

Wisconsin Elections Commission

Special Meeting

Tuesday, September 24, 2024

1:30 P.M.

This meeting is being held via video teleconference only. Members of the public and media may attend online or by telephone. Please visit <https://elections.wi.gov/event/special-meeting-9242024> to view materials for the meeting. All public participants' phones/microphones will be muted during the meeting. Members of the public wishing to communicate to the Commissioners should email electioncomments@wi.gov with "Message to Commissioners" in the subject line.

Zoom information:

You are invited to a Zoom webinar.

When: Sep 24, 2024 01:30 PM Central Time (US and Canada)

Topic: Meeting of the Wisconsin Elections Commission

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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 23-29 – Robert Rasmussen v. City of Oak Creek.....7**
 - 2. EL 23-50 – Kenneth Brown v. Tara McMenamin et al.....15**
 - 3. EL 23-47 – Brian Peters v. Jennifer Goergen.....31**
 - 4. EL 24-23 – Andrew Yunker v. Michelle Luedtke.....97**
- D. Discussion, Review, and Possible Action Pertaining to Rescission, or Labeling as Outdated, Inconsistent Clerk Communications following the Amended Final Order in *Rise et al v. WEC et al*.....172**
- E. 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 September 24, 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 23-29 – Robert Rasmussen v. City of Oak Creek

Appendix 2 – EL 23-50 – Kenneth Brown v. Tara McMenamin

Appendix 3 – EL 23-47 – Brian Peters v. Jennifer Goergen

Appendix 4 – EL 24-23 – Andrew Yunker v. Michelle Luedtke

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 four complaints and draft decisions for the Commission’s review and consideration at today’s meeting, along with a recommended motion for each one.

Appendix 1 - EL 23-29 – Robert Rasmussen v. City of Oak Creek

The complaint of Robert Rasmussen v. City of Oak Creek pertains to actions taken by Clerk Catherine Roeske concerning alleged failures to properly witness in person absentee ballots in violation of Wis. Stat. § 6.87(2).

Commission legal staff reviewed the complaint. No response was provided by the clerk. 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. The facts set forth in the complaint lack enough clarity, specificity, and evidentiary support to establish probable cause that a violation of Wis. Stat. § 6.87(2) actually occurred. While the Commission cannot conclude that the Complaint set forth sufficient facts to show probable cause that the Respondent violated

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

the law or abused her discretion, the proposed decision letter nevertheless provides an overview of a municipal clerk’s statutory responsibilities when witnessing absentee ballots during in person absentee voting.

The Commission has not yet reviewed the proposed decision letter.

Recommended Motion for Rasmussen v. City of Oak Creek: 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 23-50 – Kenneth Brown v. Tara McMenamini

The complaint of Kenneth Brown v. Tara McMenamini pertains to allegations that Clerk McMenamini has set an incorrect distance from which election observers are permitted to observe election activities. The complaint alleges that Clerk McMenamini has violated Wis. Stat. §§ 7.41(1) and (2).

Commission legal staff reviewed the complaint and the response. No reply was submitted. In short, and as detailed more extensively in the proposed draft decision letter, Commission staff believe the Complainant did not show probable cause to believe that a violation of law or abuse of discretion occurred. Respondent McMenamini asserts, and the Complainant does not refute, that the observation area was between 3 and 8 feet away from the observable activities. The Complainant appears to argue that § 7.41(2) requires Respondent McMenamini to instead always choose a distance of 3 feet. That interpretation is not consistent with the plain language of the statute, which unambiguously states that the observable area should be “not less than 3 feet from nor more than 8 feet from” the observable areas.

The Commission has not yet reviewed the proposed decision letter.

Recommended Motion for Brown v. McMenamini: 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 23-47 – Brian Peters v. Jennifer Goergen

The complaint of Brian Peters v. Jennifer Goergen pertains to allegations that Clerk Goergen violated state law by not permitting the in-person return of voted absentee ballots to polling places by voters or their assistants.

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 the sole dispute in this complaint centers upon the question of whether Wisconsin law permits absentee voters, including their lawfully designated assistants, to return their voted absentee ballots directly to their designated polling places by 8 p.m. on Election Day. The proposed decision letter recommends that the answer to this question is an unqualified “Yes.”

The Commission has not yet had a chance to review a draft of the proposed decision letter.

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. § 5.06(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 4 – EL 24-23 – Andrew Yunker v. Michelle Luedtke

The complaint of Andrew Yunker and Michelle Luedtke also pertains to a similar policy of Clerk Luedtke to refuse to accept the in person return of voted absentee ballots to polling places. The allegations and questions of law in this complaint are substantially similar to that of Peters v. Goergen (in Appendix 3). However, this complaint contains additional factual allegations concerning Clerk Luedtke’s modification of the Commission’s Uniform Instructions to remove the line that voters can return voted absentee ballots to polling places.

Commission legal staff reviewed the complaint, the response, and the reply. Staff recommend that the Commission find that the return of voted absentee ballots directly to polling places is a lawful method of ballot return by voters and their lawful assistants, and that Clerk Luedtke abused her discretion by modifying the Commission’s Uniform Instructions to the contrary.

The Commission has not yet had a chance to review a draft of the proposed decision letter.

Recommended Motion for Yunker v. Luedtke: The Commission has reviewed the proposed draft decision letter in **Appendix 4**, 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 A

EL-23-29

**Robert Rasmussen v. City of Oak
Creek**

September 24, 2024

Robert Rasmussen
200 W. Rainbow Ridge Dr., Apt. 910
Oak Creek, WI 53154

Catherine Roeske, City Clerk
8040 S. 6th Street
Oak Creek, WI 53154

Sent via email to: OldGuard15@aol.com; croeske@oakcreekwi.gov

Re: In the Matter of Robert Rasmussen v. City of Oak Creek (Case No.: EL 23-29)

Dear Mr. Rasmussen and Clerk Roeske:

This letter is in response to the verified complaint submitted by Robert Rasmussen (Complainant) to the Wisconsin Elections Commission (Commission), which was filed to challenge actions taken by Oak Creek City Clerk, Catherine Roeske (Respondent), concerning alleged failures to properly witness in person absentee ballots in violation of Wis. Stat. § 6.87(2).

The Commission has reviewed the complaint. No Response was filed by Clerk Roeske. 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.

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 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 Allegation

The Complainant alleges that on March 31, 2023, during in person absentee voting, “the election inspector did not witness my signature as required by statute 6.87.” The Complainant also alleges that “the City of Oak Creek did not have witness signatures or addresses on the absentee ballot envelopes.” He also appears to assert that there were no witness signatures on the absentee envelopes generally. The Complainant states that he is therefore “challenging all absentee ballots contained in absentee ballot envelopes which do not contain a witness signature and/or address until a court can determine the legitimacy of the ballots.”

The Respondent had until April 24, 2023, to file a sworn written response to the complaint. No such response was received by the Commission.

Discussion

The Complainant is correct that Clerk Roeske or another election official was required to witness all in person absentee ballots cast, and all certificates should have contained both the witness’s signature and address per Wis. Stat. § 6.87(2). However, the facts set forth in the complaint lack enough clarity, specificity, and evidentiary support to establish probable cause that a violation of Wis. Stat. § 6.87(2) actually occurred.

The Complainant’s allegation that the election inspector did not witness his signature is unclear. He does not state which part of in person voting the clerk or election inspector failed to witness, or whether they failed to witness him voting his absentee ballot from start to finish. The lack of evidence in the administrative record is made even more difficult by the fact that the Respondent did not submit a response.

The claim that “the City of Oak Creek did not have witness signatures or addresses on the absentee ballot envelopes” in general is similarly unclear. The complaint does not specify whether the envelopes had been used or otherwise completed. Nor does the Complainant allege that the envelopes were sent to the polling place without witness signatures or addresses. Regardless, any allegation that multiple absentee ballots lacked signatures and addresses is not credible without further evidence. There is nothing in the sworn administrative record, such as ballot records, to support an allegation that multiple absentee ballots lacked completed certificate envelopes

While the Commission cannot conclude that the Complaint set forth sufficient facts to show probable cause that the Respondent violated the law or abused her discretion, the Commission will nevertheless provide an overview of a municipal clerk’s statutory responsibilities when witnessing absentee ballots during in person absentee voting.

The procedure for absentee voting and the certificate form is laid out in Wis. Stat. § 6.87. Per Wis. Stat. § 6.87(2):

The witness shall execute the following:

I, the undersigned witness, subject to the penalties of s. 12.60(1)(b), Wis. Stats., for false statements, certify that I am an adult U.S. citizen** and that the above statements are true and the voting procedure was executed as there stated. I am not a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk). I did not solicit or advise the elector to vote for or against any candidate or measure.

...(Printed name)

...(Address)***

Signed

Under Wis. Stat. § 6.86(1)(b), “[t]he municipal clerk or an election official shall witness the certificate for any in-person absentee ballot cast.” This requires that the municipal clerk or election official both sign and print their name and provide their address in accordance with Wis. Stat. § 6.87(2).

Furthermore, page 78 of the Election Administration Manual for Wisconsin Municipal Clerks provides the following guidance for in person absentee requests:

The absentee ballot is marked by the absent voter, and sealed in an Absentee Ballot Certificate Envelope (EL-122). The Absentee Ballot Certificate Envelope (EL-122) is completed and signed by the absentee voter, and witnessed by the municipal clerk or designated staff. The witness must sign and print their name and provide their office or home address. Wis. Stat. § 6.86(1)(b).

The Commission, therefore, recommends that the clerk or election official complete the witness certification section in the presence of the voter to prevent any uncertainty or confusion as to whether the absentee voting process has been completed. However, no probable cause has been established to support the allegation that the Respondent’s actions constituted a violation of law or abuse of discretion.

Commission Decision

Based upon the above review and analysis, the Commission does not find probable cause that a violation of law or abuse of discretion occurred under Wis. Stat. § 6.87(2). However, Clerk Roeske may wish to implement new compliance practices based on the statutory obligations detailed above.

Right to Appeal – Circuit Court

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

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

Sincerely,

WISCONSIN ELECTIONS COMMISSION

**STATE OF WISCONSIN
ELECTIONS COMMISSION**

COMPLAINT FORM

Please provide the following information about yourself:

Name Robert L Rasmussen
Address 200 W Rainbow Ridge Dr. Apt 910 Oak Creek, WI 53154
Telephone Number (414) 507-2364
E-mail OldGuard15@aol.com

State of Wisconsin

Before the Elections Commission

The Complaint of Robert L Rasmussen
_____, Complainant(s) against
City of Oak Creek, Respondent, whose
address is 8040 South 6th Sreet Oak Creek, WI 53154

This complaint is under 6.87 Absentee voting procedure (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, Robert L Rasmussen, allege that:

the City of Oak Creek did not have witness signatures or addresses on the absentee ballot envelopes.

When I went for in person voting 3/31/2023 around 2:30, the election inspector did not witness

my signature as required by statute 6.87. While trying to confirm this via the internet, the polls closed.

I sent a certified letter to the Mayor, City Attorney, City Clerk, and WEC about this problem which makes

the ballots ineligible and they should not be counted. See attached letter for mor information,

(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: 4/4/2023

[Signature]
Complainant's Signature

I, Robert L Rasmussen, 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 Milwaukee,
(county of notarization)

Sworn to before me this 4th day of
APRIL, 2023.

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



My commission expires 6/19/2025, 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

4/3/23

Catherine A Roeske
Oak Creek City Clerk
8040 South 6th St.
Oak Creek, WI 53154

Daniel Bukiewicz
Oak Creek Mayor
8040 South 6th St.
Oak Creek, WI 53154

Melissa Karls
Oak Creek City Attorney
8040 South 6th St.
Oak Creek, WI 53154

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

I was at the in person voting on 3/31/2023. During that process, I noted that there were no witness signatures or addresses on the absentee ballot envelopes. Wisconsin State Statute 6.87 states that there needs to be a witness signature on all absentee ballot envelopes.

6.87 Absent voting procedure.

The witness shall execute the following:

I, the undersigned witness, subject to the penalties of s. [12.60 \(1\) \(b\)](#), Wis. Stats., for false statements, certify that I am an adult U.S. citizen** and that the above statements are true and the voting procedure was executed as there stated. I am not a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk). I did not solicit or advise the elector to vote for or against any candidate or measure.

....(Printed name)

....(Address)***

Signed

The Seventh Circuit Court of Appeals confirmed this in 2020

“The Seventh Circuit Court of Appeals granted a stay regarding the portion of the Order permitting an absentee voter to submit a statement that they were unable to obtain a witness signature in lieu of a witness signature on the certificate envelope. Therefore, absentee ballots must have a witness signature on their ballot for it to be counted, regardless of when the ballot is issued or received.”

4/3/23

In guidance provided by the Wisconsin Election Commission, this information was restated for the April 4th election. "Both the voter's address and witness's address need to be clear and complete on the envelope into which the ballot is inserted."

As stated in Wisconsin Election Statute 6.93, the vote of any absent elector may be challenged.

6.93 Challenging the absent elector. The vote of any absent elector may be challenged for cause and the inspectors of election shall have all the power and authority given them to hear and determine the legality of the ballot the same as if the ballot had been voted in person. In municipalities where absentee ballots are canvassed under s. 7.52, the vote of an absentee elector may be challenged as provided in s. 7.52 (5).

Therefore, I am challenging all absentee ballots contained in absentee ballot envelopes which do not contain a witness signature and/or address until a court can determine the legitimacy of these ballots.

These ballots should be segregated and secured until that time.

Regards,

Robert Rasmussen
200 W Rainbow Ridge Dr.
Apt.910
Oak Creek, WI 53154
(414) 507-2364
QldGuard15@aol.com

APPENDIX B

EL 23-50

**Kenneth Brown v. Tara
McMenamin**

September 24, 2024

Kenneth Brown
610 Main St.
Suite 403
Racine, WI 53403

Tara McMenamin
730 Washington Ave.
Racine, WI 53403

Ian Pomplin
730 Washington Ave.
Racine, WI 53403

Scott Letteney
730 Washington Ave.
Racine, WI 53403

Sent via email to: klbinv@tds.net; tara.mcmenamin@cityofracine.org; Scott.Letteney@cityofracine.org; Ian.Pomplin@cityofracine.org

Re: Kenneth Brown v. Tara McMenamin et al. (EL 23–50)

Dear Mr. Brown, Clerk McMenamin, Attorney Pomplin, and Attorney Letteney:

This letter is in response to the verified complaint submitted by Kenneth Brown to the Wisconsin Elections Commission (“Commission”), which was filed in reply to actions taken by Clerk McMenamin of the City of Racine (“Respondent”) concerning alleged violations of Wis. Stat. § 7.41 (1) and (2). The complaint concerns the distance from which election observers are permitted to observe election activities.

The Commission has reviewed the complaint and 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.

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 issue 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 and Response

On September 29, 2023, the Complainant filed a sworn complaint with the Commission under Wis. Stat. § 5.06 alleging that the Respondents violated Wis. Stats. §§ 7.41 (1) and (2) by placing or approving the placement of the boundary for election observers more than 3 feet away from the voting activities.

The Complainant alleges that the boundaries for the election observers' area at Central Count in the City of Racine for the 2020 General Election and the Primary and General Elections in 2022 were not compliant with Wis. Stat. § 7.41 (2). He alleges that the boundaries prevented poll observers from readily viewing election certificates resulting in few absentee certificates being observed. The complainant alleges that when the issue was explained to Respondent McMenamin, she stated that "the boundaries would not be changed because she interprets the law to mean the observers' boundaries can be anywhere within a 3 to 8 foot distance."

The response argued that the complainant failed to allege that the City Clerk violated any election statute and that the complaint is untimely and contains factually impossible allegations. The response stated that the observation areas were clearly marked and consistently complied with statutory obligations. The Respondent stated that "these areas are located no closer than three feet and no further than eight feet from the polling tables," that "the observation areas are often located in the center of the room to allow observers to view all tables where public aspects of voting occur," and that "that the boundaries of the observation area are set such that elections staff may perform their duties without being impeded by observers."

The response also argues that the focus of observation is "primarily *auditory*, not visual," and notes that statutes require absentee ballot canvassers to read information from absentee certificate envelopes out loud for observers to hear. The response alleges that observers could request to more closely inspect a specific envelope by notifying an election inspector. The response argues that the complaint was filed too long after the elections at issue to be considered timely by the Commission. Finally, the response argues that Racine did not use board of absentee ballot canvassers in 2020, and that the dates provided in the complaint do not correspond to the elections activities that are alleged to have occurred.

Discussion

Under Wis. Stat. § 7.41(1), any member of the public can observe the voting process. Wis. Stat. § 7.41(1) states:

Any member of the public may be present at any polling place, in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855 on any day that absentee ballots may be cast at that site for the purpose of observation of an election and the absentee voting process, except a candidate whose name appears on the ballot at the polling place or on an absentee ballot to be cast at the clerk's office or alternate site at that election. The chief inspector or municipal clerk may reasonably limit the number of persons representing the same organization who are permitted to observe under this subsection at the same time. Each person permitted to observe under this subsection shall print his or her name in and sign and date a log maintained by the chief inspector or municipal clerk for that polling place, office, or alternate site.

Wis. Stat. § 7.41(2) states:

The chief inspector or municipal clerk may restrict the location of any individual exercising the right under sub. (1) to certain areas within a polling place, the clerk's office, or alternate site under s. 6.855. The chief inspector or municipal clerk shall clearly designate observation areas for election observers under sub. (1). The observation areas shall be not less than 3 feet from nor more than 8 feet from the table at which electors announce their name and address to be issued a voter number at the polling place, office, or alternate site and not less than 3 feet from nor more

than 8 feet from the table at which a person may register to vote at the polling place, office, or alternate site. The observation areas shall be so positioned to permit any election observer to readily observe all public aspects of the voting process.

Further, Wis. Stat. § 7.52(1)(a) extends the same ability to observe to boards of absentee ballot canvassers. The municipal clerk is permitted to restrict the location of election observers within certain areas of an observable location so that they may observe the election process without interfering with the duties of election officials and voters.

According to the statute, the observation areas cannot be closer than 3 feet or further than 8 feet from the registration, check in, and absentee ballot processing tables. Respondent McMEnamin asserts, and the Complainant does not refute, that the observation area was between 3 and 8 feet away from the observable activities. The Complainant appears to argue that § 7.41(2) requires Respondent McMEnamin to instead always choose a distance of 3 feet. That interpretation is not consistent with the plain language of the statute, which unambiguously states that the observable area should be “not less than 3 feet from nor more than 8 feet from” the observable areas. If the boundaries were placed closer than 3 feet to the election tables, or further than 8 feet away, that would be in direct violation of Wis. Stat. § 7.41(2). The plain language of § 7.41(2) demonstrates clear legislative intent that 3 to 8 feet is a distance range that is adaptable based on the needs of each polling place. The Commission does not find that the Respondents violated Wis. Stat. § 7.41 by establishing observation areas between 3 and 8 feet from the observable areas.

The Commission does not agree with the Respondents that the complaint was untimely. Were a clerk to establish an observation area further than 8 feet from an observable area, the Commission would be within its powers under Wis. Stat. § 5.06(6) to order a clerk to conform his or her conduct to the law. Observation areas are required during each election. For this allegation, the Commission does not find that the complaint would prejudice the rights of the respondents.

Finally, the Commission has not attempted to untangle the dates alleged in the complaint and contested in the response or whether the activities alleged occurred at a polling place or a board of absentee ballot canvassers location. The Commission found that the allegations rested on an incorrect interpretation of the statute, and thus that the complaint should be dismissed no matter what dates or locations were intended to be alleged by the complainant.

Commission Decision

Based on the above review and analysis, the Commission finds that the Complainant has not shown probable cause to believe that a violation of law or abuse of discretion occurred in relation to Wis. Stats. §§ 7.41(1) and (2). The Commission orders the Respondent to continue placing the boundaries within the 3 to 8 feet range consistent with Wis. Stat. § 7.41(2).

Right to Appeal – Circuit Court

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

If any of the parties 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
ELECTIONS COMMISSION**

Tara McMenamin layout the boundaries of the Poll Observer's Area. Her plan for location of the Poll Observer's Area was approved by Ian Pomplin from the Racine City Attorney's office and Racine City Attorney Scott Letteney. Furthermore; when John Harry Landwehr informed Racine City Clerk Tara McMenamin on 04/03/2022 and then again on 04/04/2022 that the boundaries did not comply with WI Election Law 7.41 Sec. 1 and Sec. 2; Tara McMenamin said the boundaries would **not** be changed because she interprets the law to mean the Poll Observer's boundaries can be anywhere within a 3 to 8 foot distance.

This created a situation on: Election Day 2020, Primary Day 2022 and Election Day 2022, that prevented Poll Observers from readily viewing Election Certificates resulting in few absentee certificates being observed by Poll Observers. Not being able to view Election Certificates created a situation that suspicious absentee ballots could not be viewed, identified and verified which creates the opportunity for illegal ballots to be tallied.

Failure to have boundaries for Poll Observer's Area comply with WI Election Law: 7.41 Public's Right to Access, Section 1 and Section 2 prohibited Ken Brown and all other registered Poll Observers from doing their civic duty as a Poll Observer. Which in turn, violated ALL Poll Workers at Cenral Count in the city of Racine Civil Rights.

7.41 Public's right to access.

(1) Any member of the public may be present at any polling place, in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855 on any day that absentee ballots may be cast at that site for the purpose of observation of an election and the absentee ballot voting process, except a candidate whose name appears on the ballot at the polling place or on an absentee ballot to be cast at the clerk's office or alternate site at that election. The chief inspector or municipal clerk may reasonably limit the number of persons representing the same organization who are permitted to observe under this subsection at the same time. Each person permitted to observe under this subsection shall print his or her name in and sign and date a log maintained by the chief inspector or municipal clerk for that polling place, office, or alternate site.

