabled are complicated, and without a fair judgement on the matter from the court, it is hard to know what the requirement is. With the next Presidential Election coming up in just a few short months, the public is bracing itself for the results. Will all of our votes be counted accurately?

On July 26, there was a presentation on voting security at the Worden Avenue Exchange in Ladysmith. Mark Cook of Hand Count Road Show (handcountroadshow.org) is a subject matter expert on election vulnerabilities who has traveled the country in his camper trailer, educating folks about elections systems and how they can go wrong. A number of local governmental officials were in the audience and saw how Cook showed exactly how voting machines can be easily manipulated. Cook addressed the entire ecosystem of voting, which includes the voter rolls, verification of absentee ballots, tabulation and recording of votes. His conclusion is that there is too much room for fraud when using machines.

The mission of Hand Count Road Show is to ensure that our elections accurately and verifiably represent the will of the people. Cook has been making personal visits to counties all over the U.S. to educate and offer advice on how to fortify the security, accuracy, and verifiability of each county's upcoming elections. In addition to the Friday night presentation, on Saturday Cook met with representatives from both sides of the local political aisle, and showed them the data that he says proves the machines can be hacked. Cook also discussed additional forms of election fraud. The main goal is to get local municipalities to discontinue the use of the electronic voting machines, and count all ballots by hand. Hand Count Road Show's work is non-partisan, because they say fair, accurate, and transparent elections will benefit all Americans.



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: For the November 1, 2024, Meeting of the Wisconsin Elections Commission

TO: Members, Wisconsin Elections Commission

FROM: WEC Staff

SUBJECT: Preparing for a Potential 2024 Presidential Recount

The Wisconsin Elections Commission (“the Commission”) received petitions for a full, or partial, recount following the presidential elections in both 2020 and 2016. Accordingly, it is prudent to plan for the possibility of a recount petition following the November 5, 2024, election so that clerks, candidates, and voters understand how this process will unfold if it occurs.

With that in mind, Commission staff have prepared the enclosed clerk communication for the Commission’s review and consideration. The clerk communication has four goals:

1. **Confirmation of Recount Timeline** – State law requires the Commission to certify the results of the election by December 1, 2024. Accordingly, any requested county recount statements must be submitted to the Commission by November 30, 2024, so that the Commission can meet its certification deadline. The clerk communication breaks down the timeline on which a recount would proceed depending on when a petition could be received by the Commission. Providing this information now will help clerks prepare if they know their deadlines upfront, especially considering Thanksgiving Day this year is on November 28, 2024.
2. **Information on Fee Calculation** – If a recount is requested and a fee is necessary, Commission staff will need to quickly gather financial data from county clerks to confirm the fee amount. The clerk communication explains the fee calculation process, and lets counties know what data will be needed so they can be prepared to provide it quickly.
3. **Minor Revisions to Recount Manual** – The Commission received public comment at the October 4, 2024, meeting regarding an ambiguity in the Recount Manual. Commission legal staff recommend making that change, and also recommend adding a few statutory citations, while cleaning up other minor ambiguities so this resource is ready if a recount is requested. The clerk communication will also provide supplementary materials to clerks so they can see what changed.
4. **Compilation of Unofficial County Results** – The clerk communication will also let clerks know that Commission staff intend to compile unofficial results reported by all 72 Wisconsin counties for the office of U.S. President and U.S. Senate to quickly determine whether these races are within the recount margins.

Recommended Motion: The Wisconsin Elections Commission approves the clerk communication that accompanies this memo, which includes approval of the proposed recount timeline, and revisions to the Recount Manual. Staff are instructed to immediately transmit the communication and supplemental materials to all clerks.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

APPENDIX 1 – DRAFT CLERK COMMUNICATION

DATE: November 1, 2024

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

FROM: The Wisconsin Elections Commission

SUBJECT: Preparing for a Potential 2024 Presidential Recount

The Wisconsin Elections Commission (“the Commission”) approved this clerk communication on November 1, 2024, to provide pertinent information on planning for a possible 2024 presidential recount petition.

This clerk communication provides detailed information on four recount topics:

1. **Recount Completion Deadline of November 30, 2024**
2. **Information the Commission will Need from Counties to Determine Recount Fee**
3. **Minor Revisions to the Recount Manual**
4. **Commission Staff will Compile Unofficial County Results to Track Recount Margins**

Part 1 - Recount Completion Deadline of November 30, 2024

Any recount regarding the presidential election would proceed on a precise timeline under Wisconsin and federal law. The timeline is determined by the last date that a county canvass statement is submitted to the Commission. The Commission would notify all county clerks immediately should a sufficient petition for a recount be filed. Regardless of when the last county canvass statement is received, the state canvass must occur no later than December 1, and thus the Commission must have received all county recount statements by **noon on November 30**. Please use the table below when planning for the possibility of a recount. Please also plan accordingly given that Thursday, Nov. 28 (11/28/24) is Thanksgiving.

Date County Canvasses Transmitted to WEC	Date Recount Requested	Date Recount Results Transmitted to WEC	Date of State Canvass of Recount Returns
11/13/24	11/14/24	11/27/24	11/28/24
11/14/24	11/15/24	11/28/24	11/29/24
11/15/24*	11/16/24	11/29/24	11/30/24
11/16/24	11/17/24	11/30/24	12/1/24
11/17/24	11/18/24	11/30/24	12/1/24
11/18/24	11/19/24	11/30/24	12/1/24
11/19/24	11/20/24	11/30/24	12/1/24

Citations:

[Wis. Stat. § 7.60\(5\)](#): The final day for a county to transmit its completed canvass to the WEC is November 19, 2024. It may be completed and transmitted earlier.

[Wis. Stats. §§ 7.60\(5\), 9.01\(1\)\(a\)1. & \(ar\)3.](#): A recount must be requested within one business day of the WEC receiving all the completed county canvasses. The last day to request a recount is therefore November 20, 2024, one day after the November 19, 2024, county canvass deadline. Upon receipt of a timely and proper request for a recount, the Commission will promptly issue an order for the recount.

[Wis. Stat. § 9.01\(1\)\(ar\)3.](#): Any recount return from the counties must be submitted to the Commission no later than 13 days from the date of the order for recount, but may be submitted earlier.

[Wis. Stat. § 7.70\(3\)\(a\)](#): The chair must publicly canvass the returns and make her certifications and determinations on or before December 1, 2024.

[Wis. Stat. § 7.70\(5\)\(b\)](#): Once the Commission Chair has completed the state canvass, a certificate of determination is prepared by the Commission and signed by the governor. This is different than a certificate of election as seen in [Wis. Stat. § 7.70\(5\)\(a\)](#).

*If the Canvass is returned on Friday, November 15 (11/15/24), under the statute, the aggrieved party could file the request for recount on Monday, November 18 (11/18/24). If so, the dates governing that request would be the same as if the canvass was returned on Sunday, November 17 (11/17/24).

Part 2 – Information the Commission will Need from Counties to Determine Recount Fee

Following a presidential election, a candidate for president would need to file with the WEC a verified petition for a recount by 5 p.m. on the 1st business day following the day on which the WEC receives the last statement from a county board of canvassers. The WEC would immediately inform all counties under which the recount is desired. If the difference between the total votes cast in the state for the leading candidate and the petitioner is equal to or less than 0.25% of the total votes cast in Wisconsin for the office, each county assumes the cost of the recount, and an estimated cost would not be necessary. However, if the difference is greater than 0.25% of the total votes cast for the office, the WEC would request from those counties a reasonable estimate of expenditures to conduct their recount. A prompt estimate is necessary. WEC would provide to the counties an excel form (similar form as in 2020) in which to report their cost estimate (see [Wis. Stat. § 9.01\(1\)\(ag\)](#)). That excel includes estimates for:

- Labor (Salaries/Wages & Fringe):
 - Board of Canvassers & Tabulators
 - Legal Counsel
 - Security Staff
 - Other Personnel
- Other Allowable Expenses:
 - Space Rental
 - Transportation Fees
 - Equipment Rental Fees
 - Allowable Travel Costs (Mileage & Parking)
 - Supplies, Including PPE & Other Safety Supplies
 - IT Related Expenses

- Meals
- Other Allowable Expenses (description required)

WEC will compile the county estimates along with our own estimate of costs and provide those estimates to the petitioner who will decide whether to pursue the recount, in full or in part, or withdraw the petition. If pursued and if the difference between the votes cast for the leading candidate and the petitioner is greater than 0.25% of the total votes cast for the office, the petitioner must prepay the WEC the full estimated fee before the petition can be considered valid. Wis. Stat. § 9.01(1)(ag)3. The WEC will receive these funds into a designated appropriation. Once the WEC has received the valid petition and payment from the petitioner, we will notify the participating county clerks who shall, in turn, notify their board of canvassers to commence the recount. WEC will then distribute to the county clerks of the counties in which the recount is to be held each county's estimated amount. The county clerk shall deposit their prepayment received with their county treasurer.

County boards of canvassers shall convene no later than 9 a.m. on the 3rd day after receipt of an order and may adjourn for not more than one day at a time until the recount is completed in the county, except that the commission may permit extension of the time for adjournment. Each board of canvassers must follow the recount procedure under Wis. Stats. §§ 9.01(1)(b) & 9.01(5). Returns from a recount shall be transmitted to the WEC as soon as possible, but not later than 13 days from the date the WEC ordered the recount.