(2) The chief inspector or municipal clerk may restrict the location of any individual exercising the right under sub. (1) to certain areas within a polling place, the clerk's office, or alternate site under s. 6.855. The chief inspector or municipal clerk shall clearly designate observation areas for election observers under sub. (1). The observation areas shall be not less than 3 feet from nor more than 8 feet from the table at which electors announce their name and address to be issued a voter number at the polling place, office, or alternate site and not less than 3 feet from nor more than 8 feet from the table at which a person may register to vote at the polling place, office, or alternate site. The observation areas shall be so positioned to permit any election observer to readily observe all public aspects of the voting process.

**STATE OF WISCONSIN
ELECTIONS COMMISSION**

COMPLAINT FORM

Please provide the following information about yourself:

Name **Kenneth Brown**
Address **610 Main St. Suite 403 53403**
Telephone **262 9093569**
E-mail **klbinv@tds.net**

State of Wisconsin
Before the Election Commission

The Complaint: Poll Observer's Area at 730 Washington Ave. 53403 Racine, WI during the 2020 and 2022 Election Cycle which was under the control of Racine's City Clerk (Tara McMenamin) did not comply with WI Election Law 7.41 Section 1 and Section 2. The Observer's area is located more than 3 feet from the location where Absentee Ballots were processed.

Poll Observer's Area's boundaries were more than 3 feet away from Poll Worker's workstation. Poll Observer's were prevented from fulfilling their legal duties as described in WI Election Law 7.41 Section 1 due to the distance Poll Workers were kept from Poll Workers processing Absentee Ballots.

Location of Poll Observer's Area at Central Count in the City of Racine prevents Poll Observer's 'readily access' as described in Election Law 7.41: Poll Observers "Shall have readily access of all aspects of public voting process" as prescribe in WI Election Law 7.41 Section 2.

When Racine City Clerk was asked to change the location of the Observer's Area boundaries to comply with WI Election Law 7.41 Section 2, Racine's City Clerk, Tara McMenamin stated that the Poll Observer's Boundaries do comply with WI Election Law 7.41 and were approved by Racine City Attorney.

Complaint against Racine's City Clerk, Tara McMenamin for laying out boundaries for the Observer's Area that do not comply with Election Law 7.41 and for NOT changing the boundaries for the Observer's Area that do not comply with Election Law 7.41.

A request made to Tara McMenamin was made by John Harry Landwehr on 04/03/2022 by e-mail and then again on Election Day 04/04/2022. Furthermore, this complaint includes attorney Ian Pomplin from the Racine City Attorney's office and Racine City Attorney Scott Letteney for approving boundaries for the Poll Observer's Area at Racine City Central Count, that did not comply WI Election Law 7.41 Section 1 and Section 2;

Respondents, whose address's are 730 Washington Ave Racine, WI 53403

The complaint in under WI Election Law 7.41 Sec. 1 & Sec. 2

I, **Kenneth Brown** alleges that boundaries for the Poll Observer's Area at Central Count in the City of Racine for the 2020 General Election and the Primary and General Election in 2022 were not in compliance with WI Election Law 7.41 Section 1 and Section 2. Racine City Clerk

(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: 17 Aug 2023 Complainant's Signature [Handwritten Signature]

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

Complainant's Signature [Handwritten Signature]

STATE OF WISCONSIN

County of, Racine
(county of notarization)

Sworn to before me this 17 day of
August, 2023.



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

My commission expires March 26, 2027, 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

STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION

Kenneth Brown
610 Main Street
Racine, WI 53403,

Complainant,

Complaint: EL23-50

v.

Tara McMenamin
Office of the City Clerk
730 Washington Ave.
Racine, WI 53403,

Respondent.

RESPONSE OF RESPONDENT TARA MCMENAMIN

Respondent Tara McMenamin, in her capacity as City Clerk of the City of Racine, by and through her attorneys Scott Letteney and Ian Pomplin, hereby submits the following response to the Complaint filed by Kenneth Brown with the Wisconsin Elections Commission.

INTRODUCTION

Between 2020 and 2022, and all other years, the City of Racine has operated elections within the scope of the law, including the establishment of appropriately distanced observation areas. The City of Racine has operated these observation areas consistently by indicating on the ground with removable, high visibility tape where observers may stand. These areas are located no closer than three feet and no further than eight feet from the polling tables at which electors announce their name and address to be issued a voter number and from the tables at which an individual may register to vote. These observation areas are often located in the center of the room to allow observers to view all tables where public aspects of voting occur. *Aff.* of McMenamin,

Ex. 1. (This photograph was taken after the closing of polls on April 4, 2023, and illustrates the location of the observer area at the City of Racine central count location. The observation area has been set up in an identical manner for every election at which the City of Racine has opted to use a central count.) The boundaries of the observation area are set such that elections staff may perform their election duties without being impeded by observers.

For all elections prior to August 9, 2022, the City of Racine canvassed absentee ballots at the polling locations pursuant to Wisconsin Statutes section 6.88. Beginning with the election that occurred on August 9, 2022, the City of Racine opted into Wisconsin Statutes section 7.52, which permitted the City to establish a central count location for the canvassing of absentee ballots. Racine, Wis., Municipal Code §§ 2-321, 2-322. Accordingly, all elections in 2020, 2021, and both the 2022 Spring Primary and the 2022 Spring General Election did not use a central count system. The 2022 Partisan Primary, 2022 General Election, and all elections in 2023; however, utilized a central count system.

The City of Racine did not allow any voting activity on Monday, April 4, 2022—the day before the 2022 Spring Election. This was done in accordance with Wisconsin Statutes section 6.86(1)(b).

ARGUMENT

The complaint fails to allege that the City Clerk has violated any election statute and thus fails as a matter of law. The City of Racine has numerous polling locations spread throughout the City. Though the complainant alludes to the central count location established under Wisconsin Statutes section 7.52, he does not specify which location is alleged to be in error. Further, the complaint is untimely and contains factually impossible allegations.

I. The City Clerk properly restricted observation areas within the meaning of Wis. Stat. § 7.41

City of Racine Clerk Tara McMenammin lawfully followed all requirements of Wisconsin Statutes section 7.41 to restrict observation to certain areas within a polling place, clerk's office, or alternate site under section 6.855. There are three statutory requirements:

1. The chief inspector or municipal clerk shall clearly designate observation areas for election observers under sub. (1).
2. The observation areas shall be not less than 3 feet from nor more than 8 feet from the table at which electors announce their name and address to be issued a voter number at the polling place, office, or alternate site and not less than 3 feet from nor more than 8 feet from the table at which a person may register to vote at the polling place, office, or alternate site.
3. The observation areas shall be so positioned to permit any election observer to readily observe all public aspects of the voting process.

Wis. Stat. § 7.41(2).

The complaint does not allege that any of these requirements were violated. The chief inspector and/or municipal clerk clearly designated observation areas through signage and high-visibility tape. The chief inspector and/or municipal clerk located these areas no less than three feet nor more than eight feet from polling tables. The complaint admits as much. "Poll Observer's Area's boundaries were more than 3 feet away from Poll Worker's workstation." *Compl.* p. 2. "The Observer's area is located more than 3 feet from the location where Absentee Ballots were processed." *Id.* The observation areas were centrally located and provided observers with the ability to readily observe the election process, both visually and audibly. This was done in accordance with Wisconsin Statutes section 7.41 and the "Election Administration Manual for Wisconsin Municipal Clerks" *Wisconsin Elections Commission*, September 2023 p. 183 ("Observers are allowed at a central counting location under Wis. Stat. § 5.86. Counting Area: There must be an observer area between three and eight feet of the table at which the counting is taking place.") The complaint, which alleges that observers were not allowed closer than three

feet, is wholly without merit. The City Clerk for the City of Racine followed the law exactly, and the complaint itself admits as much.

Further, the focus of observation, as such applies to the central count procedure adhered to by the City of Racine under Wisconsin Statutes section 7.52, is primarily *auditory*, not visual. Section 7.52 incorporates both the right of observation and the statutory distance requirements prescribed by Wisconsin Statute section 7.41. To illustrate, section 7.52 clearly states that “[t]he board of absentee ballot canvassers shall first open the carrier envelope only, and, in such a manner that *a member of the public, if he or she desired, could hear*, announce the name of the absent elector or the identification serial number of the absent elector if the elector has a confidential listing under s. 6.47 (2).” Wis. Stat. § 7.52(3)(a) (emphasis added). Plainly, this statute emphasizes auditory observation, but also allows for visual observation from the requisite distance. It is just as plain that there is no room within the law for members of the public to hover mere inches behind absentee ballot canvassers, despite what the complainant has implied.

To the extent that the activities at central count constitute an “open meeting,” the observation locations are legally permissible under that framework as well. Former Attorney General J.B. Van Hollen opined in an Attorney General Opinion that processing absentee ballots at a central count location constituted an “open meeting” within the meaning of Wisconsin Statutes section 19.82(1). OAG 5-14. Within that opinion, it was made clear that “canvassing boards must provide the public a reasonable opportunity to meaningfully observe their meetings, they may impose reasonable limits on public access to the extent necessary to protect the effective and orderly conduct of the canvass.” The central count restrictions imposed by the City’s Clerk—designated observation areas no closer than three feet and no further than eight feet—comply with both open meetings laws and Wisconsin Statute section 7.41.

In furtherance of the principles behind both Wisconsin Statutes section 7.41 and the open meetings laws, as well as OAG 5-14, reasonable discretion was used to allow observers the opportunity to more closely inspect any ballot envelope upon request. Observers need only identify the *specific* envelope or document and alert the chief election inspector and/or the municipal clerk. This is in accordance with the Attorney General opinion that “canvassers must exercise reasonable discretion to determine the manner of public access to election documents and materials that is consistent with the orderly conduct of the canvass.” OAG 5-14. Thus, all requirements regarding the handling of election materials were followed, as the chief election inspector and/or municipal clerk allowed for visual inspection upon request.

II. The Complaint is untimely

The complaint alleges that violations occurred on “Election Day 2020, Primary Day 2022, and Election Day 2022.” *Compl.* p. 1. Presumably, the complaint is referring to the November 3, 2020, Fall General Election, the August 9, 2022, Fall Primary Election, and the November 8, 2022, Fall General Election, though other elections occurred within 2020 and 2022. It is possible that “Primary Day 2022 and Election Day 2022” refer to the spring elections in 2022. Regardless, all complaints about these elections are untimely.

All complaints alleging election administration issues must be filed promptly. Wis. Stat. § 5.06. While the statute is silent as to what “promptly” means, this complaint is certainly outside the realm of any sense of that word. The complaint here appears to have been filed on September 29, 2023, and such was transmitted to the Respondent on October 2, 2023. This indicates that the complaint was filed one thousand fifty-four days after the November 3, 2020, Fall General Election, four hundred and ten days after the August 9, 2022, Fall Primary Election, and three hundred nineteen days after the November 8, 2022, Fall General Election. A common definition

of promptly is “in a prompt manner: without delay: very quickly or immediately” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/promptly>. (Accessed Oct. 4, 2023.) The complainant here delayed many hundreds of days after the allegations are said to have occurred, which is clearly not prompt within the meaning of the statute.

III. The Complaint alleges actions in locations that did not exist and actions on a day for which an election was not held.

It appears that this complaint is alleging that the City of Racine operated its central count area in violation of witness observation laws. *Compl.* p. 1 (“Which in turn, violated ALL Poll Workers at Cenral [sic] Count in the city of Racine Civil Rights.”) However, the City of Racine began using central count canvassing under Wisconsin Statutes section 7.52 only during the 2022 Fall Primary Election, which was held on August 9, 2022. This means that the complaint regarding the 2020 election necessarily fails because it argues a factual impossibility, as no central count location was operated in 2020 (or prior to August 9, 2022).

Further, the complaint alleges that violations occurred on Monday, April 4, 2022¹. Specifically, it states that “[a] request made to Tara McMenamin was made by John Harry Landwehr on 04/03/2022 by e-mail and then again on Election Day 04/04/2022.” No election activity occurred on April 4, 2022. The scheduled election was to occur on April 5, 2022, but the City of Racine did not operate the central count location for that election. Further, in-person absentee voting may not occur on the Monday prior to a Tuesday election. Wis. Stat. § 6.86(1)(b). Thus, this allegation is factually impossible.

¹ It is possible that the complainant is referring to the April 4, 2023, election, for which central count canvassing was used. However, the complaint references the year 2022 eight separate times, indicating that the complaint does in fact refer to April 4, 2022, a day in which no voting activity occurred.

Dated this 12th day of October, 2023.

Respectfully submitted,

Electronically signed by Ian R. Pomplin
Ian R. Pomplin, Assistant City Attorney
State Bar No. 1105355
ian.pomplin@cityofracine.org
Scott R. Letteney, City Attorney
State Bar No. 1000559
scott.letteney@cityofracine.org
Attorneys for Tara McMenamin

Racine City Attorney's Office
800 Center Street
Suite 122
Racine, Wisconsin 53403
Telephone: (262) 636-9115
Facsimile: (262) 636-9570

VERIFICATION

I, Tara McMenamin, being first duly sworn upon oath, state that I personally read the above verified Response, and that the above Response is true and correct based upon my personal knowledge.

Dated this 12th day of October, 2023.

Tara McMenamin
City Clerk, City of Racine

STATE OF WISCONSIN)
)ss.
COUNTY OF RACINE)

Subscribed and sworn to before me this 12th day of October, 2023, by

Signature
Notary Public, State of Wisconsin

My commission expires: 9-23-2025



STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION

Kenneth Brown
610 Main Street
Racine, WI 53403,

Complainant,

v.

Tara McMenamin
Office of the City Clerk
730 Washington Ave.
Racine, WI 53403,

Respondent.

**AFFIDAVIT OF TARA MCMENAMIN IN SUPPORT OF
RESPONSE OF RESPONDENT**

STATE OF WISCONSIN)
)SS
COUNTY OF RACINE)

Tara McMenamin, first being duly sworn on oath, deposes and states as follows:

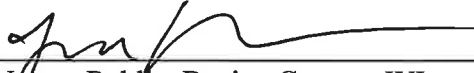
1. That at all times pertinent hereto, she was an adult resident of the State of Wisconsin, and that she is employed by the City of Racine as City Clerk.
2. This affidavit is given in support of Respondent's Response in the above-entitled action.
3. Appended hereto as Exhibit 1, is a true and accurate copy of a photograph taken on April 4, 2023, that is illustrative of the typical observer area in the City of Racine's central canvassing location.

Dated at Racine, Wisconsin, this 12th day of October, 2023.



Tara McMenemy

Subscribed and sworn to before me
this 12 day of October, 2023.



Notary Public, Racine County, WI

My commission expires/is 9-23-2025



APPENDIX C

EL 23-47

Brian Peters v. Jennifer Goergen

September 24, 2024

Brian Peters
5050 S. 41st Street
Greenfield, WI 53221

Clerk Jennifer Goergen
7325 W Forest Home Ave, Rm. 102
Greenfield, WI 53220

Sent via email to: bpeters@independencefirst.org; dlenz@lawforward.org;
ClerkDept@greenfieldwi.us

Re: In the Matter of Brian Peters v. Jennifer Goergen (EL 23-47)

Dear Mr. Peters and Clerk Goergen:

This letter is in response to the verified complaint submitted by Brian Peters (Complainant) to the Wisconsin Elections Commission (Commission), which was filed in reply to actions taken by Jennifer Goergen (Respondent) who is the city clerk for the City of Greenfield (Milwaukee County).

The Commission has reviewed the complaint, the Respondent's response, and the Complainant's reply. There do not appear to be significant factual disputes between the parties in this matter. The sole dispute centers upon an important legal question: Does Wisconsin law permit absentee voters, including their lawfully designated assistants, to return their voted absentee ballots directly to their designated polling places by 8 p.m. on Election Day? The Commission concludes the answer to that question is an unqualified "Yes." The Commission accordingly provides the following analysis and decision, which is consistent with its longstanding guidance.

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 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 Complainant alleges that he has assisted his wife, a voter with a disability who often requires ballot return assistance, in returning her absentee ballot since 2022. The Complainant acknowledged that his wife, Mrs. Jennifer Peters, contacted the Respondent on August 3, 2022, by email to inform her that she was designating her husband as her assistant because she required assistance returning her ballot as a voter with a disability. The Complainant has provided copies of this email correspondence with his complaint.

The Complainant alleges that Mrs. Peters discovered information on the City of Greenfield’s website which conflicted with information on the Commission’s MyVote website. The Complainant alleges that MyVote states that voters may return their absentee ballots to their assigned polling place, but that the Greenfield website states: “[Absentee] ballots can be hand delivered to the Greenfield City Clerk’s office...and must be received no later than 7:00 p.m. on Election Day, Tuesday, August 9, 2022, to allow for timely delivery to the polls no later than 8:00 p.m.”

The Complainant further alleges that on Election Day, August 9, 2022, he followed Commission guidance and brought Mrs. Peters’ absentee ballot to their designated polling place. He further alleges that election officials at the polling place told him he must go to the Respondent’s office to return Mrs. Peters’ ballot and that voters could not deliver absentee ballots to the polling place. The Complainant alleges that he then took Mrs. Peters’ ballot to the Respondent’s office where it was accepted and later delivered to the polling place.

After Election Day, the Complainant alleges that he contacted the Respondent to request clarification for why he was not permitted to return Mrs. Peters’ absentee ballot to their polling place. He alleges that the Respondent replied and asserted her policy that “Absentee ballots via third party drop off prearranged due to a disability are required to be dropped off in the clerk’s office.” The Complainant has also provided copies of this email correspondence with his complaint.

The Complainant argues that the plain language and context of Wis. Stat. § 6.87(6) permits voters to return their absentee ballots to polling locations. He also argues that an interpretation of § 6.87(6) to the contrary would violate federal law, specifically the Americans with Disabilities Act (ADA).

The Respondent’s Response

The Respondent does not dispute the Complainant’s accounts of his communications with her. She admits that the City of Greenfield website contained the information alleged, but denied that the City’s information conflicted with Commission guidance.

The Respondent alleges that on August 5, 2022, she received a memo from her then-City Attorney, Brian Sajdak, containing advice regarding the return of absentee ballots based on the Wisconsin Supreme Court’s decision in *Teigen v. Wis. Elections Comm’n*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519. She alleges that her counsel advised her that based on this decision, as well as his

interpretation of § 6.87, it was not lawful to permit the return of absentee ballots to the polling place, including for voters who require assistance due to a disability. The Respondent argues that she properly accommodates voters with disabilities who require assistance by permitting them to prearrange ballot drop off by 7 p.m. at her office on Election Day.

The Respondent also alleges that her policy of requiring voters to return their absentee ballots to her office by 7 p.m. is to ensure that there is sufficient time for her to process those ballots and ensure they are delivered to the correct polling location by 8 p.m.

The Respondent alleges that there were several additional pieces of correspondence between her and the Complainant, as well as with her former City Attorney, Brian Sajdak. She has produced copies of these communications with her response.

The Complainant's Reply to the Response

The Complainant reiterates his legal arguments that the Respondent's policy 1) is contrary to the plain meaning of § 6.87(6); 2) is not required by the Wisconsin Supreme Court's decision in *Teigen*; 3) creates unnecessary conflicts with federal law; and 4) is contrary to existing Commission guidance.

Discussion

The legal question presented by this complaint logically follows from two important decisions addressing how absent electors may lawfully return their absentee ballots. In July 2022, the Wisconsin Supreme Court held that unstaffed ballot drop boxes were not a lawful method by which voters could return their absentee ballots. *Teigen v. Wis. Elections Comm'n.*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519, *overruled by Priorities USA v. WEC*, 2024 WI 32, 412 Wis. 2d 594, 8 N.W.3d 429. That holding from the *Teigen* opinion has since been overruled by *Priorities USA*. In its reasoning, the *Teigen* majority asserted that if a voter chooses to return their ballot in person, only that voter is permitted to do so, and she must do so to the office of the municipal clerk or a designated alternate absentee site. *Id.* at ¶59.

Less than two months later, the United States District Court for the Western District of Wisconsin issued a decision and order that modified the reasoning of the *Teigen* decision to the extent that it violated federal law for voters who need assistance due to a disability. *Carey v. Wis. Elections Comm'n.*, 624 F. Supp. 3d 1020 (W.D. Wis. 2022). The *Carey* court held that the federal Voting Rights Act guarantees that disabled voters who need assistance in returning an absentee ballot are entitled to ask the person of their choosing for that assistance. *Id.* at 1024–25.

Neither *Teigen* nor *Carey* addressed the question of whether absentee voters, or their lawfully designated assistants, may return their ballots in person to their polling places. However, both decisions provide important context for how the statutes relating to the return of absentee ballot should be interpreted by municipal clerks.

In short, and as detailed further by the analysis in this decision, the in person return of a voted absentee ballot by an elector, or that elector's lawful assistant, to a polling place is a lawful method of absentee ballot return under § 6.87(6).

The Respondent's Policies Are Contrary to § 6.87(6)

The only statutory provision that explicitly mentions ballot return directly to the polling place by the elector is specific to hospitalized voters who are voting by lawful agent. Wis. Stat. § 6.86(3)(c). No other provision of § 6.86 or § 6.87, the two primary statutes that describe how absentee voters can request and return their ballots, explicitly states that electors may return their ballots directly to the polling place.