If, as a result of the recount, the petitioner becomes the leading candidate, the counties and the WEC must bear their own costs of the recount and refund the full amount paid within 45 days after the last board of canvassers makes its determination in the recount. If the results of the recount do not change the designation of the leading candidate, then prepaid costs are compared to actual costs. Using the same form on which they made their estimate, county clerks must compile and submit to the WEC their actual costs of the recount. Actual costs must be reasonable and necessary, wholly due to the recount process, not otherwise reimbursed, and be properly documented. All documentation relating to submitted costs must be retained. If *actual costs are less* than the estimated, the county must refund the amount overpaid within 45 days after their board of canvassers makes its determination in the recount. If *actual costs are greater* than the estimated, the petitioner must pay to the WEC the overage within 45 days of receipt of balance due, and the WEC will then distribute to the county/counties owed additional reimbursement.

If a recount is requested, the WEC will provide clerks with a designated WEC Recount email address for all related questions and submissions.

Part 3 – Minor Revisions to the Recount Manual

The Wisconsin Elections Commission (“the Commission”) maintains a manual describing the statutory requirements and best practices to use in the event of a recount following an election in Wisconsin. In January 2024, Commission staff worked closely with county clerks across the state to identify possible revisions to this manual, all of which were presented to the Commission in March 2024. The Commission's discussion and subsequent approval of the staff's proposed changes were extensively documented in the minutes from the March 20, 2024, meeting.¹

At the October 4, 2024, meeting, the Wisconsin Elections Commission (“the Commission”) received public comment from an experienced election inspector regarding a couple of thoughtful clarification changes to the Recount Manual. Legal staff agreed that those clarification changes to the Recount Manual were

¹ Available at: <https://elections.wi.gov/event/special-meeting-3202024>.

warranted. Commission legal staff also took the opportunity to conduct a full review of the revised Recount Manual to determine whether any other clarifications of ambiguities or helpful statutory citations were necessary.

All but one of the changes proposed by staff to the recount manual do not substantively change the procedures and policies for conducting a recount. All but one of the changes merely add statutory citations, provide additional detail or clarity, or reorganize information to resolve ambiguities.

The sole substantive change removes guidance that clerks can conduct administrative review of recount materials prior to the convening of the Board of Canvassers (“BOC”). Staff recommend this change purely in the interest of total transparency and full statutory compliance, as all work pertaining to recounts should properly be conducted by the BOC in an open meeting where the candidates and their representatives may be present. This change is presented on page 9 of the Recount Manual.

A redlined version of the Recount Manual, along with a detailed chart explaining where and why each change was made, is included in the supplemental materials to this clerk communication.

Part 4 – Commission Staff will Compile Unofficial County Results to Track Recount Margins

The State of Wisconsin’s statutes do not charge the Wisconsin Elections Commission with collecting an aggregate of unofficial election night results. Instead, Wisconsin law requires that each of the municipalities report their unofficial totals to their county clerk, the county clerk then posts all the municipalities’ unofficial results to the county website. The WEC then maintains a list of direct links to each of the 72 county websites where their municipalities unofficial results are posted. Links to the county sites for the November 5, 2024 election will be posted here: <https://elections.wi.gov/wisconsin-county-election-websites>

As it relates to a potential recount, WEC and local clerks often receive questions from candidates, the media, and clerks about where to find official data to determine if a race is within the statutory margin to qualify for a recount. An aggrieved candidate can request a recount if the unofficial results indicate that the difference between the leading candidate and a potential aggrieved candidate is within the 1% threshold to request a recount under [Wis. Stat. § 9.01\(1\)\(a\)5](#). To provide a reliable source for this information, WEC staff will compile a spreadsheet after the election that consolidates unofficial totals for each county for all federal contests on the ballot. Additionally, WEC will monitor state-level contests that appear close to the recount margin to collect this data. However, we do not plan to collect aggregate data for contests that do not appear to be near the recount threshold.

The spreadsheet will be posted to the same webpage as the links to the [72 county websites](#) in the days following the election. The spreadsheet will include the aggregate totals, based on the unofficial results on the counties’ websites, and a calculation of the margin between the top two candidates, using the calculation presented in the WEC recount manual. The spreadsheet will also include a disclaimer that says, “The information presented here is based on the unofficial results posted on each of Wisconsin’s 72 counties’ websites. These calculations are also unofficial, and meant to serve as a resource to understand if a contest may qualify for a recount under [Wis. Stat. § 9.01\(1\)\(a\)5](#).”

Please contact the WEC Help Desk at elections@wi.gov or (608) 261-2028 with any questions you may have.

Section	Page	Action Taken	Material	Type of Update	Why?
Cover Page	N/A	Modify	Updated proposed revision date for the manual.	Typo/Formatting	Proposing a new revision date for the cover page of "November 2024.
Definitions	3	Formatting	Put defined words in bold formatting	Typo/Formatting	Make the defined words stand out, and makes this section look more polished
Definitions	3	Modify	Correct statute cite	7.08(3)(c) Manual Maintenance	Correct citation; Existing cite is the leading candidate statute, not the aggrieved one
Definitions	3	Addition	Add "(including U.S. president)" to the definition of Filing Officer	7.08(3)(c) Manual Maintenance	This clarification confirms that the Commission is the Filing Officer for recounts for the office of US President even though major party candidates don't file nomination papers
Who may request recount?	4	Addition	Add statute cites to each of first two lines	7.08(3)(c) Manual Maintenance	Adds appropriate statutory cites
How is a recount requested?	4	Addition	Add the line: "Recounts of statewide referenda questions are filed with the Commission."	7.08(3)(c) Manual Maintenance	Adds clarity for where statewide referenda recounts are filed since the Commission is not a "clerk of a jurisdiction"
What is a recount petition?	4,5	Revision	Revise Form "EL-187" to "EL-186R"	7.08(3)(c) Manual Maintenance	This form is the sample recount petition for referenda. The form number was changed to EL-186R.
When must the petition be filed?	7	Addition	Add the line: "After a presidential election, if the candidates for that office are within the recall margin, the WEC will notify the candidates and their parties when it receives the last county canvass statement."	7.08(3)(c) Manual Maintenance	This is something the Commission does already, but this clarification is for the benefit of candidates so they know how they will know when the last county canvass statement is received in order to properly calculate their recount filing deadline
Who may attend the recount?	9	Addition	Add : "Compare Wis. Stat. § 7.41 with § 9.01(3)."	7.08(3)(c) Manual Maintenance	Adds appropriate statutory cites
Who may attend the recount?	9	Addition	Add: "See Wis. Stat. § 12.13(3)(x) ("No person may...interrupt or disturb the voting or canvassing proceedings.")	7.08(3)(c) Manual Maintenance	Adds appropriate statutory cites
Recount Preparations	9	Deletion	Remove the paragraph beginning with "The Filing Officer may choose to conduct an administrative review of the recount materials..."	7.08(3)(c) Manual Maintenance	The work described by this section should be more appropriately conducted by the BOC in an open meeting so that the candidates and their representatives may be present and may observe all work pertaining to the recount
What does the BOC do?	10	Addition	Add statute cite to the second sentence	7.08(3)(c) Manual Maintenance	Adds appropriate statutory cite
Recount Step 4	12	Relocation	Add : "The BOC should also examine all remade ballots to ensure that such ballots were correctly remade and that voter intent was correctly determined. If any duplicate ballots were remade incorrectly, the BOC should set aside the incorrectly remade duplicate ballot, mark it with the reason for its removal, create a new duplicate ballot, and mark it as such. See Wis. Stat. § 5.90(1).	7.08(3)(c) Manual Maintenance	This instruction previously appeared in the tabulation instructions for using voting equipment to recount the ballots after sorting and preparation. This instruction should equally apply to voting machine and hand count tabulation, so it was accordingly moved into the ballot preparation section so that it is clear that it should be done for all recounts, whether tabulation is by hand or by tabulator
Tabulatig Votes by Hand Coung	14	Addition	Add the following word in bold: "The WEC recommends that hand counts be conducted using teams of at least two human tabulators."	7.08(3)(c) Manual Maintenance	The recount statute refers to the individuals who assist the BOC as "tabulators," which can be confusing as that word can also refer to electronic voting equipment. Since this is the handcount section, adding the word "human" clarifies that the hand count should be done with human tabulators, not voting equipment
Optical Scan Tabulator	15	Addition	Add: "The procedures for the test and the results of the test should be recorded in the minutes."	7.08(3)(c) Manual Maintenance	This addition just clarifies and reminds the BOC to record the results of the test in the minutes so that record is preserved
Optical Scan Tabulator	15	Relocation	Relocate section "Compare Duplicate Ballots with Original Ballots" to page 12	7.08(3)(c) Manual Maintenance	This is the companion edit to line 12 and relocates this information into the general recount prep/review work to confirm it's not a step that should be specific to optical tabulation, and should be something the BOC also does even if it intends to do a hand count
Direct Record Electronic	16	Revision	Revises "paper ballot" to "hand count ballots"	7.08(3)(c) Manual Maintenance	Revised to avoid an ambiguity. All ballots are paper ballots, but the use of that phrase in this context is more accurately "hand count ballots"
Recount Checklist - Hand Count	App - 9	Revision	Add: "Review remade ballots against originals to confirm accuracy."	7.08(3)(c) Manual Maintenance	Included to confirm that this should be completed as part of the recount work by the BOC
Recount Checklist - Optical Scan Voting Equipment	App - 10	Revision	Add: "Review remade ballots against originals to confirm accuracy."	7.08(3)(c) Manual Maintenance	Included to confirm that this should be completed as part of the recount work by the BOC
Recount Checklist - DRE / Touch Screen	App - 11	Revision	Add: "Review remade ballots against originals to confirm accuracy."	7.08(3)(c) Manual Maintenance	Included to confirm that this should be completed as part of the recount work by the BOC