Accordingly, in the absence of an express grant of statutory authority, it is necessary to examine the provisions of the absentee ballot return statute that is applicable to all other absentee voters, specifically § 6.87(6). Absentee voting procedure is detailed in § 6.87 of state statutes, which specifies that, the voted absentee ballot “*shall be returned so it is delivered* to the polling place no later than 8 p.m. on election day.” (Emphasis added.) Wis. Stat. § 6.87(6). The very next sentence is more specific and states, “...if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered...” to the elector’s polling place, or to central count, by 8 p.m. on election day. Wis. Stat. § 6.87(6).

The key question to resolving this complaint is whether the unidentified actor of § 6.87(6) must refer solely to the municipal clerk, or whether it can also refer to the voter. If the unidentified actor solely refers to the municipal clerk, then elector return of voted absentee ballots directly to their polling place would not be permitted by § 6.87(6). However, if the unidentified actor can include the elector, then § 6.87(6) would permit the return of absentee ballots to polling places by electors.

The Commission reiterates its consistent belief that the unidentified actor of § 6.87(6) can refer to any individual who is lawfully permitted to return voted absentee ballots, including the voter themselves and the disabled voter’s assistant. Had the legislature intended to restrict this action to the municipal clerk alone, it could have done so, as it has for countless actions within the elections statutes. Instead, it used passive voice and did not specify who may take this action, and the simplest reading of the statute is that anyone qualified to handle the ballot may take this action. Specifically, a voter may lawfully return his or her voted absentee ballot in person to their polling place before 8 p.m. on Election Day and a voter who determines that he or she needs assistance returning her ballot due to a disability may also permit their assistant to return their ballot directly to their polling place.

The *Teigen* Decision and Reasoning Do Not Compel a Different Result

The Respondent argues that § 6.87(6) must be read in the context of § 6.87(4)(b)1., as interpreted by *Teigen v. WEC*. 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519, *overruled in part* by *Priorities USA v. WEC*, 2024 WI 32. The Respondent concedes that *Teigen* did not address the question of absentee ballot return to polling places by electors, but instead asserts that its holding means that an absentee ballot can only be returned by mail or delivered in person to the office of the municipal clerk.

As a preliminary matter, the Commission must note that the *Teigen* decision was overruled on July 5, 2024, by *Priorities USA v. WEC*. Specifically, *Priorities USA* overruled *Teigen*’s ultimate conclusion that drop boxes are not permitted as a lawful form of absentee ballot return under state law. It is not entirely clear to what extent *Priorities USA* overruled all of *Teigen*’s reasoning, though certainly any analysis by the *Teigen* court that underpinned its overturned conclusion is subject to scrutiny.

However, regardless of the extent to which it was overruled, the Commission does not interpret *Teigen* to mean that the only two options available to a voter to return their voted absentee ballot are to return it by mail or to return it in person to the office of the municipal clerk. First, the Commission is precluded from interpreting *Teigen* in a way that restricts the rights of individuals with disabilities from receiving assistance to return their ballots. *Carey v. Wis. Elections Comm'n*, 624 F. Supp. 3d 1020 (W.D. Wis. 2022). Second, § 6.86(3)(c) expressly provides a third method by which absentee ballots may be lawfully returned—via agent for hospitalized voters. Interpreting *Teigen* as broadly as the Respondent appears to urge would not only potentially violate federal law, but it would also nullify the statute for hospitalized voters that was never discussed or addressed by the *Teigen* court. Finally, it is clear that the majority of the Supreme Court in *Priorities USA* also rejected *Teigen*'s interpretation of the law by expressly holding that drop boxes are an additional lawful method of absentee ballot return.

Accordingly, it is the opinion of the Commission that the analysis of the *Teigen* lead opinion is limited to the facts of that case, and solely addresses the legality of unstaffed drop boxes as a method of absentee ballot return.

The Respondent's 7 p.m. Ballot Return Policy is Contrary to Law

Even though the Commission has determined that the Respondent must permit voters and their lawful assistants to return voted absentee ballots directly to their polling places, it will also address the Respondent's 7 p.m. deadline to the extent that it is still relevant to voters who choose to return their voted absentee ballots to the clerk's office.

The Commission acknowledges the difficulty faced by the Respondent in complying with the mandate of § 6.87(6) that all ballots be “delivered to the polling place no later than 8 p.m. on election day.” Time and space would not permit her to accept a ballot in her office from a voter at 7:59 p.m. and cause it to be delivered to the polling place by 8 p.m., even if it was in the same building. The municipal clerk needs to be able to take some actions to ensure that she is able to cause ballots to be delivered to their polling places by 8 p.m. on Election Day, and she must be able to reasonably set some kind of cutoff after which she cannot accept voted absentee ballots at her office.

However, those actions should not be to refuse to accept ballots before 8 p.m. while simultaneously refusing to permit voters to return their absentee ballots themselves to their polling places. If the Respondent believes she would not be able to get absentee ballots to the polling place by 8 p.m. if she accepts them later than 7 p.m., she must inform voters of how they may still lawfully cast a ballot by 8 p.m. Voters can be instructed to return their voted absentee ballot themselves directly to their polling place. Voters can also be instructed that if they do not return their absentee ballot, they are still permitted to vote in person on Election Day as long as they are in line to vote by 8 p.m.

Most importantly, the Respondent cannot lead voters to believe that they must return their voted absentee ballot to her office by 7 p.m., or it will not be counted. The language on the Respondent's website that absentee ballots “must be received no later than 7:00 p.m. on Election Day...to allow for timely delivery to the polls no later than 8:00 p.m.” may lead voters to believe that missing this 7 p.m. deadline means their vote will not be counted. Voters lawfully may cast ballots until 8 p.m. on Election Day. If the Respondent is unable to accept the return of voted absentee ballots in her

office past a certain point, she must inform voters how they can still lawfully cast their ballots before 8 p.m.

Commission's Findings

Complainants seek various forms of relief from the Commission, including the issuance of an order directing the Respondent to conform her conduct to the law, to be restrained from taking any action inconsistent with Wisconsin law, and to be required to correct any policies inconsistent with the law.

Pursuant to the analysis above, the Commission hereby issues this order restraining the Respondent from taking any action inconsistent with the analysis of the law in this decision. Wis. Stat. § 5.06(6). This method of relief is intended to provide clear instruction to the Respondent. Accordingly:

1. The Respondent, including any election officials in her jurisdiction, must accept the in person return of voted absentee ballots to polling places on Election Day until the statutory deadline of 8 p.m., whether the ballot is brought by an absentee voter themselves, by a designated ballot return assistant, or by any other lawful means.
2. If the Respondent believes that she cannot facilitate the return of voted absentee ballots to polling places by 8 p.m. on Election Day after a certain point, she must take affirmative steps to inform voters of how they may still lawfully cast their ballots until 8 p.m. on Election Day. Voters in these circumstances should be informed that they can return their voted absentee ballots directly to their polling place themselves, or they can choose not to return their absentee ballot and instead vote in person at their polling place. The Respondent may facilitate this communication either orally to voters in her office, through handouts given to voters who arrive after the cutoff, by posting signs to this effect at the entrance to her office, or any combination of these options.
3. The Respondent must correct any policies inconsistent with this decision, including both internally and on her website.

Right to Appeal – Circuit Court

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

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

Sincerely,

WISCONSIN ELECTIONS COMMISSION

**STATE OF WISCONSIN
ELECTIONS COMMISSION**

COMPLAINT FORM

Please provide the following information about yourself:

Name Brian Peters

Address 5050 S. 41st Street, Greenfield, WI 53221

Telephone Number 414-937-5912

E-mail bpeters@independencefirst.org

**State of Wisconsin
Before the Elections Commission**

The Complaint of Brian Peters

_____, Complainant(s) against

Jennifer Goergen, City Clerk for the City of Greenfield, Respondent, whose

address is 7325 W. Forest Home Ave., Room 102, Greenfield, Wisconsin 53220.

This complaint is under Wis. Stat. 6.87(6) (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, Brian Peters, allege that:

Please see attached Complaint and supporting documents.

(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: August 14, 2023 
Complainant's Signature

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

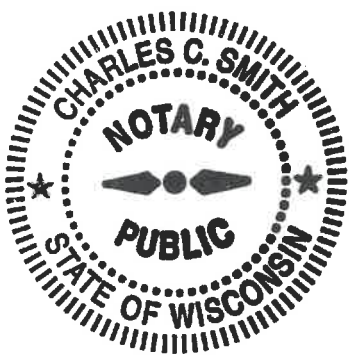

Complainant's Signature

STATE OF WISCONSIN

County of Milwaukee,
(county of notarization)

Sworn to before me this 14th day of
August, 2023.


(Signature of person authorized to administer oaths)



My commission expires 11-17-26, 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

WISCONSIN ELECTIONS COMMISSION

BRIAN PETERS,

Complainant,

v.

Case No. _____

JENNIFER GOERGEN,
CITY CLERK FOR THE CITY OF
GREENFIELD, WISCONSIN,

Respondent.

COMPLAINT

Pursuant to Wis. Stat. § 5.06, Brian Peters alleges under oath as follows:

1. The Wisconsin Constitution vests the authority to create and amend election laws, including laws pertaining to the absentee ballot process, in the Legislature, subject to the Governor’s veto. Wis. Const. art. III, § 2; Wis. Const. art. V, § 10; *State ex rel. La Follette v. Kohler*, 200 Wis. 518, 548, 228 N.W. 895 (1930). Those laws prescribe a comprehensive system for requesting, returning, and counting absentee ballots. *See generally* Wis. Stat. ch. 6, subch. IV; *Teigen v. Wis. Elec. Comm’n*, 2022 WI 64, ¶178, 403 Wis. 2d 207, 976 N.W.2d 519 (Hagedorn, J. concurring) (referring to Wisconsin’s 1915 “comprehensive absentee voting law”).

2. The Wisconsin Elections Commission (WEC) has previously instructed election officials, including municipal clerks, that they cannot impose “additional

requirements not provided by state or federal law that impact the civil and constitutional rights of voters.”¹

3. As described below, however, the City of Greenfield has created additional hurdles beyond those contemplated in Wisconsin’s election code for absentee voters and designated ballot return assistants delivering ballots to their polling places on Election Day, contravening state law.

PARTIES

4. Complainant Brian Peters is a qualified elector who resides with his wife, Jennifer Peters, in the City of Greenfield, Wisconsin. Wis. Stat. § 6.02. Mr. Peters has assisted Mrs. Peters, a voter with a disability who often requires ballot return assistance, in returning her absentee ballot since 2022.

5. Respondent Jennifer Goergen is the City Clerk for the City of Greenfield, Wisconsin. Clerk Goergen’s principal place of business is located at 7325 W. Forest Home Avenue, Room 102, Greenfield, Wisconsin 53220. Clerk Goergen is an election official as defined by Wis. Stat. § 5.02(4e). *See also* Wis. Stat. §§ 7.15(1), 5.02(10).

BACKGROUND

6. Pursuant to long-standing Wisconsin Supreme Court precedent, prior to 2022, all absentee voters in Wisconsin could have a third party return their absentee ballot in person to their municipal clerk prior to Election Day, and those

¹ WEC, *Face Coverings on Election Day*, available at <https://elections.wi.gov/node/1221>; *see also* WEC, *Face Coverings While Voting and Conducting Elections* (July 31, 2020), available at <https://elections.wi.gov/media/11301/download>.

ballots would be counted. *Sommerfeld v. Bd. of Canvassers of the City of St. Francis*, 269 Wis. 299, 301, 69 N.W.2d 235 (1955), *limited by Teigen*, 2022 WI 64, ¶¶79–82.

7. Previous WEC guidance reflected this long-held understanding of Wisconsin law, including guidance to clerks issued in the Spring of 2020 that stated, “[a] family member of another person may ... return the [absentee] ballot on behalf of a voter.” *Teigen*, 2022 WI 64, ¶6.

8. On January 20, 2022, following an oral ruling the week before, the Circuit Court of Waukesha County issued a written order, holding in part that, “the only lawful methods for casting an absentee ballot pursuant to Wis. Stat. § 6.87(4)(b)1. are for the elector to place the envelope in containing the ballot in the mail or for the elector to deliver the ballot in person to the municipal clerk.” *Teigen v. Wis. Elec. Comm’n*, No. 2022AP91 (Wis. Cir. Ct. Waukesha Cty. January 20, 2022).

9. Following the Circuit Court’s order in *Teigen* and the expiration of a stay from the court of appeals, there was widespread confusion for voters and clerks during the April 5, 2022 Spring Election.²

10. On July 8, 2022, the Wisconsin Supreme Court issued its decision in *Teigen*, which held that “[a]n absentee ballot must be returned by mail or the voter must personally deliver to the municipal clerk at the clerk’s office or a designated alternate site.” 2022 WI 64, ¶4. The decision did not address whether a voter may

² See Emilee Fannon, “If you put your ballot in here, it won’t be counted”: Court order creates confusion for clerks, voters ahead of April 5, CBS 58 (March 30, 2022), available at <https://www.cbs58.com/news/if-you-put-your-ballot-in-here-it-wont-be-counted-court-order-creates-confusion-for-clerks-voters-ahead-of-april-5th>.

have assistance in mailing their absentee ballot, or how the ruling can be reconciled with federal protections for voters with disabilities. *Id.*, ¶¶5, 84–86.

11. The August 9, 2022 election occurred one month after the Court released the *Teigen* decision. During this election, questions surrounding ballot return assistance for disabled voters remained unanswered.

12. Three weeks later, on August 30, 2022, the U.S. District Court for the Western District of Wisconsin issued its decision in *Carey v. Wisconsin Elections Commission*, which reaffirmed the right of voters with disabilities to receive assistance in all steps of the absentee process, including ballot delivery. 624 F. Supp. 3d 1020 (W.D. Wis. 2022).

13. WEC has consistently stated that voters may return absentee ballots to their polling location on Election Day.³

14. Following the *Carey* decision, WEC issued additional guidance affirming the right of voters with disabilities to use ballot return assistance pursuant to the federal Voting Rights Act.⁴

³ WEC guidance during all relevant periods has stated that absentee voters and designated ballot return assistants may return absentee ballots to their polling location on Election Day, except in municipalities which use a central count procedure, which does not apply to Greenfield. WEC, *How to Turn In Completed Absentee Ballot? Wisconsin Elections*, September 11, 2020, available at <https://www.youtube.com/watch?v=MgMfkFbR6UM>; WEC, *Polls in Wisconsin Close at 8 p.m.*, August 15, 2022, available at <http://web.archive.org/web/20220815041202/https://elections.wi.gov/node/212>, WEC, *Polls in Wisconsin Close at 8 p.m.*, July 5, 2023, available at <https://elections.wi.gov/node/212>.

⁴ WEC, *Guidance on Absentee Ballot Return Options Under the Federal Voting Rights Act*, September 7, 2022, available at <https://elections.wi.gov/memo/guidance-absentee-ballot-return-options-under-federal-voting-rights-act>.

15. As the election officials with “charge and supervision of elections” in their municipalities, municipal clerks are responsible for implementing Wisconsin election law. Wis. Stat. § 7.15(1).

STATEMENT OF FACTS

16. Jennifer Peters is a long-time voter in the City of Greenfield who often relies on her husband, Complainant Brian Peters, for ballot return assistance due to a disability.

17. On August 3, 2022, Mrs. Peters emailed the office of Respondent, the City Clerk of Greenfield, stating that she required ballot return assistance for the August 9, 2022 election due to her disability. Specifically, Mrs. Peters designated Mr. Peters to return her absentee ballot. A true and correct copy of this communication is attached as Exhibit 1.

18. Clerk Goergen’s office received this communication and provided an accommodation by documenting that Mrs. Peters designated Mr. Peters as her ballot return assistant. A true and correct copy of this communication is attached as Exhibit 2.

19. Mr. Peters then searched for instructions on how to return an absentee ballot on MyVoteWI, which stated: “Take [the absentee ballot] to *your assigned polling place* or absentee counting location on Election Day” (emphasis added).⁵

20. The City of Greenfield’s website conflicted with WEC guidance. Greenfield stated that: “[Absentee] ballots can be hand delivered to the Greenfield

⁵ MyVote Wisconsin, *Vote Absentee*, available at <https://myvote.wi.gov/en-us/Vote-Absentee-Guide>.

City Clerk's office... and must be received no later than 7:00 p.m. on Election Day, Tuesday, August 9, 2022 to allow for timely delivery to the polls no later than 8:00 p.m.”⁶

21. On the morning of Election Day, August 9, 2022, Mr. Peters followed WEC guidance and brought Mrs. Peters' absentee ballot to their polling place, Adoration Lutheran Church, 3840 W. Edgerton Avenue, Greenfield, WI 53221.

22. At the polling place, election staff told Mr. Peters that he must go to the City Clerk's office to return Mrs. Peters' ballot and that voters could not deliver absentee ballots to the polling place due to a change in state law.

23. Mr. Peters then drove from the polling place to the City Clerk's office, which is three miles away.⁷

24. At the Clerk's office, staff confirmed that Mrs. Peters designated Mr. Peters as her ballot return assistant.

25. The Clerk's office then accepted Mrs. Peters' ballot from Mr. Peters and later delivered the ballot to the polling place where it was counted.

26. After Election Day, on August 15, 2022, Mr. Peters contacted Clerk Goergen to request clarification as to why he was prevented from returning Mrs.

⁶ City of Greenfield, Wisconsin, *Voter Registration and Absentee Voting*, available at <https://web.archive.org/web/20220706130810/https://www.ci.greenfield.wi.us/677/Voter-Registration-and-Absentee-Voting>.

⁷ The Clerk's office and the polling place are not directly connected by a bus route, which could pose additional hurdles for redirected absentee voters relying on public transportation and facing a time limit for delivering their ballot. See Milwaukee County Transit System, *55 Layton Avenue Bus Route*, available at <https://platform.remix.com/project/3087f49c/line/4d5d45cd?dir=0&latlng=42.95477,-88.03095,13>.

Peters' ballot at the polling place and needed to make an additional trip to the City Clerk's office to return the ballot. A true and correct copy of this communication is attached as Exhibit 3.

27. Clerk Goergen responded: "Absentee ballots via third party drop off prearranged due to a disability are required to be dropped off in the clerk's office. Thus, our election workers were instructed to inform voters to return absentee ballots to the Clerk's office and upon receipt our office delivered them to the polls." (Exh. 2, Email from Jennifer Goergen dated August 16, 2022.)

COUNT I

VIOLATION OF WIS. STAT. § 6.87(6).

28. All preceding paragraphs are incorporated by reference.

A. The plain language and context of Wis. Stat. § 6.87(6) permit voters to return their ballots to polling locations.

29. Part of Wisconsin's statutory scheme for handling absentee ballots, except in municipalities which use a central count procedure, is that they are processed and counted at the polling place for the voter's ward or election district. *See* Wis. Stat. § 6.88(2), (3)(a).

30. For that reason, the statutes require that: "The ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day." Wis. Stat. § 6.87(6).

31. The first sentence of Wis. Stat. § 6.87(6) does not specify *who* must return the ballot, and the language of the statute gives no reason to believe that it cannot be the absentee voter or their designated ballot return assistant.

32. No other provision or decision requires *only* the City Clerk or her staff to deliver absentee ballots to the polling place on Election Day for the ballots to be counted.

33. In other election statutes, the Legislature specifically stated when the municipal clerk alone must take a certain step in the absentee ballot counting process. *See* Wis. Stat. §§ 6.15(4)(a) (“Clerks holding new resident ballots shall deliver them to the election inspectors in the proper ward or election district where the new residents reside ...”), 6.88(1–2) (“the clerk shall enclose [an absentee ballot], unopened, in a carrier envelope which shall be securely sealed and endorsed with the name and official title of the clerk”).

34. Wis. Stat. § 6.87(6), in contrast, does not use the words “the municipal clerk” or any other indication that the Legislature believed only clerks could deliver absentee ballots to the polling location, instead of absentee voters or their designated ballot return assistants. In other words, the statute only emphasizes *where* the ballot must go—“the polling place serving the elector’s residence”—and *when*—“before 8 p.m.” Wis. Stat. § 6.87(6).

35. Wis. Stat. § 6.86(3)(a), which deals with hospitalized voters, clarifies that ballots may be returned directly to polling places by someone other than the municipal clerk. The statute explicitly states that the elector’s agent will return a completed ballot directly to the polling place if they return the ballot on Election Day. Wis. Stat. § 6.86(3)(c) (“if the ballot is returned on the day of the election, the agent

shall make personal delivery to the polling place serving the hospitalized voter's residence before the closing hours").

36. While this procedure is specific to hospitalized voters, it clarifies that the statutes generally permit someone other than the municipal clerk to deliver absentee ballots to the polling place. Wis. Stat. § 6.86(3)(c).

B. The Court's decision in Teigen does not prevent voters from returning their absentee ballots to polling places.

37. Nothing in *Teigen* explicitly addresses absentee voters' or designated ballot return assistants' ability to deliver their ballots to polling places on Election Day. 2022 WI 64, ¶¶86–87 (lead op., Bradley, R.G., J., with Ziegler, C.J. and Roggensack, J.).

38. To the contrary, in *Teigen*, the Court agreed that voters may return their ballots early to locations staffed by the municipal clerk—either their office, or an alternate site designated pursuant to Wis. Stat. § 6.855, which includes polling places. 2022 WI 64, ¶¶61–62; Wis. Stat. § 5.25(2).

39. When an absentee voter or her designated ballot return assistant returns an absentee ballot to the polling place, the ballot is returned to employees of the municipal clerk at a properly designated location, which complies with Wis. Stats. §§ 6.87(4)(b)1 and 6.87(6) and is supported by *Teigen*.

C. An interpretation of Wis. Stat. § 6.87(6) that does not allow voters to return their absentee ballots to polling locations on Election Day would violate federal law.