ELECTION RECOUNT PROCEDURES

November 2024

~~April 2024~~



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Table of Contents

Definitions for Use in This Manual	3
Procedures for Requesting a Recount	4-7
Who May Request a Recount?	4
How is a Recount Requested?	4
What is a Recount Petition?	4-5
When is a Filing Fee Required?	5-6
Campaign Finance Note	6
Where Does the Petitioner File a Recount Petition?	6
When Must the Petition Be Filed?	6-7
What Happens When the Petition is Properly Filed?	7
Procedures for Conducting the Recount	7-17
When Does the Recount Begin?	7-8
Who Conducts the Recount?	8
Who May Attend the Recount?	8-9
Recount Preparations	9
Recount Methods	9-10
What Does the BOC Do?	10
How Does the BOC Conduct the Recount?	10-17
After the Recount	17-18
What Does the BOC Do After the Recount?	17
How Does a Candidate or Petitioner Challenge the Results?	17

Appendix	
Sample Forms	1-6
Recount Petition	1
Recount Petition for Referendum	2
Order for Recount	3
Public Notice of Recount	4
Acceptance of Service	5
Recount Minutes	6
Recount Fee Scenarios	7
Recount Checklists	8-11
Supplies and Materials	8
Paper Ballot	9
Optical Scan	10
Direct Recording Electronic (DRE)/Touch Screen Voting	11

Definitions for Use in this Manual

“Aggrieved Candidate” means a candidate who (1) in an election with 4,000 votes or fewer, trails the Leading Candidate by no more than 40 votes, or (2) in an election with more than 4,000 votes, trails the Leading Candidate by no more than one percent of the total votes cast for the office

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sought. ~~Wis. Stat. § 9.01(1)(ag)5.~~ **Wis. Stat. § 9.01(1)(a)5.** ~~Wis. Stat. § 9.01(1)(a)5.~~

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Note: If more than one office of the same type is to be filled in an election from the same Territory, the number and percentage of votes cast under this definition shall be determined by first dividing the total number of votes cast for the office by the number of offices being filled at the election from the same Territory.

“BOC” means the recount board of canvassers overseeing the applicable recount process referred to throughout specific sections of this manual. Any board of canvassers other than the recount board of canvassers will be referred to by its full title, such as the municipal, county, or state board of canvassers.

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“Determining” or **“Determination”** relates to the time at which a recount petition may be filed, and means the point after the candidate or referendum vote totals have been tallied by the last board of canvassers. This stage occurs not earlier than the canvass of all valid provisional votes for the election, and not later than 5:00 p.m. on the third business day after the last meeting day of the last board of canvassers following canvassing of all valid provisional ballots for the election or referendum results.

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“Filing Officer” means the Wisconsin Elections Commission for any federal or state office (including U.S. president) or referendum (including U.S. president), the county clerk for any county office or referendum, the municipal clerk or the board of election commissioners for a municipal office or referendum, and the school district clerk for a school board office or referendum.

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“Leading Candidate” means every individual whose vote total at the time of the filing of the recount petition would entitle the individual to election or nomination to office.

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“Original Election Materials” means those materials itemized in the applicable Recount Checklist attached to this manual as an appendix.

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“Probable Absentee Ballot” means a ballot initialed only by the municipal clerk, executive director of the board of election commissioners, deputy clerk, or secretary.

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“Territory” means the geographic area served by the office subject to recount (ward, district, municipality, county, state, etc.).

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Procedures for Requesting a Recount

Who May Request a Recount?

Any Aggrieved Candidate may petition for a recount of the election. [Wis. Stat. § 9.01\(1\)\(a\)1.](#)

Any individual who voted at a referendum election may petition for a recount of the referendum results. [Wis. Stat. § 9.01\(1\)\(a\)1.](#)

There is no automatic recount in Wisconsin, even if the unofficial results are extremely close.

How is a Recount Requested?

A recount of an election is requested by filing a verified petition with the Filing Officer along with any applicable fee.

A recount of a referendum is requested by the filing of a verified petition with the clerk of the jurisdiction in which the referendum is called, along with any applicable fee. [Recounts of statewide referenda questions are filed with the Commission. Wis. Stat. § 9.01\(1\)\(a\)1. & 9.01\(1\)\(ar\)1. & 2.](#)

What is a Recount Petition?

A recount petition is a sworn statement requesting that the votes at an election be counted again, or the votes of a referendum be counted again. The petitioner shall set out the reasons why the ballots should be recounted.

The recount petition must state the following information:

1. That the petitioner is either an Aggrieved Candidate for the office in question or a voter who voted on the referendum in question. [Wis. Stat. § 9.01\(1\)\(a\)2.a & c.](#)
2. The basis for requesting the recount. This shall consist of a statement that the petitioner is informed and believes that a mistake or fraud was committed in a specified ward or municipality in the counting and return of the votes cast for the office or upon the referendum or the petitioner may state that another specified defect, irregularity, or illegality occurred in the conduct of the election. The petitioner shall state if this information is based on personal knowledge of the petitioner or if the petitioner believes the information to be true based on information received from other sources. [Wis. Stat. § 9.01\(1\)\(a\)2.b.](#)
3. The ward or wards to be recounted. If a municipality consists of only one ward, the petition need only list the municipality in which the recount is desired. If all wards in a municipality, county or district are to be recounted, the petition may list the municipality, county or district without specifying each ward to be recounted. The petitioner may also state “all wards” if the petitioner wants the entire election recounted. If no ward specifications are indicated, the Filing Officer will assume that all wards are included. [Wis. Stat. § 9.01\(1\)\(a\)3.](#)

The petition must be verified, meaning that it is signed under oath before a person authorized to administer oaths, or is declared pursuant to Wis. Stat. § 887.015. The verification must state that the matters contained in the petition are known to the petitioner to be true except for allegations stated

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on information and belief, which the individual believes to be true. See Sample Recount Petition ([EL-186](#) or [EL-187EL-186R](#)).

If a recount petition is not filed in the proper form, or not accompanied by the filing fee (if required) by the filing deadline, the petitioner loses his or her right to a recount of the election. See Wis. Stats. §§ [9.01\(1\)\(a\)](#) & [\(1\)\(ag\)](#). A sample recount petition ([EL-186](#) or [EL-187EL-186R](#)) is available in the Appendix.

After filing the recount petition, the petitioner may amend the petition. This may be done to include information discovered as a result of facts gathered and determined by the BOC during the recount. If the petitioner wants to amend his or her petition, the petitioner must file a motion to amend the petition with the BOC as soon as possible after the petitioner discovers, or should have reasonably discovered, the new information, and show that the petitioner was unable to include the information in the original petition. [Wis. Stat. § 9.01\(1\)\(a\)4](#).

Expanding the recount through subsequent petitions. If an Aggrieved Candidate petitions for a recount in some, but not all, of the wards or municipalities within a jurisdiction or district, the opposing candidate may file a petition for a recount, meeting the requirements above, in any or all of the remaining wards or municipalities. The opposing candidate filing a subsequent petition need not be an Aggrieved Candidate, and need only be running in the same race on the same ballot as the Aggrieved Candidate. The subsequent petition must be filed not later than 5:00 p.m. two days after the BOC completes the first recount. The BOC convenes at 9:00 a.m. on the next business day to count the remaining wards or municipalities.

In a recount of a referendum where the petitioner has sought a recount of some but not all wards or municipalities within a district, any voter who voted at the election or a municipality may petition to recount the remaining wards or municipalities in a referendum election. Wis. Stat. § 9.01(4).

When is a Filing Fee Required?

Filing fees for an election depend on the total votes cast for the office, the difference between the total votes cast for the Leading Candidate(s), and the total votes cast for the recount petitioner. Filing fees for a referendum depend on the total votes cast in the affirmative and negative, and the difference between the two totals.

- If 4,000 or fewer votes are cast:
 - If the difference between the Leading Candidate and Aggrieved Candidate is less than 10, or the difference between the “yes” votes and “no” votes in a referendum is less than 10, no fee is required.
 - If the difference between the Leading Candidate and Aggrieved Candidate is 10 or more votes, or the difference between the “yes” votes and “no” votes in a referendum is 10 or more, a filing fee is required.
- If more than 4,000 votes are cast:
 - If the difference in the total votes cast in an election between the Leading Candidate and the Aggrieved Candidate, or the difference between the “yes” votes and “no” votes in a referendum is 0.25% or less, no fee is required.
 - If the difference in the total votes cast in an election between the Leading Candidate and the Aggrieved Candidate, or the difference between the “yes” votes and “no” votes in a referendum is greater than 0.25%, a filing fee is required.

- Calculating Fees If more than one candidate can petition for recount:
 - In an election where more than one candidate is elected to the same office, or in a primary election when two or more candidates are nominated, the Leading Candidate is any person who received sufficient votes that would still entitle the candidate to election or nomination to office; not necessarily the candidate with the most votes. When more than one candidate is elected or nominated from the same Territory, the number and percentage of votes cast to determine filing fees is calculated by first dividing the total votes cast for the office by the number of offices being filled at the election from the same Territory. [Wis. Stat. § 9.01\(1\)\(ag\)5](#). Please see “Recount Fee Scenarios” in the Appendix for an example of how to determine if a filing fee is required under these circumstances.