40. Polling places are statutorily required to accommodate voters with disabilities. Wis. Stat. § 5.25(4)(a) (“Each polling place shall be accessible to all individuals with disabilities”); *See, e.g.*, Wis. Stats. §§ 5.36–7, 5.40(5).

41. As such, polling places must accommodate a voter whose disability requires them to vote via absentee ballot and deliver the ballot on Election Day—including by providing curbside options by which an assistant may drop off a ballot—whereas the City Clerk’s office may not be as accessible to the voter (or their assistant) on Election Day.

42. Moreover, the Americans with Disabilities Act (ADA) mandates that municipalities must treat all disabled persons equitably and places affirmative obligations upon municipalities to ensure that voters with disabilities enjoy the franchise in all aspects of voting. 42 U.S.C. §§ 12131-12134; 28 C.F.R. §§ 35.101–35.190. Under the ADA, municipalities may not restrict the rights of voters who must vote absentee due to disability just because others may be able to vote in person. *Id.*

43. An interpretation of Wis. Stat. 6.87(6) in which absentee ballots cannot be returned on Election Day to polling places—which are required by Wisconsin statute to accommodate voters with disabilities—and must only be delivered to Clerk’s offices that may not be accessible, would run afoul of federal requirements that voters with disabilities have equal access to voting as voters without disabilities. 42 U.S.C. §§ 12131–12134; 28 C.F.R. §§ 35.101–35.190.

44. In addition, limiting the ability of absentee voters with disabilities and designated ballot return assistants to return their ballots to any time before the statutory deadline of 8 P.M. clearly contradicts the federal mandate that disabled persons enjoy equal access to voting. 42 U.S.C. §§ 12131–12134; 28 C.F.R. §§ 35.101–35.190. Policies like those imposed by Clerk Goergen necessarily have earlier deadlines by which absentee ballots must be returned to their office so that the office can then deliver the ballots to the polls before they close. This effectively shortens the time by which certain voters, including voters who rely on ballot return assistance, can vote, contrary to Wisconsin and federal law.

45. Because Clerks’ offices may not be accessible to disabled voters and may limit the time that an absentee ballot may be delivered to their office to before 8 P.M. on Election Day, an interpretation of Wis. Stat. § 6.87(6) in which absentee ballots cannot be returned on Election Day to polling places and may only be returned to clerks’ offices would be federally preempted.

46. Statutory interpretation in Wisconsin begins with “a presumption against preemption.” *Aurora Med. Grp. v. Dep’t of Workforce Dev., Equal Rts. Div.*, 2000 WI 70, ¶13, 236 Wis. 2d 1, 612 N.W.2d 646; *see also Time Warner Cable v. Doyle*, 66 F.3d 867, 884 (7th Cir. 1995) (discussing, in the context of *Pullman* abstention, the importance of interpreting state statutes in a way that avoids unnecessary constitutional issues).

47. Presuming that Wis. Stat. § 6.87(6) is not federally preempted, it must be interpreted so that absentee voters and designated ballot return assistants can return their ballots to polling places on Election Day until the deadline of 8 P.M.

D. Municipal clerks may not alter Wis Stat. § 6.87(6) by preventing voters from delivering ballots to polling places on Election Day, or by altering the statutory deadline of 8 P.M. to return ballots.

48. All provisions of Wis Stat. § 6.87(6) must be construed as mandatory. Wis. Stat. § 6.84(2). As such, neither the municipal clerks, WEC, or any other entity has the discretion to mandate that the City Clerk herself must deliver an absentee ballot to the polling place under Wis Stat. § 6.87(6), rather than the absentee voter or their designated ballot return assistant. This interpretation effectively adds the term “the municipal clerk” to the language of Wis. Stat. § 6.87(6).

49. Neither the municipal clerks, WEC, or any other entity has the discretion to alter the 8 P.M. ballot return deadline in Wis. Stat. § 6.87(6). Wis. Stat. § 6.84(2).

50. By preventing absentee voters or their designated ballot return assistants like Mr. Peters from returning absentee ballots to their polling places themselves, and by imposing a deadline of 7 P.M. to return absentee ballots to the Clerk’s office, Clerk Goergen violated Wis. Stat. § 6.87(6), which allows absentee voters and designated ballot return assistants to deliver absentee ballots to polling places until 8 P.M.

WHEREFORE, Complainant requests relief pursuant to Wis. Stat. § 5.06 as follows:

- A. Issue an order requiring Clerk Goergen and any other election official in the City of Greenfield to accept lawful absentee ballots at the absentee voter's appropriate polling place on Election Day until the statutory deadline of 8 P.M. under Wis. Stat. §6.87(6), whether the ballot is brought by an absentee voter themselves, by a designated ballot return assistant, or by any other lawful means.
- B. Issue an order requiring Clerk Goergen to update and correct any policies or procedures for the City of Greenfield to reflect that an absentee voter or their designated ballot return assistant may deliver their ballots to the appropriate polling place on Election Day before 8 P.M. under Wis. Stat. §6.87(6).
- C. Take any other action that has the effect of restraining Clerk Goergen from acting contrary to law as described in this Complaint.

Dated this 16th day of August, 2023.

Electronically Signed By: /s/ Daniel S. Lenz
Daniel S. Lenz, SBN 1082058
LAW FORWARD
222 West Washington Avenue, Suite 250
Madison, WI 53703-0326
dlenz@lawforward.org
608-556-9120

Attorney for Brian Peters

EXHIBIT 1

Subject: Absentee Ballot drop off

Date: Wednesday, August 3, 2022 at 2:13:45 PM Central Daylight Time

From: Jennifer Peters

To: z GF Clerk Dept

Dear Election Official,

I am hereby requesting a reasonable accommodation under the Americans with Disabilities Act Title II which requires reasonable accommodation in voting procedures, the Voting Rights Act which provides for assistance to voters with disabilities, and Wisconsin Statute [7.15\(14\)](#) which states that: “Each municipal clerk shall make reasonable efforts to comply with requests for voting accommodations made by individuals with disabilities whenever feasible.”

Due to limitations experienced because of my disability, I am unable to deliver my ballot in person. I am requesting that my husband (and absentee ballot witness) Brian Peters, be allowed to turn in my ballot on my behalf.

Sincerely,

Jennifer Peters

5050 S 41st Street

Greenfield WI 53221

EXHIBIT 2

From: Jennifer Goergen <Jennifer.Goergen@greenfieldwi.us>
Sent: Tuesday, August 16, 2022 12:54 PM
To: Brian Peters <BPeters@independencefirst.org>
Cc: B Sajdak <brian@wrslegal.net>; Mayor Neitzke <MayorNeitzke@GreenfieldWI.US>; z
GF Clerk Dept <ClerkDept@greenfieldwi.us>
Subject: RE: Election Day Issues

Dear Brian:

Thank you for your email. Our City Attorney advised my office on August 5, 2022 that based upon the language of the Tiegen decision, and a strict reading of the statute, that an absentee ballot may only be returned by mail or personally delivered to the municipal clerk at the clerk's office--that there are no other options provided in the statutes, unless the ballot was for a hospitalized voter. Absentee ballots via third party drop off prearranged due to a disability also are required to be dropped off in the clerk's office. Thus, our election workers were instructed to inform voters to return absentee ballots to the Clerk's office and upon receipt our office delivered them to the polls.

With regard to curbside voting, one stall was marked at each location "for curbside voting call 329-5219." In addition there was a sign posted at each polling place entrance with regard to the ability to vote curbside, which included voters experiencing Covid symptoms.

We did receive your wife Jennifer's request prearranging for you, Brian Peters, to drop off her absentee ballot. Our records indicate her absentee ballot was accepted (documented on our log at 10:43 a.m.), and delivered to the polls and counted.

Sincerely,

Jennifer Goergen, WCMC/CMC
City Clerk
City of Greenfield
7325 W. Forest Home Ave., Room 102
Greenfield, WI 53220
Telephone: (414) 329-5215
Fax: (414) 543-0591

EXHIBIT 3

From: Brian Peters [<mailto:BPeters@independencefirst.org>]
Sent: Monday, August 15, 2022 4:39 PM
To: z GF Clerk Dept <ClerkDept@greenfieldwi.us>
Subject: Election Day Issues

Hi;

On Election Day, I attempted to deliver my wife's ballot (per reasonable accommodation request) to the polling site on Edgerton (Adoration Church). I was told I could not deliver it there, that I had to go to City Hall. This surprised me because it was contrary to the information I found on the WEC website. The staff person at the Clerk office told me it was due to a recent change in state law. Today, I attended a meeting for the Disability Vote Coalition where we were working on updating some information, and I mentioned that I was told I couldn't drop it off at the polling site anymore.

I was told the following information:

You can return an absentee ballot to your polling place. The statute is: "6.87(6) The ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day. Except in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided in this subsection may not be counted."

Additionally, I don't recall seeing any signage for curbside voting at the church polling site.

Please let me know why I was told to go to City Hall, and why there apparently was no provision for curbside voting.

Thank you,

Brian Peters (He/His) ♦ Independent Living Services Assistant Program Director
Independence First ♦ 540 S 1st Street ♦ Milwaukee, Wisconsin ♦ 53204
Direct 414-937-5912 ♦ **Office** 414-291-7520 TTY/Relay ♦ **Fax** 414-226-8155
BPeters@independencefirst.org ♦ www.independencefirst.org

IndependenceFirst Logo image



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STATE OF WISCONSIN
ELECTIONS COMMISSION

BRIAN PETERS,
Complainant,

v.

Case No. EL 23-47

JENNIFER GOERGEN,
CITY CLERK FOR THE CITY OF
GREENFIELD, WISCONSIN,

Respondent.

SWORN STATEMENT OF JENNIFER GOERGEN

STATE OF WISCONSIN)
) SS:
COUNTY OF MILWAUKEE)

I, Jennifer Goergen, being first duly sworn on oath deposes and says as follows:

1. I am the Clerk for the City of Greenfield, located in the County of Milwaukee, State of Wisconsin.

2. As the Clerk for the City of Greenfield, I acknowledge receipt of the complaint of Brian Peters in regard to this matter.

3. That I am offering this sworn statement to the Wisconsin Elections Commission (the "Commission"), as requested in correspondence dated August 17, 2023, from Angela O'Brien, Staff Attorney for the Commission, to provide a response to the Complaint filed by Brian Peters with the Commission dated August 16, 2023 (the "Complaint").

4. I agree with the factual assertions made in Paragraphs 1 and 2.

5. I deny the allegations contained in Paragraph 3. As described later in this sworn statement, I believe I have faithfully performed my duties under the State of Wisconsin's election laws and that neither I, nor the City of Greenfield, have "created additional hurdles beyond those contemplated in Wisconsin's election code for absentee voters and designated ballot return assistants delivering their ballots to their polling places on Election Day, contravening state law."

6. Upon information and belief, the first sentence of Paragraph 4 is correct. I am without personal knowledge and information sufficient to form a response to the statement contained in the second sentence of Paragraph 4.

7. I agree with the description of myself, and my office contained in Paragraph 5.

8. Upon Information and belief, the factual statements made in Paragraphs 6 through 12 are correct.

9. I deny the statement contained in Paragraph 13. The Commission's guidance of September 7, 2022, titled "Guidance on Absentee Ballot Return Options Under the Federal Voting Rights Act," provided the following: "Pursuant to the Voting Rights Act, any Wisconsin voter who requires assistance with **mailing or delivering their absentee ballot to the municipal clerk because of a disability** must be permitted to receive such assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union" (emphasis added). This guidance does not provide for the elector to return their or their designee's absentee ballot to the elector or their designee's polling place on Election Day.

10. Upon Information and belief, the factual statements made in Paragraphs 14 and 15 are correct.

11. I am without personal knowledge and information sufficient to form a response to the statement contained in Paragraph 16.

12. Upon information and belief, the information in Paragraphs 17 and 18 are correct.

13. I am without personal knowledge and information sufficient to form a response to the statement contained in Paragraph 19. The link provided in footnote 5 of the Complaint is broken and I am unable to view what Mr. Peters alleges was stated on that website.

14. I deny the allegation that "The City of Greenfield's website conflicted with WEC guidance" contained in Paragraph 20. I admit that the City of Greenfield website stated that [Absentee] ballots can be hand delivered to the Greenfield City Clerk's office... and must be received no later than 7:00 p.m. on Election Day, Tuesday, August 9, 2022, to allow for timely delivery to the polls no later than 8:00 p.m."

15. I am without personal knowledge and information sufficient to form a response to the statements contained in Paragraphs 21 through 23.

16. I admit the statements contained in Paragraphs 24 and 27. However, there were several pieces of additional correspondence between Mr. Peters, myself, and our former City Attorney, Atty. Brian Sajdak, which have not been addressed by Mr. Peters, which further investigate Mr. Peters' inquiry of August 15, as described in Paragraph 26. This correspondence has been attached as **Exhibit A**.

17. In answering the allegations made in Paragraphs 28 through 50, I certify the following:

- a. On August 3, 2022, Mrs. Peters emailed me stating that she required an accommodation for returning her absentee ballot and that her husband, Mr. Peters, would be returning her ballot for her. I sent this information along to the appropriate parties, which at that time included the Peters' assigned polling place, to ensure the ballot would be accepted.
- b. On August 5, 2022, our then City Attorney, Brian Sajdak, distributed a memo to the City of Greenfield regarding the return of all absentee ballots based on the ruling in *Tiegen v. WEC* and a strict reading of Wis. Stat. § 6.87(4)(b)(1) and Wis. Stat. § 6.87(6). In that memo, not directly applying the *Tiegen* decision as this issue was not taken up by the court, Atty. Sajdak concluded that Wis. Stat. § 6.87(6) must be read in the context of the mandate of Wis. Stat. § 6.87(4)(b)(1). Therefore, the substance of the former City Attorney's conclusion is as follows: under Wis. Stat. § 6.87(4)(b)(1), an absentee ballot is required to be returned one of two ways: (1) "mailed by the elector," or (2) "delivered in person, to the municipal clerk issuing the ballot or ballots," and it follows that the mandate of Wis. Stat. § 6.87(6), "the ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day," must be read in light of § 6.87(4)(b)(1), meaning that if the absentee ballot is delivered in person, it must be delivered to the Clerk's office and in such a way that the ballot can be delivered to the polling place no later than 8 p.m. on election day. This applies to all absentee ballots being returned.

Further, Atty. Sajdak concluded that *Tiegen* did not take away the right of a disabled voter to utilize accommodations, like the accommodation granted here for Mrs. Peters to use her husband, Mr. Peters, to return her absentee ballot to the correct location because she was unable to do so due to her disability. Atty Sajdak corresponded with Mr. Peters on this point and gave Mr. Peters a copy of the aforementioned memo on August 16, 2022. A copy of attorney Sajdak's memo is attached as **Exhibit B**.

- c. On September 7, 2022, the WEC provided "Guidance on Absentee Ballot Return Options Under the Federal Voting Rights Act" to the Clerks in the State of Wisconsin. This guidance provided the following "Pursuant to the Voting Rights Act, **any Wisconsin voter who requires assistance with mailing or delivering their absentee ballot to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.**" This was the official stance of the WEC regarding the rights of voters with disabilities to receive accommodations, and this guidance, in part, echoes Atty. Sajdak's advice to the City of Greenfield.

- d. Mr. Peters, argues that the “assistance” required to be given to Wisconsin voters with disabilities allows the assistant to deliver the disabled individual’s absentee ballot in person to the clerk’s office or an “alternate site designated pursuant to Wis. Stat. § 6.855, which includes polling places...Wis. Stat. § 5.25(2).” However, Wis. Stat. § 6.855 requires the municipality to affirmatively elect to designate an alternate site. The designated site is not automatically created through Wis. Stat. § 5.25(2). I publish Type D and Type E Notices, regarding hours and locations of polling places and absentee voting respectively, for each election (attached as **Exhibit C**) and, as confirmed by the published Type D notice, Greenfield did not designate an alternate site for the August 2022 election. Therefore, the two options for returning the absentee ballot under Wisconsin law were to (1) mail it, or (2) return the ballot in person to the clerk’s office in such a way that the ballot could be delivered by the clerk to the elector’s respective polling place by 8 p.m. on election day.

The statutory deadline, as set forth in Wis. Stat. § 6.87(6), states that “the ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day,” and that, “[E]xcept in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector’s residence before 8 p.m.” Greenfield does not canvass ballots under Wis. Stat. § 7.52, therefore the clerk must deliver the absentee ballots to the polling place by 8 p.m. The City of Greenfield’s 7 p.m. deadline for all absentee ballots on election day has been requested so I can follow the required statutory actions of “caus[ing] the ballot to be delivered to the polling place serving the elector’s residence before 8 p.m.” and the administrative process that statutory requirement entails.

After ballot envelopes are examined, absentee ballots are accepted, and such ballot acceptances are documented in WisVote by my office, there is an extensive internal administrative process that my clerk staff and myself engage in. This internal process is required to ensure the integrity of the election process with respect to absentee ballots. This process includes sorting, alphabetizing, and counting absentee ballots by ward, certifying the number of each ward’s absentee ballots with an affidavit form EL-125, placing the ballot envelopes in a carrier envelope and attaching form EL-125 to the carrier envelope, ensuring the ballots are couriered to the appropriate polling places. Once at the polling place, an election official accepts the absentee ballot carrier envelope, form EL-125 and signs the certificate, and the worker opens the absentee ballot carrier envelope and verifies the number of ballots inside of the envelope matches the number of ballots placed inside as written on the front of the certificate, form EL-125. All of these processes must be completed before 8 p.m. on election day.

There are 5 districts comprised of 26 wards in the City of Greenfield. Greenfield has approximately 21,100 registered voters. In order for my office of 4 staff members to ensure all elector's absentee ballots are properly handled and delivered to their respective polling places by 8 p.m., a reasonable deadline before 8 p.m. for absentee ballot drop off at the Clerk's office is necessary. Hence the 7:00 p.m. deadline.

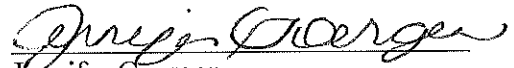
- e. In conclusion, Mrs. Peters was granted an accommodation in that her ballot was allowed to be cast for her by her husband, and her vote was counted. The accommodation that was granted was to allow her husband to deliver her absentee ballot to the statutorily prescribed location, whereas absent the accommodation only Mrs. Peters herself could have delivered her absentee ballot. The accommodation was for her and her disability, not for her non-disabled ballot assistant. Currently, the ADA and federal and state voters' rights laws do not provide for accommodations to be made for non-disabled voting assistants. Additionally, the WEC's guidance of September 7, 2022, regarding disabled voter accommodations, did not require the City to allow a ballot assistant to deliver a disabled voter's absentee ballot directly to the polling place when the statutes expressly do not provide for that.

The statutes clearly state that absentee ballots must either be (1) mailed prior to election day and within statutory timelines or (2) delivered to the Clerk's office unless an alternative location has been set under Wis. Stat. § 6.855, and, if the ballot is to be hand delivered, that the ballot must be delivered in such a way that the Clerk can deliver the absentee ballot to the electors' respective polling places by 8:00 p.m. Because Mr. or Mrs. Peters did not mail the ballot within the applicable statutory timelines, and because Greenfield did not affirmatively designate an alternative location under Wis. Stat. § 6.855 for the August 2022 election, and Greenfield also did not canvass ballots under Wis. Stat. § 7.52 for the August 2022 election, Mr. Peters' only option to return his wife's ballot on Election Day was to deliver the ballot to the Clerk's office. Again, this was an accommodation because otherwise Mr. Peters could not have returned his wife's absentee ballot at all.

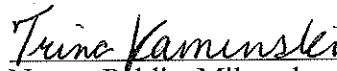
All the above being said, in the event WEC, the Milwaukee Elections Commission, or the courts provide further guidance on the issue of delivering absentee ballots to locations other than those statutorily provided, or municipalities requiring an earlier drop-off deadline so that absentee ballots can be delivered to the polling places by the statutorily required "8 p.m. on election day," or any other issues discussed in the complaint, my office will readily adhere to that guidance. In point of fact, allowing absentee ballots to be dropped off directly at each polling place would remove one of the many responsibilities placed on my office on election

days. Under current state law, however, and current WEC guidance, the drop-off of absentee ballots directly at polling places is not allowed.

17. Considering the foregoing 16 numbered paragraphs of this Response, hereby incorporated by reference, I do not believe Mr. Peters is entitled to the relief he requests under Wis. Stat. § 5.06 as stated in the Compliant.


Jennifer Goergen

Subscribed and sworn to before me this 5th day of September, 2023.


Notary Public, Milwaukee County, WI
My Commission Expires: 3/25/2025

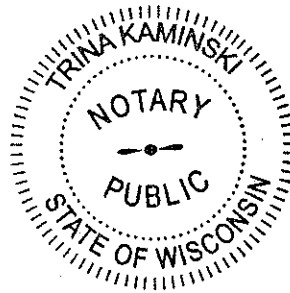


EXHIBIT A:

**JENNIFER GOERGEN AND ATTORNEY BRIAN SAJDAK'S
CORRESPONDANCE WITH BRIAN PETERS AUGUST 15-16, 2022.**

Jennifer Goergen

From: Brian Peters <BPeters@independencefirst.org>
Sent: Monday, August 15, 2022 4:39 PM
To: z GF Clerk Dept
Subject: Election Day Issues

Hi;

On Election Day, I attempted to deliver my wife's ballot (per reasonable accommodation request) to the polling site on Edgerton (Adoration Church). I was told I could not deliver it there, that I had to go to City Hall. This surprised me because it was contrary to the information I found on the WEC website. The staff person at the Clerk office told me it was due to a recent change in state law. Today, I attended a meeting for the Disability Vote Coalition where we were working on updating some information, and I mentioned that I was told I couldn't drop it off at the polling site anymore.

I was told the following information:

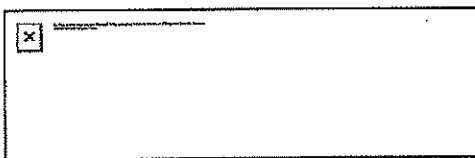
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Additionally, I don't recall seeing any signage for curbside voting at the church polling site.

Please let me know why I was told to go to City Hall, and why there apparently was no provision for curbside voting.

Thank you,

Brian Peters (He/His) ♦ Independent Living Services Assistant Program Director
Independence First ♦ 540 S 1st Street ♦ Milwaukee, Wisconsin ♦ 53204
Direct 414-937-5912 ♦ **Office** 414-291-7520 TTY/Relay ♦ **Fax** 414-226-8155
BPeters@independencefirst.org ♦ www.independencefirst.org



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Jennifer Goergen

From: Jennifer Goergen
Sent: Tuesday, August 16, 2022 12:54 PM
To: 'BPeters@independencefirst.org'
Cc: B Sajdak; Mayor Neitzke; z GF Clerk Dept
Subject: RE: Election Day Issues
Attachments: Absentee Ballot drop off

Dear Brian:

Thank you for your email. Our City Attorney advised my office on August 5, 2022 that based upon the language of the Tiegen decision, and a strict reading of the statute, that an absentee ballot may only be returned by mail or personally delivered to the municipal clerk at the clerk's office--that there are no other options provided in the statutes, unless the ballot was for a hospitalized voter. Absentee ballots via third party drop off prearranged due to a disability also are required to be dropped off in the clerk's office. Thus, our election workers were instructed to inform voters to return absentee ballots to the Clerk's office and upon receipt our office delivered them to the polls.

With regard to curbside voting, one stall was marked at each location "for curbside voting call 329-5219." In addition there was a sign posted at each polling place entrance with regard to the ability to vote curbside, which included voters experiencing Covid symptoms.

We did receive your wife Jennifer's request prearranging for you, Brian Peters, to drop off her absentee ballot. Our records indicate her absentee ballot was accepted (documented on our log at 10:43 a.m.), and delivered to the polls and counted.

Sincerely,

Jennifer Goergen, WCMC/CMC
City Clerk
City of Greenfield
7325 W. Forest Home Ave., Room 102
Greenfield, WI 53220
Telephone: (414) 329-5215
Fax: (414) 543-0591
Email: JenniferG@Greenfieldwi.us

From: Brian Peters [mailto:BPeters@independencefirst.org]
Sent: Monday, August 15, 2022 4:39 PM
To: z GF Clerk Dept <ClerkDept@greenfieldwi.us>
Subject: Election Day Issues

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I was told the following information:

You can return an absentee ballot to your polling place. The statute is: "6.87(6) The ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day. Except in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided in this subsection may not be counted."

Additionally, I don't recall seeing any signage for curbside voting at the church polling site.

Please let me know why I was told to go to City Hall, and why there apparently was no provision for curbside voting.

Thank you,

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Jennifer Goergen

From: Brian Peters <BPeters@independencefirst.org>
Sent: Tuesday, August 16, 2022 2:41 PM
To: Jennifer Goergen
Cc: B Sajdak; Mayor Neitzke; z GF Clerk Dept
Subject: RE: Election Day Issues

The Tiegen decision has to do with early voting, not election day. This is a very restrictive interpretation of the law, and I believe, an incorrect one. I work with quite a few people who are very familiar with election law, and they were quite surprised at this interpretation.

I am asking that your office reconsider your position on this. I asked a Wisconsin Election Commission staff person about this, and that person told me the same thing – that polling sites are an eligible place to return absentee ballots on election day.

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BPeters@independencefirst.org ♦ www.independencefirst.org

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Sent: Tuesday, August 16, 2022 12:54 PM
To: Brian Peters <BPeters@independencefirst.org>
Cc: B Sajdak <brian@wrslegal.net>; Mayor Neitzke <MayorNeitzke@GreenfieldWI.US>; z GF Clerk Dept <ClerkDept@greenfieldwi.us>
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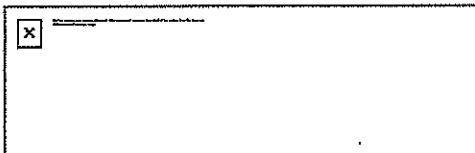
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Thank you,

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Jennifer Goergen

From: Brian Sajdak <brian@wrslegal.net>
Sent: Tuesday, August 16, 2022 3:02 PM
To: Brian Peters
Cc: Jennifer Goergen; Mayor Neitzke; z GF Clerk Dept
Subject: Re: Election Day Issues
Attachments: Memo re Acceptance of Absentee Ballots on Election Day.pdf

Brian:

I disagree with the characterization that the Tiegen case involved early voting (vs. Election Day voting). The Tiegen decision centered solely on voting by absentee ballot, and specifically how those ballots must be returned. While I do not disagree that my interpretation is a fairly strict interpretation, I believe that the statutes and the Tiegen decision ultimately leads me to the conclusion that it is the correct interpretation. And, to that end, that WEC's interpretation is incorrect. I have attached the memo that I provided to the Clerk's office which explains my interpretation. You will note that in the middle of page 2 of this memo, I quote the same statutory language you did below. The next paragraph then explains why I do not believe this language allows for the return of an absentee ballot to the polling location.

As it relates to voters with a disability, and the question of reasonable accommodations, as Jennifer noted the City does offer curbside voting for these voters. For those voters with disabilities who seek an accommodation by having a third party deliver their ballot, as you likely know this question is presently being litigated. Perhaps the Courts will weigh in before November's election such that we will have better guidance. Until then, however, I do not believe that requiring a designated third party to deliver the ballot to Clerk's office is unreasonable. The accommodation is to allow for the voter to utilize the third party, and additional accommodation to allow that third party to return the ballot anywhere they wish is not reasonable.

Should you have any questions, do not hesitate to reach out.

Brian

--
Brian C. Sajdak
Wesolowski, Reidenbach & Sajdak, S.C.
11402 W. Church St.
Franklin, WI 53132
(414) 529-8900
(414) 529-2121 - Fax

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On Aug 16, 2022, at 2:41 PM, Brian Peters <BPeters@independencefirst.org> wrote:

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Cc: B Sajdak <brian@wrslegal.net>; Mayor Neitzke <MayorNeitzke@GreenfieldWI.US>; z GF Clerk Dept <ClerkDept@greenfieldwi.us>

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EXHIBIT B:

ATTORNEY BRIAN SAJDAK'S MEMO OF AUGUST 5, 2022.

WESOLOWSKI, REIDENBACH & SAJDAK, S.C.
ATTORNEYS AT LAW
11402 WEST CHURCH STREET
FRANKLIN, WISCONSIN 53132

MEMORANDUM

To: Client Municipal Clerks
From: Brian C. Sajdak
Date: August 5, 2022
Re: Delivery of Absentee Ballots on Election Day

Question Presented

The recently issued Supreme Court decision in Teigen v. Wisconsin Elections Comm'n, 2022 WI 64, ¶ 4, ___ Wis. 2d ___, 976 N.W.2d 519, ruled that drop boxes cannot be utilized to accept absentee ballots, holding that “[a]n absentee ballot must be returned by mail or the voter must personally deliver it to the municipal clerk at the clerk’s office or a designated alternate site.” With this holding in mind, the question has been raised whether an elector may return their absentee ballot to their designated polling location on election day.

Short Answer

Based upon the language of the Teigen decision, and a strict reading of the statute, an elector may not generally return their absentee ballot to their polling location on election day unless they are a hospitalized voter. Any elector seeking to return their ballot to a poll location should be directed to return their ballot to the office of the municipal clerk. Alternatively (and especially after the clerk’s office is closed for the day), the elector could choose to not return the absentee ballot issued to them and request a new ballot in person on election day. However, if they have already returned (placed in the mail or hand delivered) their ballot, even if it hasn’t been processed yet, that elector may not get a new ballot on election day.

Discussion

Generally, election statutes are “construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.” Wis. Stat. § 5.01(1). Despite this general rule, and in response to the line of cases finding that election statutes are not mandatory, the Legislature enacted Wis. Stat. § 6.84(2), which provides that “[n]otwithstanding s. 5.01(1), with respect to matters relating to the absentee ballot process, ss. 6.86, 6.87 (3) to (7) and 9.01 (1) (b) 2. and 4. shall be construed as mandatory.” These mandatory requirements “must be strictly adhered to and strictly observed.” Teigen at § 53 (quoting State ex rel. Ahlgrimm v. State Elections Bd., 82 Wis. 2d 585, 592–93, 263 N.W.2d 152 (1978))(internal quotation marks omitted).

When interpreting a statute, “[i]f the language chosen is clear and unambiguous, we stop the inquiry and apply the plain meaning of those words. Important to the meaning of a statute is the context in which it occurs, and we interpret statutes to reasonably give effect to every word.”

Jefferson v. Dane Cnty., 2020 WI 90, ¶ 21, 394 Wis. 2d 602, 951 N.W.2d 556. Further, “statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” State ex rel. Kalal v. Cir. Ct. for Dane Cnty., 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124. “[W]here the legislature uses similar but different terms in a statute, particularly within the same section, it is presumed that the legislature intended such terms to have different meanings.” Nelson v. McLaughlin, 211 Wis. 2d 487, 496, 565 N.W.2d 123, 128 (1997).

Applying these cardinal rules of statutory construction to the relevant statutes here, it is clear that an absentee ballot may not be returned to a polling location on election day. Under Wis. Stat. § 6.87(4)(b)1, an absentee ballot “shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” “This subparagraph contemplates only two ways to vote absentee: by mail and at “the office of the municipal clerk” or “an alternate site” as statutorily described. No third option exists.” Teigen at ¶ 59. “Municipal clerk, however, denotes a public office, held by a public official acting in an official capacity when performing statutory duties such as accepting ballots. The statutes do not authorize the municipal clerk to perform any official duties related to the acceptance of ballots at any location beyond those statutorily prescribed.” Id. at ¶ 61.

The statutes provide additional support for this interpretation. Section 6.87(6), for example, provides:

The ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day. Except in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector’s residence before 8 p.m. Any ballot not mailed or delivered as provided in this subsection may not be counted.

While an argument could be made that the first sentence of that section would allow hand delivery by the elector to the polling location, such an interpretation ignores the context of subsection (4)(b)1 which requires delivery by mail or to the clerk’s office. Similarly, when dealing with absentee ballots for sequestered jurors, the municipal clerk is directed to “deliver it to the polling place.” Wis. Stat. § 6.86(1)(b). Furthermore, the legislature expressly allows an absentee ballot to be returned directly to the polling location when dealing with hospitalized electors. See Wis. Stat. § 6.86(3)(c) (“if the ballot is returned on the day of the election, the agent shall make personal delivery to the polling place serving the hospitalized elector’s residence before the closing hour or, in municipalities where absentee ballots are canvassed under s. 7.52, to the municipal clerk no later than 8 p.m. on election day.”). By expressly allowing for the return of an absentee ballot to the polls in this circumstance, the legislature’s intent is clearly to not allow an absentee ballot to be returned to the polls under any other circumstance where the express language is not found.

Having established that an elector cannot generally return their ballot to the polls except where they are hospitalized, the question becomes how to handle someone who appears at the polls with their absentee ballot. It is clear that an absentee elector who “mails or personally delivers an absentee ballot to the municipal clerk at an election is not permitted to vote in person at the same

election on election day.” Wis. Stat. § 6.87(6). The converse is also true — an absentee elector who has not returned their ballot is eligible to vote in person. We assume, for the purposes of this discussion, that the elector has their ballot because they are looking to return it. Accordingly, we know that they have not yet returned their ballot and would be eligible to vote in person. It is also clear that this absentee elector cannot spoil the ballot they are looking to return. Section 6.87(5) requires that any request for a replacement ballot “must be made within the applicable time limits under subs. (1) and (3) (c).” In other words, the request to spoil an absentee ballot must be made before the day of the election.

Based on the foregoing, there are two clear options for the absentee elector who appears at the polls with their ballot. First, they could be directed to deliver their ballot to the municipal clerk’s office (assuming that it is still open). Second, they could choose to not return their absentee ballot, indicate to the poll worker that they have not returned their absentee ballot and then be issued a new ballot that would be voted in person. The first option creates the fewest potential issues (see the discussion below) and is the option that the elector should be encouraged to use. However, there will be electors who will complain about having to go to the clerk’s office and should option two will be used.

Choosing the second option does, of course, raise the issue of how to address the absentee ballot they have brought to the poll. On August 1, 2022, WEC staff issued a communication to Wisconsin clerks entitled “Spoiling Absentee Guidance for the 2022 Partisan Primary.” A review of this document reveals that it appears to be consistent with the applicable statutes, however I take one exception with their guidance. Within this document, WEC staff states that “Poll workers should not take the unvoted absentee ballot from the voter.” I believe that this is probably correct based upon their prior guidance, the forms and poll logs that WEC has promulgated for use in elections, and perhaps even most consistent with the statutes. The statutes do not state how this situation should be handled. But, if the poll worker accepts the ballot, haven’t they effectively spoiled their ballot contrary to § 6.87(5)? On the other hand, the same could also be argued even where the unvoted ballot is not accepted. How the Courts might rule on this point is uncertain, and for that reason I have no problem following WEC’s guidance on this point should you choose to do so.

However, we also know that elections are under more scrutiny than perhaps at any point in history. I do have concerns that a voter taking their unvoted absentee ballot with them raises a host of additional concerns:

- The absentee elector could remove their absentee ballot from the envelope and vote that ballot in the place of the ballot they received at the poll. This would mean that they have returned a ballot contrary to law. It also creates an opportunity for them to provide that blank ballot to a third party for them to vote.
- The absentee elector could vote both ballots at the poll.
- The absentee elector could take their absentee ballot, walk down the hall of the polling location, and throw that ballot in the trash, which could then be discovered by a third party (either on election day or in the days that follow) who might then make public complaints of election fraud (“The government is throwing away your ballots and not counting them!”)

Of course, in all of these circumstances the checks and balances within our election system would allow for a fairly quick identification of the issue and an explanation. But at what cost? That initial claim of fraud will have legs among those who believe in conspiracies that will far outlast the legitimate explanation. For that reason, I also have no problem with the poll workers collecting the unvoted ballot. However, the poll work must take great care with that unvoted ballot:

- The envelope should not be opened.
- A notation should be made on the face of the envelope that it is an “Unvoted Absentee Ballot Returned to the Polls – New In-Person Ballot Issued.”
- The envelope should be kept separate from the spoiled ballots.
- A clear explanation should be included in the log (even if an additional sheet of paper needs to be included).

BCS

EXHIBIT C:

**TYPE D AND E NOTICE PUBLISHED BY THE
CITY OF GREENFIELD FOR THE AUGUST 2022 ELECTION.**

City of Greenfield
Partisan Primary

At the Partisan Primary to be held on Tuesday, August 9, 2022, in the City of Greenfield, the following polling place locations will be used for the wards indicated:

Wards	Voting Locations
Wards 1-12	Greenfield Community Center, 7215 W. Cold Spring Road
Wards 13-16	Whitnall High School, 5000 S. 116 th Street
Wards 17-21	Greenfield Public Library, 5310 W. Layton Avenue
Wards 22-26	Adoration Lutheran Church, 3840 W. Edgerton Avenue

All polling places will be open at 7:00 a.m. and will close at 8:00 p.m. All polling places are accessible to elderly and disabled voters.

If you have questions concerning your polling place, contact the City Clerk:

Jennifer Goergen, City Clerk
7325 West Forest Home Avenue
Greenfield, Wisconsin 53220
(414) 329-5219
Email: JenniferG@Greenfieldwi.us
Office Hours: 8:00 a.m.-5:00 p.m. – Monday-Friday

Notice of Meeting of the Local Board of Canvassers

At the close of voting on Election Day, pursuant to the provisions of Wis. Stat. §19.84, the Election Inspectors at each polling place will convene as the Local Canvassing Board for the purpose of conducting the local canvass pursuant to Wis. Stats. §7.51. This meeting will be open to the public pursuant to Wis. Stat. §§19.81-89.

Published: August 3, 2022

Elections/TypeD220809.doc

CITY OF GREENFIELD
OFFICIAL NOTICE

Voting By Absentee Ballot

Any qualified elector who is unable or unwilling to appear at the polling place on Election Day may request to vote an absentee ballot. A qualified elector is any U.S. citizen, who will be 18 years of age or older on Election Day, who has resided in the ward or municipality where he or she wishes to vote for at least 28 consecutive days before the election. The elector must also be registered in order to receive an absentee ballot. Proof of identification must be provided before an absentee ballot may be issued.

YOU MUST MAKE A REQUEST FOR ABSENTEE BALLOT IN WRITING OR ONLINE AT MYVOTE.WI.GOV.

Contact your municipal clerk and request that an application for an absentee ballot be sent to you for the August 9, 2022 Partisan Primary. You may also submit a written request in the form of a letter or you may apply for an absentee ballot online at myvote.wi.gov. Your written request must list your voting address within the municipality where you wish to vote, the address where the absentee ballot should be sent, if different, and your signature. You may make application for an absentee ballot in person, by mail, by fax, by email, or at myvote.wi.gov.

MAKING APPLICATION TO RECEIVE AN ABSENTEE BALLOT BY MAIL

The deadline for making application to receive an absentee ballot by mail is 5:00 p.m. on Thursday, August 4 2022.

NOTE: Special absentee voting application provisions apply to electors who are indefinitely confined to home or a care facility, in the military, hospitalized, or serving as a sequestered juror. If this applies to you, contact the municipal clerk regarding deadlines for requesting and submitting an absentee ballot.

VOTING AN ABSENTEE BALLOT IN PERSON

You may also request and vote an absentee ballot in the clerk's office or other specified location during the days and hours specified for casting an absentee ballot in person.

Jennifer Goergen, City Clerk
7325 West Forest Home Avenue
Greenfield, WI 53220
(414) 329-5219
Office Hours: 8:00 a.m.-5:00 p.m. - Monday-Friday

The first day to vote an absentee ballot in the clerk's office is Tuesday, July 26, 2022.

The last day to vote an absentee ballot in the clerk's office is Friday, August 5, 2022.

No in-person absentee voting may occur on the day before the election.

The municipal clerk will deliver voted ballots returned on or before Election Day to the proper polling place before the polls close on Tuesday, August 9, 2022. Any ballots received after the polls close will not be counted.

WISCONSIN ELECTIONS COMMISSION

BRIAN PETERS,

Complainant,

v.

Case No. EL 23-47

JENNIFER GOERGEN,
CITY CLERK FOR THE CITY OF
GREENFIELD, WISCONSIN,

Respondent.

COMPLAINANT'S SWORN REPLY

Pursuant to Wis. Stat. § 5.06, Complainant Brian Peters alleges under oath as follows:

INTRODUCTION

Adult citizens in Wisconsin have a constitutional right to vote. Wis. Const. art. III. Voters choose to exercise that right through absentee voting for reasons of convenience or disability. For all voters, absentee voting offers a safe and secure way to exercise the franchise.¹ Nonetheless, the Legislature has treated certain provisions of absentee voting differently. Wis. Stat. § 6.84(2). But treating a statute as “mandatory” does not change the plain meaning of the law or permit the establishment of new barriers to voting. Nor can it reverse the Legislature’s policy decisions. Respondent City of Greenfield Clerk Jennifer Goergen’s choice to prohibit

¹ See WEC, WEC Takes Steps to Ensure Voting by Absentee Remains Secure, August 4, 2022, available at <https://elections.wi.gov/news/wec-takes-steps-ensure-voting-absentee-remains-secure-0>.

voters, and individuals like Brian Peters who assist voters with disabilities, from returning their absentee ballot to the polling place on election day does just that. Because Clerk Goergen’s decision (1) is contrary to the plain meaning of Wis. Stat. § 6.87(6); (2) is not required by the Supreme Court’s decision in *Teigen*; (3) creates unnecessary conflicts with federal law; and (4) is contrary to existing WEC guidance, the Commission should issue an appropriate order requiring Clerk Goergen to permit ballot returns at the polling location on election day.

ARGUMENT

I. Clerk Goergen’s prohibition on returning absentee ballots to polling places violates Wis. Stat. § 6.87(6).

Clerk Goergen’s policy of prohibiting voters (or their assistants) from returning absentee ballots to polling places on election day violates the plain language of Wis. Stat. § 6.87(6). The Commission must enforce Wis. Stat. § 6.87(6) as required by its plain language, the context of the statute, and its history.

a. The Clerk’s interpretation of the statute is contrary to its plain language.

“[W]e have repeatedly held that statutory interpretation begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.” *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110 (cleaned up); *see also May v. Tri-Cnty. Trails Comm’n*, 220 Wis. 2d 729, 737, 583 N.W.2d 878 (Ct. App. 1998) (“[W]e are not free to rewrite the statute.”). Except in municipalities using a central count procedure, absentee ballots are processed and counted at the polling place for the voter’s ward or election district.

See Wis. Stat. § 6.88(2), (3)(a). Clerk Goergen does not dispute, nor can she, that Wis. Stat. § 6.87(6) does not specify that only the municipal clerk or their staff may return the ballot to the polling place. Indeed, the statute contains no limitation on who may return ballots to polling places. It reads in full:

The ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day. Except in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided in this subsection may not be counted.

Wis. Stat. § 6.87(6). Plainly, a voter (or their assistant) who returns their ballot to the polling place on or before 8 p.m. on election day should be counted. The second sentence of the statute makes clear that a clerk or their staff *may* receive absentee ballots; however, it does not say that *only* clerks can fulfill this role.