Amount of Filing Fees: When a filing fee is required, the cost of the recount should be estimated by the Filing Officer, including the actual cost incurred by the Wisconsin Elections Commission (“WEC”) to provide services for performing the recount. -The filing fee must be pre-paid by the petitioner in cash or in another form of payment acceptable to the Filing Officer at the time of filing. [Wis. Stats. §§ 9.01\(1\)\(ag\)2. & \(1\)\(ag\)3.](#)

Examples of allowable recount costs include, but are not limited to, personnel costs related to recount services provided, mileage reimbursement for travel, room rental fees, and equipment rental fees. Examples of non-allowable recount costs include, but are not limited to, alcohol reimbursement, childcare reimbursement, travel costs to a worker’s headquarter city where they would otherwise work, spouse or family reimbursements, lost or stolen property, and traffic or parking citations.

Refunds of Filing Fees: If the recount results in the petitioner becoming a Leading Candidate or a reversal of the outcome of a referendum the filing fee shall be refunded to the petitioner within 45 days after the BOC makes its determination in the recount. If the results of the recount do not change the outcome of the election, or the recount results in a difference in the votes cast that is below the threshold for paying the fee, the petitioner shall pay any balance owing toward the actual cost of the recount within 45 days after the Filing Officer provides the petitioner with a written statement of the amount due. [Wis. Stat. § 9.01\(1\)\(ag\)3m.](#)

Where Does the Petitioner File the Recount Petition?

The petitioner files the recount petition with the Filing Officer with whom nomination papers or a declaration of candidacy are filed for that office. [Wis. Stats. §§ 8.10\(6\)\(d\) & 9.01\(1\)\(ar\)1.](#)

- The Filing Officer for any federal or state office or referendum is the WEC.
- The Filing Officer for any county office or referendum is the county clerk.
- The Filing Officer for a municipal office or referendum is the municipal clerk or the board of election commissioners.
- The Filing Officer for a school board office or referendum is the school district clerk.

When Must the Petition be Filed?

If a municipal or county board of canvassers determines the election results, the deadline for filing is not earlier than the completion of the canvass of all valid provisional votes for the election and not later than 5:00 p.m. on the third business day after the last meeting day of the last board of canvassers which makes a Determination following canvassing of all valid provisional ballots for the election or referendum results. [Wis. Stat. § 9.01\(1\)\(a\)1.](#)

If the WEC Chairperson or designee determines the election or referendum result, the petition must be filed no earlier than the last meeting day of the last county board of canvassers to make a statement (*i.e.* complete all canvass processes outlined in Wis. Stat. Chapter 7) in the election or referendum and no later than 5:00 p.m. on the third business day after the WEC receives the last statement from the county board of canvassers. [Wis. Stat. § 9.01\(1\)\(a\)1.](#)

For an election for President of the United States, the recount petition must be filed no later than 5:00 p.m. on the first business day after the WEC receives the last statement from a county board of canvassers for the election. [After a presidential election, if the candidates for that office are within the recall margin, the WEC will notify the candidates and their parties when it receives the last county canvass statement.](#)

Questions regarding the use of campaign finance funds for a recount should be directed to the Wisconsin Ethics Commission.

What Happens When the Petition is Properly Filed?

Public Notice: Upon receipt of a verified recount petition, and once any required fee has been paid, the Filing Officer shall prepare a public notice of the recount (see Appendix for an example) pursuant to [Wis. Stat. § 19.84](#) describing when and where the recount will be held. The Filing Officer shall provide a copy of that notice to the BOC and a copy of the petition and public notice to all candidates whose names were listed on the ballot for the same office.

Note: While not required, the WEC recommends that the Filing Officer also deliver the notice to any registered write-in candidates.

Service of the Petition: In a partisan primary, candidates from all parties for the same office, including independent candidates with ballot access, must be provided with a copy of the petition by the Filing Officer. A candidate or agent designated by the candidate may personally accept delivery of the copy of the petition. If consented to by the candidate, electronic delivery is permitted. Upon delivery, the candidate or agent shall be required to sign a receipt or provide acknowledgement by electronic media (see Appendix). If a candidate or agent does not personally accept delivery, the copies shall be given promptly to the sheriff. The sheriff shall promptly serve the copies on the candidates without fee. [Wis. Stat. § 9.01\(2\).](#)

The BOC should also make arrangements to obtain legal advice as needed during the recount proceedings. The Commission staff may also be made available via phone during the recount upon request but cannot render legal advice.

The WEC shall be notified of all recounts. In the event of a recount for state or federal office involving more than one county, the boards of canvassers shall consult with the Commission staff to ensure that uniform procedures are used to the extent practicable. [Wis. Stat. § 9.01\(10\).](#) The Commission staff will make arrangements for a teleconference with the affected county clerks prior to beginning the recount. Candidates will be invited to participate and the teleconference will be open to the public.

Procedures for Conducting the Recount

When Does the Recount Begin?

The recount begins no earlier than 9 a.m. on the day following delivery of notice to all candidates and no later than 9 a.m. on the day following the last day for filing the recount petition. [Wis. Stat. § 9.01\(1\)\(b\)](#). Note: This requires delivery of a verified petition to all candidates the day the petition is filed if it is filed on the last allowable day.

In a recount ordered by the WEC, the BOC shall convene no later than 9 a.m. on the third day following receipt of the order by the county clerk. [Wis. Stat. § 9.01\(1\)\(ar\)3](#). If the following morning is a Saturday, Sunday, or holiday, the WEC recommends that the BOC begin the recount on that Saturday, Sunday, or holiday.

Who Conducts the Recount?

The board of canvassers that determined the original election result conducts the recount, except for state and federal elections.

For state and federal elections, the county boards of canvassers for the counties in which the contested votes are cast conduct the recount.

The WEC recommends that the BOC be composed of the same people who initially canvassed the election results. However, in the event one of the original members is unavailable when the recount is scheduled to begin, other qualified individuals may be appointed to fill the temporary vacancy. [Wis. Stats. §§ 7.53\(1\)\(b\)](#), [\(2\)\(a\)](#), [7.60\(2\)](#). If a member of the original board of canvassers is unavailable for the recount, the clerk should be notified immediately, and a list of qualified replacements composed before the recount begins. The minutes of the recount should reflect any change in canvass board members and the reason for the substitution.

The BOC may hire tabulators who work at their direction and who assist in administering the recount. Tabulators may assist the BOC in conducting the recount, but only members of the BOC are competent to make any determination as to the validity of any vote tabulated. [Wis. Stat. § 9.01\(5\)\(b\)](#). The WEC recommends that, when possible, the election inspectors who worked the polls on Election Day serve as tabulators.

Who May Attend the Recount?

The petitioner, all opposing candidates, and all interested persons are entitled to be present in person and by counsel to observe the proceedings. [Wis. Stat. § 9.01\(3\)](#). If there are multiple representatives from a single campaign, the Commission recommends that a single representative be identified as the designated primary representative to the BOC. The designated primary representative to the BOC can change or defer to others, as long as one person at a time is speaking for the campaign. The Commission recommends that the petitioner, candidates, and their authorized representatives and counsel wear a badge or nametag that clearly identifies them as a person who can object to the counting of a ballot.

Members of the BOC and the tabulators are the only persons who may handle and touch the ballots and other election materials. The BOC must, however, allow the candidates and their representatives and/or legal counsel to view and identify the election materials, as well as object to the counting of any ballot. [Wis. Stat. § 9.01\(1\)\(b\)11](#). Public health guidance should be considered by the BOC when setting up the recount location and observation areas. Any challenges to the procedure established by the BOC regarding observation should be decided by the BOC and documented in the minutes. The optional use of a live video feed to provide greater transparency and minimize the number of individuals observing in person should also be considered.

The BOC may establish marked observer areas and ask that observers remain within those areas unless otherwise permitted by the BOC. Unlike observation areas in the polling place, recount observation areas are not required to be placed at any specific distance, provided the candidates and their representatives can view and identify the election materials and the observers are not disruptive to the recount process. [Compare Wis. Stat. § 7.41\(2\) with § 9.01\(3\)](#). If there is not sufficient room for all observers to view the election materials, preference shall be given to candidates, their representatives or counsel. The use of video or still cameras inside the recount room is permitted unless it is disruptive or interferes with the recount. The BOC may enforce reasonable restrictions on items brought into the recount room, such as marking devices, food, or drink.

~~If any observer engages in disruptive behavior that in the opinion of the BOC threatens the orderly conduct of the recount, the BOC shall issue a warning and if the observer does not cease the offending conduct, order the observer's removal. See Wis. Stat. § 12.13(3)(x) ("No person may... interrupt or disturb the voting or canvassing proceedings.")~~

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Recount Preparations

The Filing Officer administering the recount should ensure that all the supplies and materials needed for the recount have been acquired prior to the start of the recount. The Filing Officer should also acquire the necessary Original Election Materials for each reporting unit to be recounted. A sample checklist of materials and supplies is available in the Appendix. The Filing Officer must properly notice the recount as a public meeting under [Wis. Stat. § 19.84](#).

If the necessary materials are not on hand when the recount is scheduled to begin, the WEC recommends that the BOC convene by the deadline set by statute, document what materials are missing, what steps have been taken to procure them for the record, and adjourn until the materials are available. In the event that the BOC has the Original Election Materials for some but not all the wards to be recounted at the time they are scheduled to begin the recount, the BOC may begin the recount with those wards for which it has the Original Election Materials while the missing materials are being obtained.