Similarly, the language of Wis. Stat. § 6.87(4)(b)1 does not support the Clerk's position. This portion of the statute establishes the requirements placed on an absentee voter. The relevant language--which was at the center of *Teigen*--reads: "The envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots." Wis. Stat. § 6.87(4)(b)1. Again, an absentee voter (or their assistant) who returns the absentee ballot to the polling place fulfills this requirement. By delivering the ballot to the polling place, staffed by employees of the municipal clerk, the voter is returning it to the municipal clerk (and in the location where the ballot will be processed and counted).

b. The context surrounding Wis. Stat. § 6.87(6) supports the Complainant's interpretation.

The context and purpose of Wis. Stat. § 6.87(6) support Mr. Peters's position. Ultimately, it is the meaning of the statute which controls. *Kalal*, 2004 WI 58, ¶44. And context can be helpful in assessing meaning. *Id.*, ¶¶45, 49. "Context is important to meaning . . . Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes." *Id.*, ¶46. The context of chapter 6 is informative in three ways.

First, chapter 6 and surrounding statutes make clear that where the Legislature sought to specifically require that it be the municipal clerk who is to perform certain election functions, they knew how to do so. *See* Wis. Stat. §§ 6.15(4)(a) ("Clerks holding new resident ballots shall deliver them to the election inspectors in the proper ward or election district where the new residents reside ..."), 6.18 ("The municipal clerk shall verify that the name on the proof of identification conforms to the name on the application"), 6.88(1–2) ("the clerk shall enclose [an absentee ballot], unopened, in a carrier envelope which shall be securely sealed and endorsed with the name and official title of the clerk"), 7.15(1) ("the clerk shall perform the following duties ..."). Generally, "[i]t is presumed that the legislature is cognizant of what language to include or omit when it enacts laws." *In re Incorporation of Portion of Town of Sheboygan*, 2001 WI App 279, ¶9, 248 Wis. 2d 904, 637 N.W.2d 770. Here, the Legislature chose not to specify that only the clerk may return the ballot to the

polling place.² Clerk Goergen’s interpretation, however, would require inserting more language into the statute than the Legislature wrote: “The ballot shall be returned so it is delivered by the clerk to the polling place no later than 8 p.m. on election day.” Her reading violates basic principles of statutory interpretation. *United Am., LLC v. Wis. Dep’t of Transp.*, 2020 WI App 24, ¶16, 392 Wis. 2d 335, 944 N.W.2d 38, *aff’d*, 2021 WI 44, 397 Wis. 2d 42, 959 N.W.2d 317 (“We may not rewrite statutes; we must simply interpret them as they are written.”).

Second, other statutes in chapter 6 establish that it is not only the clerk who may return absentee ballots to polling places on election day. Wis. Stat. § 6.86(3)(a), which deals with hospitalized voters, clarifies that ballots may be returned directly to polling places by someone other than the municipal clerk. The statute explicitly states that the elector’s agent will return a completed ballot directly to the polling place if they return the ballot on Election Day. Wis. Stat. § 6.86(3)(c) (“if the ballot is returned on the day of the election, the agent shall make personal delivery to the polling place serving the hospitalized voter’s residence before the closing hours”).

Third, Wisconsin law establishes that, outside of municipalities which have specifically opted to use a central count proceeding, the polling place is the focus of election-day activity, including absentee ballot processing. Wis. Stat. § 6.87(6), requires that voters, their assistants, or the clerk get the ballot to the polling place before polls close. Wis. Stat. § 6.87(6); *see also* Wis. Stat. § 6.88(1–2). The polling place is also where election officials open carrier envelopes, review certifications, confirm

² Indeed, as described in Section I.c., *infra*, the Legislature specifically removed this requirement.

that the voter is a qualified elector in the ward and has not previously voted in the election, and verify that the ballot has been endorsed by the clerk, and tabulate the votes, among other procedures. Wis. Stat. § 6.88(3), WEC, *Election Day Manual* (Sep. 2020), at *91–102. The Legislature made the polling place the primary hub of absentee ballot activity, and having determined that it is a peculiarly secure location for election activity, it would be nonsensical to insist that voters take absentee ballots *away* from the polling place on election day, only to have it return shortly after.

Because of its central role in election activity, including activity around absentee ballots, the Legislature chose to make it possible for voters to return absentee ballots to polling places for good reason. Polling places are secure. *Teigen*, 2022 WI 64, ¶28 (lead/non-majority opinion) (noting the “statutorily-recognized security surrounding a polling place.”). They are open for observation. Wis. Stat. § 7.41. They are, as discussed below, required to be accessible to individuals with disabilities. Wis. Stat. § 5.25(4)(a). Polling places are usually located in a voter’s neighborhood or immediate community. And, as Clerk Goergen points out, returning ballots directly to the polling place obviates the need for many additional steps designed to ensure the secure delivery of the ballots, thereby reducing the work municipal clerks and their staff must perform on election day. (Resp., ¶17.e.) In short, returning an absentee ballot to a polling place affords the voter an opportunity to conveniently and securely get their ballot to the location where it will ultimately be counted.

c. *The legislative history of Wis. Stat. § 6.87(6) requires a finding that ballots may be returned to polling places on election day.*

Furthermore, the legislative history of Wis. Stat. § 6.87(6) is clear: voters or their assistants may return ballots to polling places on election day. Prior to March of 2016, Wis. Stat. § 6.87(6) read as follows: “Except as provided in s. 7.515 (3), the ballot shall be returned *so it is received by the municipal clerk* no later than 8 p.m. on election day.” Wis. Stat. § 6.87(6) (2013-14) (emphasis added). As part of its overhaul of Wisconsin’s elections administration in 2015, the Legislature passed, and the Governor signed, 2015 Wisconsin Act 261. Act 261, among its other provisions, removed the requirement that absentee ballots be received by the clerk, striking this language from the statute. 2015 Wis. Act. 261, §77. With this, the Legislature chose to remove the language that Clerk Goergen has implicitly re-inserted into the statute. This choice demonstrates that the Legislature did not intend to require a ballot be routed through the municipal clerk to the polling place so long as it is timely returned by someone to the polling place before 8 p.m. on election day. There is no reason to upset the Legislature’s decision to remove this requirement.

II. *The Teigen decision does not prohibit voters from returning ballots to their polling place.*

Clerk Goergen acknowledges that nothing in *Teigen v. Wisconsin Elections Commission* addresses the core question in this case—whether a voter can return their absentee ballot (either in person or, where appropriate, through ballot return assistance) to the polling place on election day and thereby comply with Wis. Stat.

§ 6.87(6). (Resp., ¶17.b.)³ *Teigen*'s holding was limited to the following: (1) two pieces of WEC guidance were invalid because voters must return their ballot in person or by mail; and (2) the use of absentee drop boxes was not authorized by Wisconsin law. *Teigen v. Wis. Elec. Comm'n*, 2022 WI 64, ¶4, 403 Wis. 2d 207, 976 N.W.2d 519. This was necessarily the case as the *Teigen* plaintiffs only challenged WEC guidance pertaining to those issues. *Id.*, ¶1. The lead/majority opinion explicitly declined to address various related issues, including whether a voter may have assistance in mailing their absentee ballot, whether the documents constituted unpromulgated rules, and how the decision might affect voters with disabilities who rely on ballot return assistance. *Id.*, ¶¶4–5, 84–86.

The city's, and its attorney's, insistence that language from *Teigen* nonetheless prohibits polling place ballot return is misplaced. The *Teigen* court did not consider the issue of whether voters (or their assistants) could return ballots to polling places. And because polling place ballot return was not at issue in *Teigen*, even if the Court *had* commented on it, such comments would have been dicta. *Wis. Justice Initiative v. Wis. Elec. Comm'n*, 2023 WI 38, 407 Wis. 2d 87, 990 N.W.2d 122 (Hagedorn, J., concurring) (“by necessity, judicial opinions touch on matters beyond the issues in a case ... The law calls this ‘dicta.’”). The Supreme Court did not have the opportunity

³ Clerk Goergen indicates that the August 5, 2022 memo on which she relied did not “directly apply[]” *Teigen*. (Resp., ¶17.b.) The memo itself, however, makes clear it relies on and seeks to interpret the *Teigen* ruling: “Based upon the language of the *Teigen* decision and a strict reading of the statute, an elector may not generally return their absentee ballot to their polling location on election day unless they are a hospitalized voter.” (Resp., Ex. B, p. 1.)

to consider these other issues around Wis. Stat. § 6.87(6), including many of the issues raised in the complaint and response.

Nothing limited the *Teigen* plaintiffs, or the courts, from addressing the various WEC guidance documents indicating that polling place ballot return is permitted. *See* Section IV, *infra*; Wis. Stat. § 227.40(1). Absent such a challenge, and therefore absent any binding ruling from a court that, “[t]he ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day” necessarily means that the clerk, and not the voter or their agent, there is no reason to alter the actual requirements of the statute. WEC should enforce the plain language of that statute, which would permit a voter to return their ballot to the polling place on election day.

III. Clerk Goergen’s improper reading of Wis. Stat. § 6.87(6) would create preemption issues and should therefore be rejected.

Any reading of Wis. Stat. § 6.87(6) that prohibits polling place ballot return and, therefore, requires ballots to be dropped off only at the office at the municipal clerk at some time before 8 p.m. conflicts with federal law. This is another reason to avoid this cramped reading. Statutory interpretation in Wisconsin begins with “a presumption against preemption.” *Aurora Med. Grp. v. Dep’t of Workforce Dev., Equal Rts. Div.*, 2000 WI 70, ¶13, 236 Wis. 2d 1, 612 N.W.2d 646; *see also Time Warner Cable v. Doyle*, 66 F.3d 867, 884 (7th Cir. 1995) (discussing, in the context of *Pullman* abstention, the importance of interpreting state statutes in a way that avoids unnecessary constitutional issues). The question is not whether federal law requires

polling place ballot return, or whether it must be granted as an accommodation.⁴ Rather, a proper reading of Wis. Stat. § 6.87(6)—one that avoids any preemption issues—permits any voter to return their ballot to the polling place on election day.

The most obvious conflict, and the one demonstrated by the Peters’ experience in August 2022, is that such policies effectively shorten election day for voters who rely on absentee ballot return assistance. Wisconsin law is consistent: voting ends at 8:00 p.m. for both in-person and absentee voting.⁵ Wis. Stat. §§ 6.78(1m) (“The polls at every election shall be open from 7 a.m. until 8 p.m.”), 6.86(3)(c) (hospitalized elector’s absentee ballot to be returned no later than 8:00 p.m. on election day), 6.87(6). Currently, for voters in the City of Greenfield that rely on ballot return assistance, this is no longer the case. Instead, their election day ends at 7:00 p.m. or whenever the clerk decides to stop accepting ballots. This means that certain voters with disabilities, like Mrs. Peters and the plaintiffs in *Carey*, will have effectively lost time to vote, whereas voters without such disabilities may vote in person at a polling place until 8:00 p.m. This interpretation conflicts with the ADA’s guarantee that voters with disabilities have equal access to all aspects of voting. 42 U.S.C. §§ 12131–12134; 28 C.F.R. §§ 35.101–35.190.

⁴ There is no dispute that Clerk Goergen and her staff worked successfully with the Peters to ensure that Mr. Peters would be able to return Mrs. Peters’s absentee ballot. This is not an accommodation, however. It is Mrs. Peters’s right under the Voting Rights Act.

⁵ The major exception to this rule—voters in line at 8 p.m. are permitted to vote—only emphasizes the central point of the Complaint. *See* Wis. Stat. §§ 6.78(4), While Wisconsin does not permit late-arriving absentee ballots, it does permit voters to exercise their right to vote until the very last minute on election day.

Artificially limiting polling place ballot return creates other barriers for voters with disabilities on election day. In addition to their security, polling places have certain accessibility requirements that may support voters with disabilities (or their assistants) in voting, including the ability to drop off a ballot through curbside voting. Wis. Stat. § 5.25(4)(a) (“Each polling place shall be accessible to all individuals with disabilities”). Absentee voters in this position may want to enjoy the convenience and flexibility of a neighborhood polling place just as other voters who are able to vote in-person on election day. Depriving voters who rely on ballot return assistance of these aspects of voting would run afoul of the ADA, and such an interpretation must be avoided.

IV. WEC has consistently advised voters that they may return their absentee ballot to the polling place on election day.

WEC guidance has consistently adopted the plain-text reading of Wis. Stat. § 6.87(6) and advised voters and clerks that absentee ballots may be returned directly to the polling place on election day. Clerk Goergen provides no reason why WEC would now deviate from that opinion. As described in Section I, *supra*, the Legislature amended Wis. Stat. § 6.87(6) in 2015, making clear that a voter could return their ballot to the polling place. WEC’s guidance has reflected this decision, and the plain meaning of the law, ever since.

In WEC’s September 11, 2020 video, “How to Turn in Completed Absentee Ballot,” the Commission advised that one way to return an absentee ballot was to “follow the directions that came with your ballot to find out whether you should take

it to your polling place or an absentee counting location on election day.”⁶ WEC was even more direct two years later when it advised that: “Most voters may return absentee ballots to their municipal clerk's office or their normal polling place.”⁷ “Most” did not exclude voters in municipalities in which clerks did not permit polling place ballot return but, instead, excluded municipalities using central count. WEC provided similar guidance on August 5, 2022:

On Election Day, most voters may deliver their absentee ballots directly to their normal polling place, but it must arrive before polls close at 8 p.m. Check with your municipal clerk regarding this option. Voters in cities, villages or towns that count absentee ballots at a central location must return ballots to their clerk’s office or the central count location.⁸

WEC issued its 2022 guidance *after* the Supreme Court issued its *Teigen* decision and incorporated the Court’s instructions just a few weeks before its September 7, 2022, post-*Carey* memorandum. Clerk Goergen nonetheless argues that the September 7 memorandum accords with her position, because it references “assistance with mailing or delivering [a voter’s] ballot to the municipal clerk.” (Resp., ¶7.c.) Clerk Goergen does not, however, address the other WEC guidance. A voter (or their assistant) who returns an absentee ballot to a polling place does return the ballot to the municipal clerk, who supervises the election officials staffing the polling places. Wis. Stat. § 7.15(e). Clerk Goergen’s description of her process makes this clear. In jurisdictions not using central count, *all* absentee ballots are returned to election

⁶ WEC, *How to Turn In Completed Absentee Ballot? Wisconsin Elections*, September 11, 2020, available at <https://www.youtube.com/watch?v=MgMfkFbR6UM> (at 00:25).

⁷ WEC, *Polls in Wisconsin Close at 8 p.m.*, August 15, 2022, available at <http://web.archive.org/web/20220815041202/https://elections.wi.gov/node/212>

⁸ WEC, *Last-Minute Reminders Before August 9 Partisan Primary*, August 5, 2022, available at <https://elections.wi.gov/news/last-minute-reminders-august-9-partisan-primary>.

officials at the polling place. (Resp., ¶7.d.) Clerk Goergen's interpretation unnecessarily requires the ballot to first stop with another member of the clerk's staff. This is not required by WEC's guidance nor by the text of the statute.

CONCLUSION

For the reasons stated herein and in the Sworn Complaint, the Complainant, Brian Peters, respectfully requests that the Wisconsin Elections Commission do the following pursuant to Wis. Stat. § 5.06:

- A. Issue an order requiring Clerk Goergen and any other election official in the City of Greenfield to accept lawful absentee ballots at the absentee voter's appropriate polling place on Election Day until the statutory deadline of 8 P.M. under Wis. Stat. §6.87(6), whether the ballot is brought by an absentee voter themselves, by a designated ballot return assistant, or by any other lawful means.
- B. Issue an order requiring Clerk Goergen to update and correct any policies or procedures for the City of Greenfield to reflect that an absentee voter or their designated ballot return assistant may deliver their ballots to the appropriate polling place on Election Day before 8 P.M. under Wis. Stat. §6.87(6).
- C. Take any other action that has the effect of restraining Clerk Goergen from acting contrary to law as described in this Complaint.

Dated this 3rd day of October, 2023.

By: 

Daniel S. Lenz, SBN 1082058
LAW FORWARD
222 West Washington Avenue, Suite 250
Madison, WI 53703-0326
dlenz@lawforward.org
608-556-9120

Attorney for Brian Peters

I, Brian Peters, being first duly sworn, state that I personally read the above reply, and that the information contained within is true based on my personal knowledge and, as to those stated on information and belief, I believe then to be true.



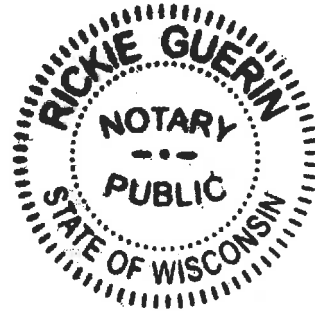
Brian Peters

Subscribed and sworn to before me
this 3 day of October, 2023



Notary Public, State of Wisconsin

My commission expires: 11/24/2026



APPENDIX D

EL 24-23

Andrew Yunker v. Michelle Luedtke

September 24, 2024

Andrew Yunker
17830 W North Avenue
Brookfield, WI 53045

Clerk Michelle Luedtke
2000 North Calhoun Road
Brookfield, WI 53005

Sent via email to: yunker88@gmail.com; merten@ci.brookfield.wi.us; cityclerk@ci.brookfield.wi.us

Re: In the Matter of: **Andrew Yunker v. Michelle Luedtke (EL 24-23)**

Dear Mr. Yunker and Clerk Luedtke:

This letter is in response to the verified complaint submitted by Andrew Yunker (“the Complainant”) to the Wisconsin Elections Commission (“Commission”), which was filed in reply to actions taken by Clerk Michelle Luedtke of the City of Brookfield (Waukesha County) concerning alleged violations of Wis. Stat. §§ 6.87(6), 6.86(6), 6.88(2), 6.88(3)(b), 6.85, 6.20, and 12.13(3)(c). The complaint alleges that Clerk Luedtke abused her discretion and took actions that were contrary to law with respect to absentee voting procedure during the February 20, 2024, Spring Primary Election.

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

The Commission provides the following analysis and decision. In short, the Commission finds that the Complainant did show probable cause to believe that a violation of law or abuse of discretion occurred with relation to Clerk Luedtke’s procedural actions.

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.

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 Complainant alleges that on February 20, 2024, the website for the City of Brookfield contained incorrect information about polling locations. He included a screenshot of the webpage in question, which showed unlabeled numbers next to polling locations. He alleges that he and his wife had already sealed their ballots, so were unable to confirm their voting ward to know which polling location to go to. He alleges he thought he remembered his ward had a 5 in it, so he went to Brookfield Central High School to attempt to return his and his wife’s absentee ballots to what he thought was his correct polling place. He chose Brookfield Central because it was a polling place listed on the city website for wards 5 and 15.

The Complainant alleges that when he arrived at the high school, he didn’t see any signage indicating that it was being used as a polling place, and that a passing police officer said there was no voting at the high school.

The Complainant alleges that he did make it to his correct polling location at the Brookfield Public Safety Building. He alleges that he spoke to the Respondent in person, and that the Respondent refused to take possession of or accept his and his wife’s sealed absentee ballots. He alleges that the Respondent informed him he needed to deliver voted absentee ballots to city hall, but also said that no one there would be able to accept his ballots as they were all in a meeting. He alleges the Respondent informed him the ballots would have need to be returned to city hall by 5 p.m. on election day.

The Complainant alleges that he informed the Respondent that the Commission’s Uniform Instructions for absentee voting said he could deliver his voted absentee ballot to his polling place before 8 p.m. on election day. The Complainant then alleges that the Respondent told him his and his wife’s ballots would need to be destroyed, and that they could cast new ballots in person at the polling location. He alleges he returned home, and then returned to the polling place a second time to again attempt to return his absentee ballots at the polling place.

The Complainant then alleges that the Respondent asked him why he was voting absentee if he was able to make it to the polls. He alleges that the Respondent said that absentee voting is for people who can’t vote in person.

The Complainant alleges that in order to be permitted to vote, he had to hand over his voted absentee ballot to be marked as unreturned. He alleges he voted in person and left. He alleges that his wife returned to the polling place, and that an individual named Jim ripped up her absentee ballot so that she could also vote in person.

After the election, the Complainant then engaged in outreach with the Respondent where he attempted to ask her to explain her policies. He included copies of their correspondence along with his complaint. He also submitted various statutes, a copy of the Uniform Instructions, some screenshots from MyVote, and copies of City of Brookfield ordinances.

The Response

The Respondent alleges that the Complainant is a registered voter of Ward 5 in the City of Brookfield. She alleges that Brookfield does not have central counting location for absentee ballots, and does not have any alternate absentee voting sites designated pursuant to Wis. Stat. § 6.855.

The Respondent alleges that the City of Brookfield included its own instructions with the Complainant's absentee ballot mailing, and alleges that the Uniform Instructions "are not the City's instructions." She alleges that the city instructions state: "Unless you are a voter with a disability, you must personally return your own ballot to the Clerk's Office. It must be received by the Clerk with enough time for the Clerk to deliver it to your polling place **no later than 8:00 p.m. on Election Day.**" (Emphasis in Original). She alleges that the city's instructions do not state that a voter may return a voted absentee ballot to their polling place.

The Respondent admits that she did not accept the Complainant's absentee ballots that he was returning for himself and his wife, and also admits that she told him he needed to return them to the city clerk's office. She admits that the Complainant ultimately voted in person, and then alleges that "[f]ollowing the guidance promulgated by the Wisconsin Elections Commission, [she] spoiled [the Complainant's] absentee ballot so that he would not have his vote counted twice."

The Respondent argues that the Complainant's appearance at the polling place rendered him an in-person voter, not an absentee voter. She argues that his presence at the polling place meant he could no longer vote absentee, and claims she had to destroy his absentee ballot to prevent him from double voting after he voted in person. She argues that the city's instructions for absentee voting properly conform to the law.

Finally, the Respondent makes a procedural argument that the Commission lacks jurisdiction over the complaint because the Complainant failed to serve the complaint upon her in accordance with Wis. Admin. Code EL § 20.03(6).

In support of her response, the Respondent provided what appears to be a copy of her city's uniform instructions as Exhibit 1. The instructions use the same layout and formatting as the Commission's instructions, and also include the Commission's logo in the top right corner. It appears as if the Respondent has edited the Commission's Uniform Instructions to create her own version for her voters with differing information than what was prescribed by the Commission.

Reply

In his reply, the Complainant asserts that the city's instructions differ significantly from the Commission's Uniform Instructions, particularly with respect to Step 6 that instructs voters how they may return their absentee ballots. He notes that the Commission's guidance from December 27, 2023, after the new version of the Uniform Instructions was approved, instructs that the Uniform Instructions "should not be modified, except to add the municipal clerk contact information where indicated at the bottom of page two."

The Complainant argues that the Respondent impermissibly spoiled his ballot after she had received it, and states that the Respondent provides no support or detail for what Commission guidance would have directed her to spoil his absentee ballot.

Discussion

The Commission will address each major issue raised by the complaint in turn.

Procedural Matter of Wis. Admin. Code EL § 20.03(6)

As a preliminary matter, the Commission will address the Respondent's affirmative defenses that the Commission lacks both subject matter jurisdiction and competency to decide this complaint because the Respondent did not mail or personally serve the Respondent with a copy of the complaint pursuant to Wis. Admin. Code EL § 20.03(6). While EL § 20.03(6) does state what the Respondent asserts, it is silent with respect to a penalty or remedy if that provision is not followed. The Respondent does not cite any authority to support her position that failure to follow EL § 20.03(6) means that the Commission lacks subject matter jurisdiction or competency to decide this matter.

The Complainant submitted his complaint electronically on February 29, 2024. The Commission acknowledged receipt of the complaint on March 1, 2024, and provided notice and a copy of the complaint to the Respondent on that same day. The Respondent does not explain how she was prejudiced by receiving the complaint on March 1 from the Commission instead of on February 29 from the Complainant.

The Commission accordingly finds that while EL § 20.03(6) may indeed require parties to serve each other with copies of their filings, it does not strip the Commission of its jurisdiction or competency to resolve the matter under Wis. Stat. § 5.06. Commission staff consistently facilitate notice of filings upon the respective parties as part of the complaint process. This ensures a smoother process for the parties, and decreases the risk that a party fails to adequately serve a crucial filing upon the opposing party.

Since the Respondent cannot cite authority for the relief she seeks and since she does not explain how the lack of compliance prejudiced her, the Commission will dismiss these arguments and turn instead to the merits of the complaint.

Polling Place Location Information

There does not appear to be a dispute between the parties over the effect or impact of the city website containing incorrect or confusing polling place locations. In any case, it appears from the Complainant's reply that the city website has since been updated to more clearly label which wards vote at which polling location.

Voters can always confirm their correct polling place location either by contacting their clerk directly or by looking it up using their address on www.myvote.wi.gov. The Commission encourages the Complainant to utilize these resources in the future if he has reason to believe the city's website may not be up to date. The Commission also encourages the Respondent to ensure that she is providing voters with timely, correct information about their polling place locations, or directing them to utilize MyVote if she is unable to regularly update the city's website.

Absentee Ballot Return to Polling Place

The Respondent's policy of prohibiting the return of voted absentee ballots to polling places is contrary to law. In short, and as detailed further by the analysis in this decision, the in person return of a voted absentee ballot by an elector, or that elector's lawful assistant, to a polling place is a lawful method of absentee ballot return under § 6.87(6).

The only statutory provision that explicitly mentions ballot return directly to the polling place by the elector is specific to hospitalized voters who are voting by lawful agent. Wis. Stat. § 6.86(3)(c). No other provision of § 6.86 or § 6.87, the two primary statutes that describe how absentee voters can request and return their ballots, explicitly states that electors may return their ballots directly to the polling place.

Accordingly, in the absence of an express grant of statutory authority, it is necessary to examine the provisions of the absentee ballot return statute that is applicable to all other absentee voters, specifically § 6.87(6). Absentee voting procedure is detailed in § 6.87 of state statutes, which specifies that, the voted absentee ballot "*shall be returned so it is delivered* to the polling place no later than 8 p.m. on election day." (Emphasis added.) Wis. Stat. § 6.87(6). The very next sentence is more specific and states, "...if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered..." to the elector's polling place, or to central count, by 8 p.m. on election day. Wis. Stat. § 6.87(6).

The key question to resolving this complaint is whether the unidentified actor of § 6.87(6) must refer solely to the municipal clerk, or whether it can also refer to the voter. If the unidentified actor solely refers to the municipal clerk, then elector return of voted absentee ballots directly to their polling place would not be permitted by § 6.87(6). However, if the unidentified actor can include the elector, then § 6.87(6) would permit the return of absentee ballots to polling places by electors.

The Commission reiterates its consistent belief that the unidentified actor of § 6.87(6) can refer to any individual who is lawfully permitted to return voted absentee ballots, including the voter him or herself or a disabled voter's assistant. Had the legislature intended to restrict this action to the municipal clerk alone, it could have done so, as it has for countless actions within the elections statutes. Instead, it used passive voice and did not specify who may take this action, and the simplest reading of the statute is that anyone qualified to handle the ballot may take this action. Specifically, a voter may lawfully return his or her voted absentee ballot in person to their polling place before 8 p.m. on Election Day and a voter who determines that he or she needs assistance returning her ballot due to a disability may also permit their assistant to return their ballot directly to their polling place.

The Respondent does not explain why she substituted her own judgement and interpretation of the law for the Commission's when she modified the Commission's prescribed Uniform Instructions. The Commission is particularly concerned with the way by which the Respondent edited the Uniform Instructions without informing her voters that she was providing them with information that had not been prescribed by the Commission. In doing so, the Respondent provided all of the absentee voters of her jurisdiction—of which there were 277 for the February 20, 2024, election—with information that was contrary to law.

Clerk's Office Hours to Receive Voted Absentee Ballots

The Respondent did not specifically address the Complainant's claim that she told him that absentee ballots needed to be returned to the clerk's office by 5 p.m. on election day. In her response, she claims that her modified uniform instructions tell voters they need to return their absentee ballots with "enough time" for the clerk to deliver it to the polling place before 8 p.m. The Commission will accordingly briefly address this issue for the Respondent's benefit in case the 5 p.m. absentee ballot return allegation is true.

The Commission acknowledges the difficulty faced by the Respondent in complying with the mandate of § 6.87(6) that all ballots be "delivered to the polling place no later than 8 p.m. on election day." Time and space would not permit her to accept a ballot in her office from a voter at 7:59 p.m. and cause it to be delivered to the polling place by 8 p.m., even if it was in the same building. The municipal clerk needs to be able to take some actions to ensure that she is able to cause ballots to be delivered to their polling places by 8 p.m. on Election Day, and she must be able to reasonably set some kind of cutoff after which she cannot accept voted absentee ballots at her office.

However, those actions should not be to refuse to accept ballots before 8 p.m. while simultaneously refusing to permit voters to return their absentee ballots themselves to their polling places. If the Respondent believes she would not be able to get absentee ballots to the polling place by 8 p.m. if she accepts them later than 5 p.m., she must inform voters of how they may still lawfully cast a ballot by 8 p.m. Voters can be instructed to return their voted absentee ballot themselves directly to their polling place. Voters can also be instructed that if they do not return their absentee ballot, they are still permitted to vote in person on Election Day as long as they are in line to vote by 8 p.m.

Most importantly, the Respondent cannot lead voters to believe that they must return their voted absentee ballot to her office by 5 p.m., or it will not be counted. Voters lawfully may cast ballots until 8 p.m. on Election Day. If the Respondent is unable to accept the return of voted absentee ballots in her office past a certain point, she must inform voters how they can still lawfully cast their ballots before 8 p.m.

Spoiling of Absentee Ballots and Treatment of Complainant as an In-Person Voter

Since the Respondent's refusal to permit the Complainant to return absentee ballots to the polling place is contrary to law, so too was her conclusion that the only lawful way the Complainant could cast his vote was as an in person voter. The Respondent does not offer any authority or support for her assertion that a voter's mere presence in a polling place, without attempting to cast a ballot, automatically voids their eligibility as an absentee voter.

An absent elector is an otherwise qualified elector who "for any reason is unable or unwilling to appear at the polling place..." Wis. Stat. § 6.85(1). The Commission has never interpreted this provision to mean that absentee voters who appear at their polling places to return their absentee ballots are no longer absentee voters. It is more than just *appearing* at the polling place that absentee voters are unable or unwilling to do—it is obviously going through the full voting process at the polling place to cast their ballot. There could be a myriad of reasons for why an absentee voter is able or willing to return an absentee ballot to their polling place but is not able or willing to cast their vote there in person. The voter is not required to disclose the reason for their voting

method choice. Accordingly, the Commission finds that the Respondent's interpretation of the definition of an absentee voter is contrary to law.

The Commission also finds that it was an abuse of discretion for the Respondent to require the Complainant to hand over his voted absentee ballot as a condition for voting in person. Although the Respondent claims that the Complainant "decided" to vote in person, her incorrect interpretation that the Complainant could not vote absentee lead the Commission to believe that the Complainant at least believed he was required to hand over his absentee ballot to be permitted to vote in person.

The Commission also finds that it was an abuse of discretion for the Respondent to void or spoil the Complainant's ballot in the manner alleged. If the voter chooses to return his or her ballot to the municipal clerk, statute directs that the clerk cannot return the ballot to the voter except in a few specific circumstances. Wis. Stat. § 6.86(6); *Kormanik v. Wisconsin Elections Commission*, Cort of Appeals, District 2, Case No. 2024AP000408, Circuit Court Case No. 2022CV001395 However, the Complainant's ballot was obviously not legally returned because the Respondent still permitted him to vote in person.

No statute directs the municipal clerk to confiscate absentee ballots for voters who requested them but nonetheless choose to vote in person on election day in order to protect them from the crime of double voting. The same is true of a voter who is not permitted to return his absentee ballot at a polling place. The Commission has consistently advised that voters can choose not to return their absentee ballots and still be permitted to vote in person. What the voter does with the voted absentee ballot they choose not to return is not addressed by statute. Statute only directs that they are prohibited from voting in person if they have returned it.

In summary, the Respondent should have accepted the absentee ballots from the Complainant as a lawful method of absentee ballot return to the polling place. She should not have led the voter to believe that he was required to hand over his absentee ballot to be destroyed as a condition of in person voting. If he chose to vote in person, she should have advised the voter that he should not return his absentee ballot as doing so would prevent him from voting in person. She should not have confiscated and destroyed the voter's absentee ballot to prevent him from double voting as no statute authorizes or requires her to do so.

Commission's Findings

Pursuant to the analysis above, the Commission hereby issues this order restraining the Respondent from taking any action inconsistent with the analysis of the law in this decision. Wis. Stat. § 5.06(6). This method of relief is intended to provide clear instruction to the Respondent. Accordingly:

1. The Respondent must provide all absentee voters in her jurisdiction with the appropriate unedited and unaltered version of Uniform Instructions that have been prescribed by the Commission. The Respondent is prohibited from providing any additional substantive information to voters regarding absentee procedure that conflicts with the Commission's prescribed Uniform Instructions.
2. The Respondent, including any election officials in her jurisdiction, must accept the in person return of voted absentee ballots to polling places on Election Day until the statutory

deadline of 8 p.m., whether the ballot is brought by an absentee voter themselves, by a designated ballot return assistant, or by any other lawful means.

3. If the Respondent believes that she cannot facilitate the return of voted absentee ballots to polling places by 8 p.m. on Election Day after a certain point, she must take affirmative steps to inform voters of how they may still lawfully cast their ballots until 8 p.m. on Election Day. Voters in these circumstances should be informed that they can return their voted absentee ballot directly to their polling places themselves, or they can choose not to return their absentee ballot and instead vote in person at their polling place. The Respondent may facilitate this communication either orally to voters in her office, through handouts given to voters who arrive after the cutoff, or by posting signs to this effect at the entrance to her office, or any combination of these options.
4. The Respondent is not permitted or required to confiscate voted absentee ballots for voters who choose to vote in person, nor is she permitted to lead voters to believe that surrendering their absentee ballot to be spoiled is a necessary condition for casting a ballot in person.

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
ELECTIONS COMMISSION**

COMPLAINT FORM

Please provide the following information about yourself:

Name Andrew Yunker

Address 17830 W North Ave, Brookfield, Wi 53045

Telephone Number 262-488-7302

E-mail yunker88@gmail.com

State of Wisconsin
Before the Elections Commission

The Complaint of Election Official Abuse or Violation (§5.06)

of Wisconsin State Statutes 6.87(6), 6.86(6), 6.88(1), 6.88(2), 6.88(3)(b), 6.85, 6.20, 12.13(3)(c) _____, Complainant(s) against

Michelle Luedtke, Brookfield City Clerk _____, Respondent, whose

address is 2000 North Calhoun Road, Brookfield, WI 53005-5095

This complaint is under Election Official Abuse or Violation (§5.06), Wisconsin State Statutes 6.87(6) _____ (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, Andrew Yunker _____, allege that:

Michelle Luedtke abused their election official discretion and/or violated

laws regarding election administration of absent voter ballots including:

Wisconsin State Statutes 6.87(6), 6.86(6), 6.88(1), 6.88(2), 6.88(3)(b), 6.85, 6.20, 12.13(3)(c)

(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: 2/28/2024

Andrew J. Yunker
Complainant's Signature

I, Andrew J. Yunker, 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.

Andrew J. Yunker
Complainant's Signature

STATE OF WISCONSIN

County of Waukesha
(county of notarization)

Sworn to before me this 28th day of

February, 2024.

S. Abdel-Hamid
(Signature of person authorized to administer oaths)

My commission expires 3/27/2026 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

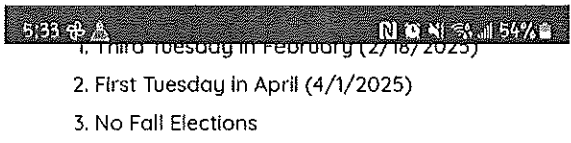
Email: elections@wi.gov

To: Wisconsin Elections Commission

From: Andrew Yunker

Subject: Supporting documents for Official Sworn Complaint under §5.06

Between 5 PM-8PM on election day, Tuesday, February 20th, 2024, my wife and I experienced difficulties voting in Brookfield, Wisconsin. I left my home at 17830 W North Avenue after 5 PM to deliver our absentee ballot votes to our polling place. I googled Brookfield voting locations and looked at Brookfield's elections website, <https://www.ci.brookfield.wi.us/212/Elections>, which at the time contained incorrect information about polling locations when viewing the website on my phone. See attached Screenshot of Brookfield Elections Site on Mobile Phone pdf.



ELECTION POLLING PLACES

Voting Hours are from 7:00AM to 8:00PM.

Bring your photo ID.

1

1, 2, 3

Brookfield East High School
3305 Lilly Road

2*

4, 5, 6, 22

Brookfield Central High School
16900 Gebhardt Road

3

7, 8, 9

Brookfield Central High School
16900 Gebhardt Road

4

The list of polling locations didn't indicate what the numbers mean next to the different polling locations. We had already sealed our ballots so I couldn't see what district/ward we were in, but I remembered the number 5. So, I looked at the Brookfield site for the number 5 and Brookfield Central High School had a 5 next to it in the table that again is unclear it doesn't say district 5 wards 13,14, 15, it just says 5, 13,14,15. Then, I followed my GPS's directions to Brookfield Central High School, as I was convinced I was traveling to the correct polling location based on the flawed Brookfield Elections website. I drove around Brookfield Central High School for a while, searching for a polling location, and finally found a police

officer Tony Kader, who said there was no voting at the high school, even though it is listed as a poll location for 2 districts on the website. Officer Kader also stated he knows there is incorrect info on the Brookfield website. I spoke to Officer Kader again on February 27, 2024, and he confirmed several people showed up the Brookfield Central High School on February 20, 2024 looking to vote. It sounds like several people were being directed to the wrong polling place, possibly in viewing the unclear info on the Brookfield elections website.

This problem regarding unclear polling locations on the city website was fixed within a few days after contacting Mary Schulz, a Brookfield city clerk, schulz@ci.brookfield.wi.us on Wednesday, February 21, 2024.

Following the directions of the police officer at Brookfield High School, I headed to the correct polling location. I ended up making two trips to the Brookfield Public Safety Bldg., Courtroom, 2100 N. Calhoun Road, which is the polling place for my address (17830 W North Ave) in Brookfield district 5 wards 13, 14, 15. During both visits I spoke in-person with Michelle Luedtke, the Brookfield City Clerk. During both visits I attempted to perform step 6 of the Uniform Instructions for Wisconsin Absentee Voters, returning mine and my wife's absentee ballots which were completed through step 5 of the Uniform Instructions for Wisconsin Absentee Voters. Michelle, the city clerk, refused to secure or count either of our absentee ballots, despite having both of our ballots in her hands on election day with over an hour left to vote at the very slow (not busy) polling location serving my address. Michelle said absentee ballots need to be delivered to the city clerk's office, but also informed me that nobody would be able to take my ballot if I went to the city clerk's office because they were all in a meeting. I asked what time absentee ballots need to be returned to the City Clerk's office and she said 5 PM on election day. I argued with Michelle that I received the Uniform Instructions for Wisconsin Absentee Voters with my ballot and that I interpreted those instructions as being able to drop off my ballot at the polling place before 8 PM. Michelle said in-order-to vote, my wife and I would have to turn-in our absentee ballots to be destroyed and marked as un-returned in the system, then we would be issued a ballot to complete in-person, and my wife would also have to come vote in-person. Michelle's reasoning behind this was to prevent people from voting twice. My neighbor, Lisa Youretz, is a volunteer poll worker and witnessed my attendance at my polling location on election day. Lisa also asked me how it was going, and I expressed difficulties voting and our absentee ballots were not being accepted. Lisa and other poll workers directed me back to the city clerk Michelle. Then I went home to tell my wife she would have to vote in-person because our absentee ballots were not being accepted. I also brought the Uniform Instructions for Wisconsin Absentee Voters document that we received with our ballots from my house back to the polling location on my second attempt to vote absentee. After reviewing the Uniform Instructions for Wisconsin Absentee Voters with Michelle, she still refused to count our absentee ballots. I was then asked why I was voting absentee if I was able to make it to the polls. I didn't answer. Michelle then said absentee voting is for people who can't vote in-person. In-order-to vote, I had to hand over my completed absentee ballot to a poll worker named Jim and I was informed my absentee ballot would be marked as un-returned. I have no idea what happened to my absentee ballot. I then voted in-person and left. My wife then went and voted in-person after Jim was rude to her and ripped up her absentee ballot before issuing an in-person ballot to vote. I bet Elizabeth's ballot is not in the collection of rejected absentee ballots with a reason for rejection on it, because Jim ripped it up rudely in front of her.

On Wednesday, February 21, 2024 I contacted the city clerk's office and spoke to Mary Schulz about the problems I was having and she directed me to City Clerk Michelle Luedtke. See attached Email Correspondence with Brookfield Clerk pdf.

Andrew Yunker
<yunker88@gmail.com>
to cityclerk

Feb 21, 2024,
5:42 PM (6 days ago)

Why do our absentee ballots have to be dropped off at the city clerks office by 5 pm on election day but I can't drop it off in person at the polling place before 8pm?

----- Forwarded message -----

From: **Andrew Yunker** <yunker88@gmail.com>
Date: Wed, Feb 21, 2024, 5:35 PM
Subject: Voting difficulties
To: schulz@ci.brookfield.wi.us <schulz@ci.brookfield.wi.us>

my wife and I had a heck of a time trying to vote yesterday. we requested absentee ballot but didn't get it until it was too late to return by mail. instruction form with ballot said another way to submit absentee was to deliver in-person to city clerk so it can be delivered to the polling place before 8 pm. very ambiguous unclear language. I thought I would have time to go home after work for dinner and some family time then drop off both of our ballots quickly at the polling location. encountered multiple barriers though. I googled Brookfield voting locations and looked at Brookfield website with incorrect information about polling locations when viewing website on my phone. See attached. The table on the website doesn't indicate what the numbers mean next to the different polling locations. <https://www.ci.brookfield.wi.us/212/Elections>

we had already sealed our ballots so I couldn't see what district/ward we were in, but I remembered the number 5. so I looked at the Brookfield site for the number 5 and the central high school had a 5 next to it in the table that again is unclear it doesn't say district 5 wards 13,14, 15, it just says 5, 13,14,15. so went to central high nobody was around drove around finally found a police officer who said no voting at the high school, even though it listed as a poll location for 2 districts on the website. Policeman also said he knows there is incorrect info on the website so it sounds like several people are being directed to wrong polling place from your website. Eventually went to correct location at the public safety building. I thought I was home free drop off absentee ballots and go home, but, nope. the city clerk said I cant drop off our absentee ballots there and I needed to go to city clerk office at the court house but they probably wouldn't be able to help because they were in a meeting. at this point I went home to get document about absentee instructions and tell my wife she would have to vote in person because they weren't accepting our absentee ballots. I went back to polling place and showed them instructions that looked like I was following. i had our absentee ballots signed and sealed, delivering them personally to the city clerk, at my polling location, before 8 pm on election day. mean while there's about a dozen city officials and poll workers sitting around doing nothing just watching and rolling their eyes at me. they tried asking why we were voting absentee if I was able to make it to the poll. I didn't answer I don't think that is there business.

to actually be able to cast my vote an election worker said he needed to take my absentee ballot because we only get 1 ballot, which is just weird. is he going to look at my vote on my absentee ballot? then my wife went to get her ballot taken away and submit an in person vote and they (Jim) was condescending to her saying I bet your husband was just here and do you want me to spell it all out for you? working at the VA I don't like people trying to deny my vote. Vets have died for our U.S. birth right to vote. let me know if u have any questions. 262-488-7302 text or call. Andrew Yunker 17830 W North Ave

One attachment • Scanned by Gmail



Cityclerk Mailbox

Feb 22, 2024,
9:52 AM (5 days
ago)

to me

Hi Andrew,

Wisconsin State Statute 6.87(6) indicates that the ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day. It goes on further to state that the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector's residence before 8 p.m.