Note: The BOC may not adjourn for more than one day at a time. Wis. Stat. § 9.01(1)(ar)3.

The WEC recommends that the BOC note in the minutes if proper notice of the recount was given to all candidates. Further, the BOC should note if the recount was properly noticed as a public meeting under [Wis. Stat. § 19.84](#).

~~The Filing Officer may choose to conduct an administrative review of the recount materials prior to the recount commencing to identify possible errors or anomalies (e.g., reconciliation of poll books). If any such review was conducted by the Filing Officer prior to the recount, the Filing Officer shall publicly present a full report to the BOC of any errors or anomalies identified as well as any corrective action taken, and all these considerations should be noted in the recount minutes. The BOC may choose to adopt or reverse any decision made by the Filing Officer during the administrative pre-recount review.~~

Recount Methods

Unless a court orders otherwise, the BOC may decide to either hand-count or use voting equipment

to tabulate the ballots. The BOC may also choose to hand-count certain wards, while using voting equipment to tabulate other wards. [Wis. Stats. § 5.90\(1\) & \(2\)](#).

If voting equipment is used, it should be programmed to read and tally only the results for the contest to be recounted. Filing officers should be prepared for a BOC to select either machine counting or hand counting of votes. The formal decision on the tabulation method to be used should be made publicly when the recount begins so as to provide an opportunity for candidates or their representatives to object.

What Does the BOC Do?

The duty of the BOC is to recount the votes cast for the office in question and to correct the errors, if any, that were made at the original determination of the election results. [Wis. Stat. § 9.01\(1\)\(b\)11](#).

If necessary, the BOC may also issue subpoenas to compel witnesses or documents for the recount. [Wis. Stat. § 9.01\(5\)\(a\)](#).

The BOC is required to keep complete minutes of all proceedings before the BOC, including a record of any objection, offer of evidence, exhibit, and finding of fact. [Wis. Stat. § 9.01\(5\)\(a\)](#). An audio recorder or court reporter is recommended to ensure detailed minutes are kept, as may be determined necessary or beneficial by the BOC or election officials. A sample format for the recount minutes can be found in the Appendix.

Each party to a recount must be given an opportunity to object and provide offers of evidence on:

- all objections to the recount itself,
- the composition of the BOC,
- the procedures followed,
- any ballot cast at the election, and
- any other issues presented to the BOC during the recount.

How Does the BOC Conduct the Recount?

The BOC conducts the recount by following the procedures in Wis. Stats. §§ [5.90](#); [7.50](#); [7.51](#); & [9.01\(1\)\(b\)](#). These procedures are conducted separately for each municipality and reporting unit within the municipality. The BOC shall announce each reporting unit before beginning the recount process for that reporting unit.

Note: Please see the Appendix for checklists specific to the use of each type of tabulation method as well as the WEC staff memorandum on the construction of Wisconsin's election statutes and the discretion a BOC may exercise when making decisions during the recount.

Recount Step One

Reconcile Poll Lists and Voter Data – [Wis. Stat. § 9.01\(1\)\(b\)1](#).

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The BOC reconciles the two poll lists and any supplemental lists to confirm the lists record the same voters, the same total number of electors who voted in the ward or municipality, and that

the same supplemental information is noted. The BOC determines from the poll lists the total number of voters, the number of absentee votes recorded, and identifies any irregularities appearing on these lists. The BOC notes in the minutes the total number of persons who voted, how many absentee votes were recorded, and any irregularities found on the poll lists.

Recount Step Two

Review Absentee Ballots and Materials – [Wis. Stat. § 9.01\(1\)\(b\)2.](#)

a) Determine Number of Absentee Voters

The WEC recommends that the BOC determine the number of absentee voters by reviewing the poll lists as described in Step One, before then comparing that information to the relevant ballots and materials (*e.g.* the absentee ballot certificate envelopes, the Inspectors’ Statement (EL-104), and the absentee ballot log (EL-124)).

b) Review Rejected Absentee Ballots

The BOC will then specifically examine only the rejected absentee ballot certificate envelopes contained in the carrier envelope (EL-102) for the purpose of ensuring the BOC agrees with the prior decisions on absentee ballot rejection. Rejected absentee ballot certificate envelopes are identified by the election inspectors on Election Night and marked “rejected.” The reason for the rejection should be noted on the Inspectors’ Statement (EL-104).

For recount purposes, an absentee ballot certificate envelope is defective “only if it is not witnessed or if it is not signed by the voter, or if the certificate accompanying an absentee ballot that the voter received by facsimile transmission or electronic mail is missing.” Wis. Stat. § 9.01(1)(b)2. The BOC should make its own determination for each rejected absentee ballot certificate envelope. Any improperly rejected ballots should be marked and placed into the pool of ballots to be counted. If the number of voters is increased under this procedure the change should be recorded in the minutes. Any errors by election inspectors in rejecting absentee ballots should be documented in the minutes, along with the corrective action taken.

c) Examine Written Absentee Applications

Review of absentee ballot applications is not within the purview of the BOC under the recount provisions of Wis. Stat. Chapter 9. Absentee ballot application records may be available for review under the access to records provisions of Wis. Stat. Chapter 19.

d) Examine Absentee Ballot Envelopes

The BOC examines the used absentee ballot certificate envelopes (EL-122, EL-122M, EL-122SVD, EL-122S) contained in the white carrier envelope (EL-103). If the BOC finds any defective absentee ballot certificate envelope not identified on

Election Night, it should be marked as defective, assigned a serial number, set aside, and properly preserved. A notation, including a description of the defect, should be made in the minutes.

The number of voters determined at the beginning of the recount is reduced by the total number of absentee ballots set aside under this procedure. This adjusted number is noted in the minutes and used whenever the number of voters is referred to during the recount. Do not remove ballots from the pool at this stage. See Step 4, below.

Recount Step 3

Examine Ballot Bag or Container – Wis. Stat. § 9.01(1)(b)3.

The BOC examines the ballot bag or ballot container to determine that it has not been tampered with, opened, or opened and resealed. The BOC should verify that the tamper-evident seal matches the serial number on the ballot Container Certificate (EL-101) and the Inspectors' Statement (EL-104). The WEC recommends the BOC investigate any irregularities or possible tampering with the ballots and note its findings in the minutes.

Recount Step 4

Reconcile Ballot Count – Wis. Stat. § 9.01(1)(b)4.

a) *Ballot Count – Wis. Stat. § 9.01(1)(b)4.a.*

The BOC opens the ballot bag or ballot container and removes the contents. The BOC members or tabulators count the number of ballots in the ballot bag, excluding any ballots that were set aside and not counted by the election inspectors on Election Night under the provisions of [Wis. Stat. § 7.51\(2\)](#). These “set aside” ballots should have been marked and bundled by the election inspectors on Election Night.

The BOC reviews all ballots marked rejected, defective, and objected to, in order to decide whether such ballots were correctly categorized when the ballots were first examined after the election. The BOC should also examine all remade ballots to ensure that such ballots were correctly remade and that voter intent was correctly determined. If any duplicate ballots were remade incorrectly, the BOC should set aside the incorrectly remade duplicate ballot, mark it with the reason for its removal, create a new duplicate ballot, and mark it as such. See Wis. Stat. § 5.90(1).

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b) *Separate and Compare the Count of Probable Absentee Ballots – Wis. Stat. § 9.01(1)(b)4.b.*

The BOC separates all Probable Absentee Ballots from the other ballots (see definition, above). The BOC shall presume that a ballot initialed only by the municipal clerk, executive director of the board of election commissioners, deputy clerk, or secretary is an absentee ballot. [Wis. Stat. § 9.01\(1\)\(b\)4.b.](#) The number of Probable Absentee Ballots should equal the number of properly completed certificate envelopes (as determined by the BOC in Step 2 above), the number of absentee ballots recorded on the registration list on Election Night, and the number of written applications. Any discrepancies should be recorded in the minutes.

c) *Reconciling the Number of Ballots with the Number of Voters – Wis. Stat. § 9.01(1)(b)4.b.*

If the number of voters is greater than or equal to the number of ballots, record that information, but skip this step. Only engage in the following procedure if the number of ballots exceeds the number of voters.

If the BOC previously determined that any open absentee ballot certificate envelopes were defective, the BOC must draw at random, without inspection, from the pool of Probable Absentee Ballots the number of ballots equal to the number of envelopes that have been determined defective. If the BOC finds more defective absentee ballot envelopes than Probable Absentee Ballots, the BOC shall set aside all Probable Absentee Ballots. The Probable Absentee Ballots shall not be counted but shall be marked as to the reason for their removal, set aside and properly preserved. The BOC notes in the minutes the steps taken under this procedure and the results determined. [Wis. Stat. § 9.01\(1\)\(b\)4.b.](#)

1. If the number of ballots still exceeds the number of voters, the BOC or the tabulators shall place all the ballots face up to check for blank ballots. Any blank ballots (ballots which have not been marked for any office) shall be marked as to the reason for their removal, set aside and properly preserved. The BOC should record this action in the minutes. [Wis. Stat. § 9.01\(1\)\(b\)4.c.](#)
2. If the number of ballots still exceeds the number of voters after removing all blank ballots, the BOC shall place all ballots face down to check for initials. Any ballots not properly initialed by two inspectors or any Probable Absentee Ballots not properly initialed by the municipal clerk, deputy clerk, or other statutorily authorized official are set aside. The BOC must, without inspection, randomly draw from the improperly initialed ballots as many ballots as are necessary to reduce the number of ballots to equal the number of voters determined to have voted on Election Day, less any defective absentee ballot certificate envelopes. Any ballots removed for lack of proper initials shall not be counted but shall be marked as to the reason for their removal, set aside and properly preserved. The BOC should record this action in the minutes. [Wis. Stat. § 9.01\(1\)\(b\)4.d.](#)
3. If the number of ballots still exceeds the number of voters, the BOC places the remaining ballots in the ballot bag and randomly draws, without inspection, the number of ballots equal to the number of excess ballots. These ballots shall not be counted but shall be marked as to the reason for their removal, set aside and properly preserved. The actions taken under this procedure are recorded in the minutes. [Wis. Stat. § 9.01\(1\)\(b\)4.e.](#)

When the number of ballots equals the number of voters or if the number of voters exceeds the total number of ballots, the BOC returns the ballots to the ballot bag or container and thoroughly mixes the ballots. [Wis. Stat. § 9.01\(1\)\(b\)5.](#)

Recount Step 5

Count the Votes

The exact steps for tabulating the votes will vary depending on the method or combination of methods of tabulation selected by the BOC. Unless a court orders a recount to be conducted by another method, the BOC may determine to conduct the recount of a specific election by hand and may determine to conduct the recount by hand for only certain wards or election districts.

If electronic voting machines are used, the BOC shall perform the recount using the permanent paper record of the votes cast by each elector, as generated by the machines. [Wis. Stat. § 5.90\(1\)](#).

When counting paper or optical scan ballots, questions often arise concerning the intent of the elector. Election officials have a duty to attempt to determine voter intent and give effect to that intent if it can be determined. Election officials are expected to use common sense to determine the will of an elector based on the marks made by the elector on the ballot. The decisions of the election inspectors may be reviewed by the BOC. Wis. Stats. §§ [7.50](#), [7.51](#), [7.60](#). Even if an elector has not fully complied with the provisions of the election law, votes should be counted as intended by the elector to the extent that the elector's intent can be determined. Wis. Stat. §§ [5.01\(1\)](#), [7.50\(2\)](#). The WEC has manuals titled "Counting Votes," which are designed to assist election officials in determining voter intent. A copy of the "[Counting Votes](#)" manuals are available on the agency website and should be reviewed by the BOC prior to the recount.

Recount considerations for each form of counting are as follows:

Tabulating Votes by Hand Count

The WEC recommends that hand counts be conducted using teams of at least two [human](#) tabulators. These tabulators will double-check each other's work throughout the process to ensure that an accurate count is maintained.

a) Sort Ballots by Candidate

Each tabulation team should begin by sorting the ballots into stacks: One stack for each candidate (ballots that clearly indicate a vote for a ballot candidate or a valid write-in candidate) and one stack for ballots where no vote may be counted (defective ballots, votes for invalid write-in candidates, etc.). Candidate representatives should be given the opportunity to review each ballot as it is sorted and may request that the tabulators set aside questionable ballots for closer examination and determination of voter intent by the BOC. The BOC may consult with its legal counsel or WEC staff regarding any questionable ballots. The WEC recommends that any such consultation be recorded in the minutes.

b) Create Stacks of a Fixed Number

Set aside the stack of ballots for which no vote can be counted. For each stack of ballots marked for a candidate, each tabulator should create sub-stacks of a fixed number (e.g., 25 ballots) with a remainder stack for any number left over from creating the full-size stacks. Each stack should be double-checked by a second tabulator to ensure the stack contains exactly the number expected.

c) Tally Stacks to Determine the Total Vote

The BOC then carefully counts the number of stacks for each candidate. The counts should be recorded separately by two individuals on two clearly-labeled tally sheets (EL- 105). After all of the counts have been recorded, the two tally sheets should be compared against each other to ensure an accurate count is determined. The recount vote totals are recorded in the minutes.

d) Reconcile Ballots with No Vote

A reconciliation of the ballots for which no vote could be counted should be recorded in the minutes. This documentation should list the reasons the ballots could not be counted, and the number of ballots not counted for each reason.

Optical Scan Tabulator

If an optical scan tabulator is used, the WEC recommends that where possible the tabulator should be programmed to only tally the results for the contest to be recounted. If the tabulator is not reprogrammed to tally only the contest to be recounted, the WEC recommends that the counts for other contests be separated, set aside and preserved. The recounted results for the other contests should not be included in the BOC report of recount results but may need to be preserved for public records or other purposes.

Note: The original memory device for the voting equipment from Election Day cannot be cleared and reprogrammed for use at the recount, so an alternative memory device must be acquired for use at the recount. [Wis. Stats. §§ 7.23\(1\)\(g\) & \(2\).](#)

a) Examine the optical scan tabulator

The BOC shall make a record of the number of the tamper evident seal, protective counter, or other device, if any, before opening any of the voting equipment. The BOC examines the optical scan tabulator to determine that any other tamper evident seals are intact and match the log maintained by the election inspectors and the municipal clerk. The BOC notes in the minutes any irregularities or possible tampering with the device. Wis. Stats. §§ [5.90\(1\)](#) & [9.01\(1\)\(b\)6.](#)

b) Test the optical scan tabulator

The BOC tests the automatic tabulating equipment to ensure it is programmed correctly for the recount using a pre-audited group of ballots marked to record a predetermined number of valid votes for each candidate or contest choice (test deck). The test deck should include at least one ballot with more selections than permitted (overvote) and for recounts in a partisan primary, at least one ballot with votes in more than one party primary (crossover) in order to test the ability of the tabulator to reject such ballots. The results of the test deck tabulation should be compared to the pre-audited results to ensure accuracy and a record of the test results should be noted in the minutes. Wis. Stats. §§ [5.84\(1\)](#) & [5.90\(1\)](#). [The procedures for the test and the results of the test should be recorded in the minutes.](#)

~~*c) Compare Duplicate Ballots with Original Ballots*~~

~~The BOC compares any duplicate ballots with their respective originals to determine the correctness of the duplicates. If any duplicate ballots were remade incorrectly, the BOC should set aside the incorrectly remade duplicate ballot, mark it with the reason for its removal, create a new duplicate ballot, and mark it as such. Wis. Stat. § 5.90(1).~~

~~*d) Insert Ballots into the Optical Scan Tabulator*~~

~~Each ballot shall be reviewed by the BOC and may be inspected by the candidates or their representatives before being inserted into the tabulator. If it appears the ballot may not be~~

recorded correctly by the tabulator, or if the ballot is objected to, the ballot is set aside to be examined by the BOC for voter intent and counted separately by hand.

e)d) Generate Results

The BOC places the optical scan tabulator into post-election mode and generates a results tape for the reporting unit. The BOC adds in any votes counted separately by hand using new tally sheets and records the total results as part of the revised canvass statement. See Step 7.

If the equipment needs to be used for another reporting unit, the BOC shall ensure that all ballots have been removed from the tabulator and re-secured in ballot bags or containers before proceeding to reset the equipment for use with the next reporting unit.

Direct Record Electronic (DRE)

In many polling places across the state, direct record electronic (DRE) voting equipment is used in conjunction with paper-hand count ballots or optical scan ballots to enable individuals with disabilities to vote privately and independently. As a result, the paper-hand count ballots and optical scan ballots should be counted first by following the steps described above, if applicable.

a) Separate the Paper Tape into Individual Ballots

DRE equipment records votes two separate ways: electronically and on a paper tape that the voter can view to verify the equipment is recording their votes correctly before casting their ballot. In a recount, the BOC is required to use the paper record. [Wis. Stat. § 5.90\(1\)](#). The paper tape consists of a pre-election readiness report, a zero-report showing that no votes are currently in the memory of the machine, individual ballot records, and a closing results report.

To facilitate counting of the individual ballot records and to preserve the confidentiality of an individual's vote, the BOC shall cut the paper record to separate the individual voter records and then further cut the paper tape into the individual ballots, which would then be randomized.

Note: When cutting the paper tape be careful that only the section of the tape covering Election Day is used. When separating the tape into individual ballots, watch for "voided" ballots, which appear the same as other ballot entries except they will be followed by a "void" entry on the tape. The "void" entry may appear far below the record of votes cast on the tape. These "voided" ballots should not be counted as they were not cast.

If due to a paper jam or misprint some individual ballot records are not available, the BOC may consult with the voting equipment vendor to determine if the missing records can be recreated. The BOC may be able to obtain records from the vendor, such as cast ballot records, that will allow them to tally votes from the missing ballot records. Any such tallying should be documented in the recount minutes.

b) Tally Individual Ballots to Determine the Total Vote

The BOC carefully counts each individual ballot record as recorded on the tape. The counts should be recorded by two individuals on clearly labeled tally sheets (EL-105). After all of the counts have been recorded, the two tally sheets should be compared against each other to ensure an accurate count is determined. The recount vote totals should be compared against the original

results as generated by the DRE and any discrepancies shall be recorded in the minutes.

Recount Step 6

Secure Original Materials

After concluding the recount for a particular reporting unit, the BOC shall gather and account for all Original Election Materials. All ballots shall be placed into a ballot bag or container and resealed. The BOC shall document in the minutes the serial number of any new security seals or tags used.

All election materials should be accounted for before proceeding to the next reporting unit to prevent the accidental mixing of materials from different reporting units.

Recount Step 7

Prepare New Canvass Statement

If any corrections were made to the results, the BOC shall prepare a statement of revised election results using the canvass reporting form (EL-106). [Wis. Stat. § 9.01\(1\)\(b\)9.](#)

After the Recount

What does the BOC do after completing the recount?

Transmit the Results

- If the recount is for a municipal election, the BOC promptly forwards the results and minutes to the municipal clerk.
- If the recount is for a school board election, the BOC promptly forwards the results and minutes to the school board clerk.
- If the recount is for a county election, the BOC promptly forwards the results and minutes to the county clerk.
- If the recount is for a state or federal election, the results and minutes of the recount are to be forwarded immediately to the WEC and should be received no later than 13 days after the recount is ordered. [Wis. Stat. § 9.01\(1\)\(ar\)3.](#)

Send the Minutes

A copy of the minutes of any recount should be sent to the WEC. For federal, state, and county elections, the BOC should also send copies of the minutes to the chief officers of the state or county committee for any registered political party who had candidates for that office. [Wis. Stat. § 9.01\(5\)\(bm\).](#)

Issue the Certificate of Election (Determination)

The certificate of election (certificate of determination) may be issued by the Filing Officer when the deadline for filing a recount petition, or for filing all appeals, has passed and the election results are final. The election results are final when all such deadlines have passed, and all statements of canvass have been completed.

How Does a Candidate or Petitioner Challenge the Recount Results?

The candidate or petitioner has a right to appeal the recount determination in circuit court. The appeal must be filed with the circuit court within five (5) business days of the completion of the recount in all counties concerned. Written notice of appeal must also be served in person or by certified mail on all other candidates and persons who filed a written notice of appearance before the BOC. If the recount affects a state or federal office or referendum, notice of the appeal must be served on the WEC. See Wis. Stats. §§ [9.01\(6\)](#), [\(7\)](#), [\(8\)](#), & [\(9\)](#).

The recount process and the subsequent judicial appeals is the exclusive remedy for testing the right to hold an elective office as the result of an alleged irregularity, defect, or mistake committed

during the voting or canvassing process. [Wis. Stat. § 9.01\(11\)](#).

Conclusion

This information is prepared pursuant to [Wis. Stat. § 9.01\(10\)](#). Petitioners, candidates, and Filing Officers should seek legal counsel when they are involved in a recount. If you have any questions, concerns, suggestions or recommendations about the recount process, please contact the:

Wisconsin Elections Commission

P.O. Box 7984

Madison, WI 53707-7984

Phone: 608-261-2028 Fax: 608-267-0500

Email: elections@wi.gov

Website:

<https://elections.wi.gov/>

Appendix

Sample Forms	1-6
Recount Petition	1
Recount Petition for Referendum	2
Order for Recount	3
Public Notice of Recount	4
Acceptance of Service	5
Recount Minutes	6
Recount Fee Scenarios	7
Recount Checklists	8-11
Supplies and Materials	8
Paper Ballot	9
Optical Scan	10
Direct Recording Electronic (DRE)/Touch Screen Voting	11

SAMPLE RECOUNT PETITION FOR REFERENDUM

In Re: The Election for
(specify referendum)

Verified Petition
for Recount

Petitioner (name of petitioner) alleges and shows to (specify the clerk or body with whom the referendum was filed):

1. That Petitioner was an elector who voted upon the referendum in the election held on (specify date of election);
2. That Petitioner is informed and believes that a (mistake or fraud) has been committed in (specify each ward or municipality) in the counting and return of votes cast for the referendum of (specify referendum); and/or
3. That Petitioner (is informed and believes) or (knows of his/her own knowledge) that:

(Specify other defects, irregularities or illegalities in the conduct of the election).

Wherefore: Petitioner requests a recount of (specify each ward or municipality in which a recount is desired; each ward need not be specified if a recount is requested for all wards within a jurisdiction).

Dated this _____ day of _____, _____.

Petitioner

I, (name of petitioner), being first duly sworn, on oath, state that the matters contained in the above petition are known to me to be true except for those allegations stated on information and belief, which I believe to be true.

Petitioner

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public (or other person authorized to administer oaths)

My Commission Expires _____
(specify expiration date)

The information on this form is required by Wis. Stat. § 9.01. This form is prescribed by the Wisconsin Elections Commission, 201 W. Washington Avenue, 2nd Floor, P.O. Box 7984, Madison, WI 53707-7984, (608) 261-2028
EL-186R (Rev.3/24)

SAMPLE ORDER FOR RECOUNT

STATE OF WISCONSIN – (County)

In the matter of:)	
)	ORDER FOR RECOUNT
A Recount of the (Election))	
for (Title of Office))	
for the (District), held)	
on (Date))	

On (Date Recount Petition was filed), a recount petition was filed by (Petitioner’s Name), a candidate for the office of (Office Title) for the (District), at the (Election) held on (Date).

The petition requests a recount of (list specific wards or municipalities) for the office of (Office Title).

The filing officer has reviewed the petition. The petition is sufficient. Any applicable fee has been received and accepted.

Pursuant to Wis. Stat. § 9.01:

IT IS ORDERED THAT:

1. A recount be conducted of all the votes cast for the office of (Office Title) for the (District) at the (Election) held on (Election Date) in (list of specific wards or municipalities).
2. The board of canvassers convene at (Time) on (Date) at (Location), to begin the recount.
3. The recount be completed by the board of canvassers immediately.
4. The clerk transmits a certified canvass report of the result of the recount and a copy of the minutes of the recount proceedings to the Wisconsin Elections Commission immediately after the completion of the recount.

Dated: _____

(Clerk’s Name)
(Clerk’s Title)

SAMPLE PUBLIC NOTICE

Notice of Recount for the Office of (Office Title) for the (District) in the (Election)

TO: All Candidates On The Ballot For The Office of (Office Title) for the (District) and
Other Interested Persons

FROM: (Clerk)

SUBJECT: Recount of the Votes Cast for the Office of (Office Title) for the (District) in the
(Election)

DATE: (Date)

A recount of the votes cast at the (Election Date) (Election) for the office of (Office Title) for the
(District) will begin at the time and location set forth below:

(Municipality) – 9:00 a.m. on (Date), at (Location).

A copy of the recount petition is attached. This notice is given pursuant to Wis. Stat. § 9.01(2).

You have the right to be present and to be represented by counsel to observe and challenge the votes
cast and the board of canvassers' decisions at the election.

Attachment

Sample Acceptance of Service

MEMORANDUM

DATE: (Date)
TO: (Clerk)
FROM: Candidate for (Office)
SUBJECT: Service of Recount Petition

Pursuant to Wis. Stat. § 9.01(2) on this day, I have personally received delivery of copies of the notice of recount, recount petition, and order for recount for the office of (office) at the (election date) (election name). I agree to waive service and accept delivery.

(Signature of Candidate)

(Print Name)

Sample Recount Minutes

Date of Recount:

County:

Office to be Recounted: *(Include District Number)*

Original Result: *(Candidates' Names and Votes for Each Candidate. If there was a tie, explain how it was broken.)*

Canvass Board Members: *(If substitute, give reason for substitution.)*

Other Personnel: *(Tabulators, Corporation Counsel, Clerical Support)*

Others Present:

Notification: *(Were candidates notified and was public notice given?)*

Electronic Voting Equipment Test Results:

For Each Reporting Unit:

Name of Municipality:
Reporting Unit:
Original Vote Totals for Reporting Unit:
Number of Voters from Registration List:
Number of Absentee Ballot Applications (If Applicable):
Number of Absentee Ballots:
Notes: (Include a description of any discrepancies, irregularities, errors, problems, objections raised by observers. Record any decision of the board of canvassers. Identify any exhibits by description and number.)
Recount Vote Totals for Reporting Unit:

Recount Results:

An electronic or hard copy of the minutes from any recount must be sent to:

Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984
elections@wi.gov

Recount Fee Scenarios

Scenario #1: Village President

Candidate	Votes
A	4,500
B	4,410

In this scenario, candidate A would currently be elected to office. If a recount was requested, the fee is determined by first calculating the total votes cast for the office ($4,500+4,410 = 8,910$). The difference between the Leading Candidate and the petitioner (90 votes) is divided by the total votes cast (8,910) and then multiplied by 100 to get the percentage difference (1.01%).

Candidate B would be required to pay a filing fee as the percentage difference is greater than .25%. However, the vote difference between the Leading Candidate and the petitioner is more than 1% so the contest is not eligible for a recount.

Scenario #2: School Board (vote for up to 3)

Candidates	Votes
A	3,500
B	3,000
C	2,920
D	2,910
E	2,900
F	2,800

In this scenario, candidates A-C would currently be elected to office. If a recount was requested, the fee is determined by adding up all the votes cast for the office (18,030 total) and dividing it by the number of offices to be filled (3 in this scenario) to get a total of 6,010. The difference between the Leading Candidate (C, as he or she is the candidate with the lowest number of votes still being elected to office) and the petitioner is divided by 6,010 and multiplied by 100 to get the percentage difference.

So in this case:

- If Candidate D requested a recount, there would be no fee required as the difference is .17%, which is not greater than .25%
- If Candidate E requested a recount, a filing fee would be required as the difference is .33%, which is greater than .25%
- If Candidate F requested a recount, the difference would be 2% so the contest is not eligible for recount.

General Checklist of Supplies and Materials Needed for the Recount:

- Paper and Pens (To record the minutes of the recount!)
- Tape Recorder (Optional)
- Speaker Phone (for consultation with WEC staff or counsel)
- Test Deck for Electronic Voting Equipment Test
- New *Tally Sheets* (EL-105)
- New *Canvass Reports* (EL-106)
- Copies of any informational memoranda relating to the election and the recount prepared by the Wisconsin Elections Commission staff and sent to county and municipal clerks.
- Recount checklists and the *Elections Recount Procedures Manual* available from the Wisconsin Elections Commission

Election Materials from Each Reporting Unit:

- All ballots to be recounted, contained in the original ballot bag or ballot container (EL-101), including any provisional ballots processed after Election Day;
- All paper audit trails from direct record electronic (DRE) voting devices;
- All logs of security seals for ballot boxes or electronic voting equipment;
- Both copies of the original poll lists, including any supplemental voter lists;
- Any rejected absentee ballots, contained in the original carrier envelope (EL-102);
- Any used absentee ballot certificate envelopes, contained in the white carrier envelope (EL-103);
- The original Inspectors' Statement (EL-104);
- The MBOC Record of Activity (EL-104P) created during the processing of provisional ballots, if any;
- The original tally sheets (EL-105) and any results tapes generated by electronic voting and tabulating devices;
- The original canvass report of the election results (EL-106);
- The amended canvass report of the election results created after any provisional ballots were tabulated (EL-106P);
- Any provisional ballot documentation (EL-108 & EL-123);
- The absentee ballot log (EL-124); and
- The test deck for any electronic voting equipment.

Recount Checklist

Hand Counted Paper Ballots

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- Compare and reconcile poll lists.
- Absentee ballot review: number, rejected, defective envelopes, all certificates.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EL-104) and Ballot Container Certification (EL-101).
- Ballot count.
 - Review ballots marked "rejected," "defective," or "objected to."
 - ~~Review remade ballots against originals to confirm accuracy~~
 - Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
 - Reconcile the number of ballots with the number of voters.
 - Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.*)
- Review provisional ballots.
- Hand count paper ballots.
 - Sort ballots by candidate.
 - Create stacks of a fixed number.
 - Tally the stacks using duplicate original tally sheets (EL-105).
- Add in any votes counted separately by other methods.
- Secure the original election materials.
- Prepare canvass statement.
- Prepare minutes for each reporting unit and attach completed checklist to minutes.

Recount Checklist

Optical Scan Voting Equipment

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- Compare and reconcile poll lists.
- Absentee ballot review: number, rejected, defective envelopes, all certificates.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EL-104) and Ballot Container Certification (EL-101).
- Ballot count.
 - Review ballots marked "rejected," "defective," or "objected to."
 - Review remade ballots against originals to confirm accuracy
 - Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes.*)
 - Reconcile the number of ballots with the number of voters.
 - Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.*)
- Review provisional ballots.
- Verify voting equipment tamper-evident seal number written on Inspectors' Statement (EL-104) contains Chief Inspector's initials for pre-election and post-election verification.
- Test the automatic tabulator (*The Board of Canvassers may choose to test the tabulator for all reporting units at once and skip this step in subsequent reporting units if using the same memory device for all reporting units.*)
- Feed ballots into the optical scan tabulator.
- Generate results.
- Add in any votes counted separately by other methods.
- Secure the original election materials.
- Prepare canvass statement.
- Prepare minutes for each reporting unit and attach checklist to minutes.

Recount Checklist

Direct Recording Electronic (DRE)/Touch Screen Voting Equipment

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- Compare and reconcile poll lists.
- Absentee ballot review: number, rejected, defective envelopes, all certificates.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EL-104) and Ballot Container Certification (EL-101).
- Ballot count.
 - Review ballots marked "rejected," "defective," or "objected to."
 - Review remade ballots against originals to confirm accuracy
 - Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
 - Reconcile the number of ballots with the number of voters.
 - Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.*)
- Review provisional ballots.
- Verify voting equipment tamper evident seal number written on Inspectors' Statement (EL-104) contains Chief Inspector's initials for pre-election and post-election verification.
- Separate voter-verified paper audit trail into individual ballots (may be skipped if canvass board members take appropriate precautions to ensure the confidentiality of individual electors' votes)
- Hand count permanent paper record of votes generated by DRE and record on duplicate tally sheets (EL-105).
- Add in any votes counted by other methods.
- Secure the original election materials.
- Prepare canvass statement.
- Prepare minutes for each reporting unit and attach checklist to minutes.



Wisconsin Elections Commission

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DATE: For the November 1, 2024, Meeting of the Wisconsin Elections Commission

TO: Members, Wisconsin Elections Commission

FROM: WEC Staff

SUBJECT: Election Inspector Challenge Process for Limited Term / Non-Domiciled DMV Products

Background:

Recently, the Wisconsin Elections Commission (“the Commission”) staff have received questions from clerks regarding the use of DMV identification cards that have been marked “Limited Term” and “Non-Domiciled.” According to the DMV, identification cards marked “Limited Term” indicate “that the license or ID card holder is a non-immigrant (Temporary Visitor) with legal status in the United States.” Identification cards marked “Non-Domiciled” indicate “that the CDL license holder is a non-immigrant (Temporary Visitor) with legal status in the United States.”

Commission staff believe that, while these identification cards are not widely in use across the state, it is beneficial to provide the following guidance for clerks and election inspectors in case they encounter one of these identification cards.

Recommended Motion: The Commission has reviewed the draft clerk communication provided in Appendix 1 and directs staff to make revisions consistent with discussion, if necessary. Staff are directed to immediately transmit this communication to Wisconsin’s municipal and county clerks, as well as the Milwaukee County Elections Commission and the City of Milwaukee Elections Commission.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

APPENDIX 1 – DRAFT CLERK COMMUNICATION

DATE: November 1, 2024

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

FROM: The Wisconsin Elections Commission

SUBJECT: Election Inspector Guide for Limited Term / Non-Domiciled DMV Products

On November 1, 2024, the Wisconsin Elections Commission (“the Commission”) voted to issue guidance to clerks on how they and their election inspectors should handle situations in which an individual in their jurisdiction presents a DMV-issued form of identification that has been marked with “Limited Term” or “Non-Domiciled.” The DMV was first authorized to issue “Limited Term” and “Non-Domiciled” forms of identification by statute in 2016. However, only recently has the Commission received many questions from clerks asking how to proceed should they encounter this type of ID at the polls on Election Day and during in-person absentee voting.

Under Wis. Stat. § 343.03(3m), both forms of identification are issued to non-citizens. According to the DMV, identifications marked “Limited Term” indicate “that the license or ID card holder is a non-immigrant (Temporary Visitor) with legal status in the United States” and identifications marked “Non-Domiciled” indicate “that the CDL license holder is a non-immigrant (Temporary Visitor) with legal status in the United States.” In general, Temporary Visitors in this sense do not include lawful permanent residents (green card holders) or U.S. citizens at the time the identification card was issued. The DMV has provided these sample documents on their website to indicate what these identifications look like and where to find these designations.¹



“Limited Term” Sample Document



“Non-Domiciled” Sample Document

The Commission does not know how many of these identifications have been issued, and any further questions about when and how these products are issued should be directed to the DMV.

¹ Information about these identification cards, including picture examples, is available on the DMV’s website: <https://wisconsin.gov/Pages/dmv/license-drvs/how-to-apply/mailed.aspx>.

Important: This guidance only applies in situations where an individual produces a DMV identification that is marked with either of these exact specifications: “Limited Term” or “Non-Domiciled.”

Because both the “Limited Term” and “Non-Domiciled” identifications are issued pursuant to Chapter 343 of the Statutes, Wis. Stat. § 5.02(6m)(a)1. mandates that these identifications must be accepted as a proper form of voter identification. However, possessing a valid identification does not necessarily mean the holder of the identification is eligible to vote.

If an election inspector² notices that the photo identification contains an indication that the individual may not be eligible to vote, state law directs that the inspector examine whether the individual’s qualifications to vote should be challenged. Wis. Stats. §§ 6.92, 6.93; Wis. Admin. Code EL §§ 9.01, 9.04. These challenge procedures must be followed in full. **Clerks or election inspectors cannot deny someone registration, or refuse to permit them to cast a ballot, without following the proper challenge procedures.**

This challenge process is not limited to citizenship. For example, if an individual presented an otherwise valid Wisconsin Driver License as photo ID to vote that listed January 1, 2008, as the date of birth (making the individual 16 years old), an election inspector should challenge that individual’s eligibility for being under 18 years of age. Likewise, if the potential voter presents a DMV identification marked “Limited Term” or “Non-Domiciled,” that indicates that the individual is most likely ineligible to vote because they are not a citizen and the election inspector should challenge that individual’s eligibility to vote, unless the person presents documentation demonstrating the person is now a citizen.

Wisconsin administrative code provides a detailed roadmap for how an election inspector should proceed in the event of an inspector or elector challenge. Wis. Admin. Code EL §§ 9.01, 9.02. After placing the individual under oath, the first question the election inspector is directed to ask is “Are you a United States citizen?” if they are making the challenge and “Why do you believe that the challenged elector is not a United States citizen?” if another elector is making the challenge. Wis. Admin. Code EL §§ 9.01(2)(a), 9.02(2)(a). If the individual answers that they are not a U.S. citizen, the election inspector shall not issue the ballot, and shall not permit that individual to vote. Wis. Admin. Code EL §§ 9.01(6); 9.02(7).

Please contact the WEC Help Desk at elections@wi.gov or (608) 261-2028 with any questions you may have.

² An elector may make a challenge for cause, including a challenge to the citizenship of a voter. Wis. Stats. §§ 6.925, 6.93, Wis. Admin Code §§ EL 9.02, 9.04. However, electors are not permitted to view personally identifiable information found on a driver’s license or identification card, including license numbers and dates of birth. Wis. Stat. § 6.36(1)(b)1.a.