We have 5 polling locations with 7 districts. When you return your ballot to the clerk's office or by mail, we must enter it into the state system as returned. We do not have that option at the polling sites. It is then possible for someone to vote twice. If someone votes twice, we need to report them to the District Attorney's Office. We do not designate the polling site as an alternate drop off, because of the number of sites. It was a fluke that I was at the site at the same time you were. I understand smaller municipalities have the luxury of being able to do it all at one site.

We ask on our website that absentees get their ballot to the city hall no later than 5pm as we have an abundance of staff who can accept it, log it, and get it ready for delivery. After 5pm, we ask that the voters who can - vote on site. The instructions, included in the absentee mailing, is a statewide generic form. Although it is worded oddly, still has the idea that you must get it to the Clerk's Office with enough time for us to deliver it to the site.

Our goal is to get resident's vote counted while following all applicable laws. Although it was not how you wanted to proceed, your vote was counted.

If you wish to continue to be an absentee voter, meaning you cannot make it to the polls on election day (WI SS 6.85), I encourage you to:

1. Mail it back if there is time.
2. Bring it to the Clerk's Office if there is not enough time. Preferably before Election Day. At the Clerk's Office on Election Day until 5:00pm.

3. Or vote on Election Day at the polling location.

Furthermore, if you wish to get a better idea of what we are and are not able to do for elections, I encourage you to sign up to be a poll worker. You will learn how the process is administered and why we have certain rules we have to follow. If you want to sign up, please visit our Poll Worker Information page on our website.

Thank you,

MICHELLE LUEDTKE
Brookfield City Clerk
2000 North Calhoun Road
Brookfield, WI 53005-5095
262-787-3550
luedtke@ci.brookfield.wi.us
2020 Census Population: 41,121

The City of Brookfield is subject to Wisconsin Statutes related to public records. Unless otherwise exempted from the public records law, senders and receivers of City e-mail should presume that the e-mails are subject to release upon request and are subject to state record retention requirements. If you are not an intended recipient of this e-mail, please notify the sender immediately.



Andrew Yunker <yunker88@gmail.com>

Feb 22, 2024,
6:23 PM (5 days ago)

to Cityclerk

Wisconsin State Statute 6.87(6) goes on further to state: "if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector's residence before 8 p.m."

Help me understand how you interpret that as not having to secure me and my wife's ballots that I was giving to you on election day?



Cityclerk Mailbox

Feb 23, 2024,
8:21 AM (4 days ago)

to me

Hi Andrew,

I have explained why in my previous email. We have many sites, do not have the luxury that smaller communities have, and have to enter it into the state system so people do not vote twice. The polling places are not listed as alternate sites where the clerk will accept absentees. I can only be in one place. We have designated that one place as City Hall.

Just because I was at the site the same time you are does not mean I have access to the secure state system. We have computers with special securities added on where we enter voter information.

As you were physically at the site, you did not meet the definition of an absentee voter. This is why we asked you to vote while you were there. And you did.

Again, if you want to know the process, I encourage you to become a poll worker so you can get the entire picture.



ReplyForward

Add reaction

Today, February 27, 2024, I went to the city clerk's office and asked who Jim was that tore up my wife's absentee ballot. Michelle informed me they were a poll worker and that he didn't rip up the ballot, rather he spoiled the absent ballot on purpose to allow her to vote in-person.

Additionally, the City of Brookfield's website

Election Official Abuse or Violation of Wisconsin State Statute 6.87(6)
[https://docs.legis.wisconsin.gov/document/statutes/6.87\(6\)](https://docs.legis.wisconsin.gov/document/statutes/6.87(6))

The ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day. Except in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided in this subsection may not be counted.

The municipal clerk had our ballots in her hands, on election day, at the polling place, over an hour before 8 PM. It looks like they violated wi ss 6.87(6).

Brookfield is not a canvassed absentee ballot municipality. Brookfield municipal code Title 2 ELECTED OFFICIALS, ADMINISTRATION AND PERSONNEL, Chapter 2.16 ELECTIONS, Section 2.16.060 says the central count ordinance has been repealed. ORDINANCE # 2591- 20 OF THE CITY OF BROOKFIELD, WISCONSIN of the Brookfield Municipal Code providing for the Canvassing of Absentee Ballots for all Elections in the City of Brookfield by the Municipal Board of Absentee Ballot Canvassers commonly referred to as Central Count, was repealed in ORDINANCE # 2791- 22 OF THE CITY OF BROOKFIELD, WISCONSIN Repeal Section 2.16.060 of the Brookfield Municipal Code

Providing for the Canvassing of Absentee Ballots for all Elections in the City of Brookfield by the Municipal Board of Absentee Ballot Canvassers commonly referred to as Central Count.

See attached Supporting Documents:

1. Email Correspondence with Brookfield Clerk
 - a. City clerk acknowledged we communicated on election day at the polling location
2. Andrew Yunker's Google Maps Trip History on February 20, 2024
 - a. Shows rough timeline and location data of me driving around trying to vote for my alder person between 5-7 PM near Brookfield polling location
3. Uniform Instructions for Wisconsin Absentee Voters
4. Brookfield ordinance repealing central count aka absentee canvassing
5. Are our in-person voted ballots somewhere in a box with a different ballot # than the absentee ballots we were issued. And our absentee ballots are supposed to be secured in some sort of "rejected, vote not counted" receptacle? This could support fact that they did not accept our absentee ballots and made us vote in-person.
6. My voting activity from My Vote Wisconsin shows I voted at the polls and requested an absentee ballot on February 9th, 2024, consistent with the facts I have provided about being asked to forfeit our absent ballots and vote in-person. I was told my absentee ballot that I returned would be marked as not returned. I cannot yet see my absentee ballot return status yet, sounds like it takes up to 30-days after election for those updates. I bet it will say not received.
7. The city of Brookfield's website obtains conflicting information about time deadlines to return absentee ballots. [Absentee Voting | Brookfield, WI - Official Website](#)

Election Official Abuse or Violation of Wisconsin State Statute 6.86(6)

[https://docs.legis.wisconsin.gov/document/statutes/6.86\(6\)](https://docs.legis.wisconsin.gov/document/statutes/6.86(6))

Except as authorized in sub. (5) and s. 6.87 (9), if an elector mails or personally delivers an absentee ballot to the municipal clerk, the municipal clerk shall not return the ballot to the elector. An elector who mails or personally delivers an absentee ballot to the municipal clerk at an election is not permitted to vote in person at the same election on election day.

I delivered my absentee ballot personally to the municipal clerk who immediately returned the ballot to me the elector. For me to vote, I then had to return my absentee ballot to the clerk who would only allow me to vote in-person in the same election as the absentee ballot I gave them! I was informed my ballot would be documented as not returned, even though I returned it they just didn't accept it.

Election Official Abuse or Violation of Wisconsin State Statute 6.88(1), 6.88(2),

6.88 Voting and recording the absentee ballot.

(1) When an absentee ballot arrives at the office of the municipal clerk, or at an alternate site under s. 6.855, if applicable, the clerk shall enclose it, unopened, in a carrier envelope which shall be securely sealed and endorsed with the name and official title of the clerk, and the words "This envelope contains the ballot of an absent elector and must be opened in the same room where votes are being cast at the polls during polling hours on election day or, in municipalities where absentee ballots are canvassed under s. 7.52, stats., at a meeting of the municipal board of absentee ballot canvassers under s. 7.52, stats." If the elector is a military elector, as defined in s. 6.34 (1), or an overseas elector, regardless of whether the elector qualifies as a resident of this state under s. 6.10, and the ballot was received by the elector by facsimile transmission or electronic mail and is accompanied by a separate certificate, the clerk shall enclose the ballot in a certificate envelope and securely append the completed certificate to the outside of the envelope before enclosing the ballot in the carrier envelope. The clerk shall keep the ballot in the clerk's office or at the alternate site, if applicable until delivered, as required in sub. (2).

(2) When an absentee ballot is received by the municipal clerk prior to the delivery of the official ballots to the election officials of the ward in which the elector resides or, where absentee ballots are canvassed under s. 7.52, to the municipal board of absentee ballot canvassers, the municipal clerk shall seal the ballot envelope in the carrier envelope as provided under sub. (1), and shall enclose the envelope in a package and deliver the package to the election inspectors of the proper ward or election district or, in municipalities where absentee ballots are canvassed under s. 7.52, to the municipal board of absentee ballot canvassers when it convenes under s. 7.52 (1). When the official ballots for the ward or election district have been delivered to the election inspectors before the receipt of an absentee ballot, the clerk shall immediately enclose the envelope containing the absentee ballot in a carrier envelope as provided under sub. (1) and deliver it in person to the proper election officials.

Upon delivery of me and my wife's absentee ballots in-person to the clerk, the clerk did not secure our absentee ballots or deliver them to the proper election officials. Instead, our absentee ballots were confiscated, and we were required to vote in-person. Our absentee ballots were not delivered to the proper election officials. My wife's ballot was ripped up in front of her, which was rude and looks like violation of WI SS 6.88 (1) and (2).

Election Official Abuse or Violation of Wisconsin State Statute 6.88(3)(b)

[https://docs.legis.wisconsin.gov/document/statutes/6.88\(3\)\(b\)](https://docs.legis.wisconsin.gov/document/statutes/6.88(3)(b))

When the inspectors find that a certification is insufficient, that the applicant is not a qualified elector in the ward or election district, that the ballot envelope is open or has been opened and resealed, that the ballot envelope contains more than one ballot of any one kind or, except in municipalities where absentee ballots are canvassed under s. 7.52, that the certificate of a military or overseas elector who received an absentee ballot by facsimile transmission or electronic mail is missing, or if proof is submitted to the inspectors that an elector voting an absentee ballot has since died, the inspectors shall not count the ballot.

The inspectors shall endorse every ballot not counted on the back, "rejected (giving the reason)". The inspectors shall reinsert each rejected ballot into the certificate envelope in which it was delivered and enclose the certificate envelopes and ballots, and securely seal the ballots and envelopes in an envelope marked for rejected absentee ballots. The inspectors shall endorse the envelope, "rejected ballots" with a statement of the ward or election district and date of the election, signed by the chief inspector and one of the inspectors representing each of the 2 major political parties and returned to the municipal clerk in the same manner as official ballots voted at the election.

My wife's absentee ballot was ripped up in front of her, so I doubt it made it into the collection of rejected ballots. I didn't see what happened to my absentee ballot after it was confiscated from me. I doubt it made it in the collection of rejected ballots but if it did, I want to see what the rejection reason was.

Election Official Abuse or Violation of Wisconsin State Statute 6.85.

<https://docs.legis.wisconsin.gov/document/statutes/6.85>

6.85 Absent elector; definition.

- (1) An absent elector is any otherwise qualified elector who for any reason is unable or unwilling to appear at the polling place in his or her ward or election district.
- (2) Any otherwise qualified elector who changes residence within this state by moving to a different ward or municipality later than 28 days prior to an election may vote an absentee ballot in the ward or municipality where he or she was qualified to vote before moving.
- (3) An elector qualifying under this section may vote by absentee ballot under ss. 6.86 to 6.89.

History: 1971 c. 304 s. 29 (2); 1975 c. 85, 199; 1977 c. 394; 1979 c. 232; 1983 a. 484; 1999 a. 182; 2011 a. 23.

Discussing voter residency and absentee voting, 60 Atty. Gen. 214

Michelle asked me why we were voting absentee if I was able to make it to the poll. I didn't answer because I don't think that is any of their business. Michelle told me in-person on election day that absentee voting is only for people who couldn't make it to the polls. Michelle continues to incorrectly interpret the definition of an absentee voter when I asked for clarification via email between February 21, 2024, and February 23, 2024. Michelle completely ignores the fact that absentee voting is also for people unwilling to appear at the polling place. Honestly after this experience I am unwilling to appear at my polling place.

Election Official Abuse or Violation of Wisconsin State Statute 6.20

<https://docs.legis.wisconsin.gov/document/statutes/6.20>

6.20 Absent electors. Any qualified elector of this state who registers may vote by absentee ballot under ss. 6.84 to 6.89.

Michelle refuses to acknowledge that an absent elector is more than someone who can't make it to the polls. Michelle insists absent voting is only allowed for people that cannot make it to the polls, even after asking for clarification multiple times in email.

Election Official Abuse or Violation of Wisconsin State Statute 12.13(3)(c)

[https://docs.legis.wisconsin.gov/document/statutes/12.13\(3\)\(c\)](https://docs.legis.wisconsin.gov/document/statutes/12.13(3)(c))

(3) Prohibited Acts. No person may:

(c) Willfully or negligently fail to deliver, after having undertaken to do so, official ballots prepared for an election to the proper person, or prevent their delivery within the required time, or destroy or conceal the ballots.

My wife's absentee ballot was destroyed by a poll worker named Jim, he ripped it up in front of her after being rude and condescending. My absentee ballot was confiscated and concealed. We were both informed our absentee ballots would be, in a way concealed, marked as "not returned" although they were received by election officials, destroyed, and/or concealed as being "not returned".

Voting difficulties

5 messages

Andrew Yunker <yunker88@gmail.com>

Wed, Feb 21, 2024 at 5:35 PM

To: "schulz@ci.brookfield.wi.us" <schulz@ci.brookfield.wi.us>

my wife and I had a heck of a time trying to vote yesterday. we requested absentee ballot but didn't get it until it was too late to return by mail. instruction form with ballot said another way to submit absentee was to deliver in-person to city clerk so it can be delivered to the polling place before 8 pm. very ambiguous unclear language. I thought I would have time to go home after work for dinner and some family time then drop off both of our ballots quickly at the polling location. encountered multiple barriers though. I googled Brookfield voting locations and looked at Brookfield website with incorrect information about polling locations when viewing website on my phone. See attached. The table on the website doesn't indicate what the numbers mean next to the different polling locations. <https://www.ci.brookfield.wi.us/212/Elections> we had already sealed our ballots so I couldn't see what district/ward we were in, but I remembered the number 5. so I looked at the Brookfield site for the number 5 and the central high school had a 5 next to it in the table that again is unclear it doesn't say district 5 wards 13,14, 15, it just says 5, 13,14,15. so went to central high nobody was around drove around finally found a police officer who said no voting at the high school, even though it listed as a poll location for 2 districts on the website. Policeman also said he knows there is incorrect info on the website so it sounds like several people are being directed to wrong polling place from your website. Eventually went to correct location at the public safety building. I thought I was home free drop off absentee ballots and go home, but, nope. the city clerk said I cant drop off our absentee ballots there and I needed to go to city clerk office at the court house but they probably wouldn't be able to help because they were in a meeting. at this point I went home to get document about absentee instructions and tell my wife she would have to vote in person because they weren't accepting our absentee ballots. I went back to polling place and showed them instructions that looked like I was following. i had our absentee ballots signed and sealed, delivering them personally to the city clerk, at my polling location, before 8 pm on election day. mean while there's about a dozen city officials and poll workers sitting around doing nothing just watching and rolling their eyes at me. they tried asking why we were voting absentee if I was able to make it to the poll. I didn't answer I don't think that is there business. to actually be able to cast my vote an election worker said he needed to take my absentee ballot because we only get 1 ballot, which is just weird. is he going to look at my vote on my absentee ballot? then my wife went to get her ballot taken away and submit an in person vote and they (Jim) was condescending to her saying I bet your husband was just here and do you want me to spell it all out for you? working at the VA I don't like people trying to deny my vote. Vets have died for our U.S. birth right to vote. let me know if u have any questions. 262-488-7302 text or call. Andrew Yunker 17830 W North Ave

Screenshot_20240221_173309_Chrome.jpg
305K

Andrew Yunker <yunker88@gmail.com>

Wed, Feb 21, 2024 at 5:42 PM

To: cityclerk@ci.brookfield.wi.us

Why do our absentee ballots have to be dropped off at the city clerks office by 5 pm on election day but I can't drop it off in person at the polling place before 8pm?

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Subject: Voting difficulties

To: schulz@ci.brookfield.wi.us <schulz@ci.brookfield.wi.us>

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305K

Cityclerk Mailbox <cityclerk@ci.brookfield.wi.us>
To: Andrew Yunker <yunker88@gmail.com>

Thu, Feb 22, 2024 at 9:51 AM

Hi Andrew,

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We have 5 polling locations with 7 districts. When you return your ballot to the clerk's office or by mail, we must enter it into the state system as returned. We do not have that option at the polling sites. It is then possible for someone to vote twice. If someone votes twice, we need to report them to the District Attorney's Office. We do not designate the polling site as an alternate drop off, because of the number of sites. It was a fluke that I was at the site at the same time you were. I understand smaller municipalities have the luxury of being able to do it all at one site.

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Our goal is to get resident's vote counted while following all applicable laws. Although it was not how you wanted to proceed, your vote was counted.

If you wish to continue to be an absentee voter, meaning you cannot make it to the polls on election day (WI SS 6.85), I encourage you to:

1. Mail it back if there is time.
2. Bring it to the Clerk's Office if there is not enough time. Preferably before Election Day. At the Clerk's Office on Election Day until 5:00pm.
3. Or vote on Election Day at the polling location.

Furthermore, if you wish to get a better idea of what we are and are not able to do for elections, I encourage you to sign up to be a poll worker. You will learn how the process is administered and why we have certain rules we have to follow. If you want to sign up, please visit our Poll Worker Information page on our website.

Thank you,

Michelle Luedtke

Brookfield City Clerk

2000 North Calhoun Road

Brookfield, WI 53005-5095

262-787-3550

luedtke@ci.brookfield.wi.us

2020 Census Population: 41,121

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From: Andrew Yunker <yunker88@gmail.com>
Sent: Wednesday, February 21, 2024 5:43 PM
To: Cityclerk Mailbox <cityclerk@ci.brookfield.wi.us>
Subject: Fwd: Voting difficulties

Why do our absentee ballots have to be dropped off at the city clerks office by 5 pm on election day but I can't drop it off in person at the polling place before 8pm?

----- Forwarded message -----

From: Andrew Yunker <yunker88@gmail.com>
Date: Wed, Feb 21, 2024, 5:35 PM
Subject: Voting difficulties
To: schulz@ci.brookfield.wi.us <schulz@ci.brookfield.wi.us>

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Andrew Yunker <yunker88@gmail.com>
To: Cityclerk Mailbox <cityclerk@ci.brookfield.wi.us>

Thu, Feb 22, 2024 at 6:23 PM

Wisconsin State Statute 6.87(6) goes on further to state: "if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector's residence before 8 p.m."

Help me understand how you interpret that as not having to secure me and my wive's ballots that I was giving to you on election day?

On Thu, Feb 22, 2024, 9:52 AM Cityclerk Mailbox <cityclerk@ci.brookfield.wi.us> wrote:

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We ask on our website that absentees get their ballot to the city hall no later than 5pm as we have an abundance of staff who can accept it, log it, and get it ready for delivery. After 5pm, we ask that the voters who can - vote on site. The instructions, included in the absentee mailing, is a statewide generic form. Although it is worded oddly, still has the idea that you must get it to the Clerk's Office with enough time for us to deliver it to the site.

Our goal is to get resident's vote counted while following all applicable laws. Although it was not how you wanted to proceed, your vote was counted.

If you wish to continue to be an absentee voter, meaning you cannot make it to the polls on election day (WI SS 6.85), I encourage you to:

1. Mail it back if there is time.
2. Bring it to the Clerk's Office if there is not enough time. Preferably before Election Day. At the Clerk's Office on Election Day until 5:00pm.
3. Or vote on Election Day at the polling location.

Furthermore, if you wish to get a better idea of what we are and are not able to do for elections, I encourage you to sign up to be a poll worker. You will learn how the process is administered and why we have certain rules we have to follow. If you want to sign up, please visit our Poll Worker Information page on our website.

Thank you,

Michelle Luedtke

Brookfield City Clerk

2000 North Calhoun Road

Brookfield, WI 53005-5095

262-787-3550

luedtke@ci.brookfield.wi.us

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Cityclerk Mailbox <cityclerk@ci.brookfield.wi.us>
To: Andrew Yunker <yunker88@gmail.com>

Fri, Feb 23, 2024 at 8:21 AM

Hi Andrew,

I have explained why in my previous email. We have many sites, do not have the luxury that smaller communities have, and have to enter it into the state system so people do not vote twice. The polling places are not listed as alternate sites where the clerk will accept absentees. I can only be in one place. We have designated that one place as City Hall.

Just because I was at the site the same time you are does not mean I have access to the secure state system. We have computers with special securities added on where we enter voter information.

As you were physically at the site, you did not meet the definition of an absentee voter. This is why we asked you to vote while you were there. And you did.

Again, if you want to know the process, I encourage you to become a poll worker so you can get the entire picture.

Thank you,

Michelle Luedtke

Brookfield City Clerk

2000 North Calhoun Road

Brookfield, WI 53005-5095

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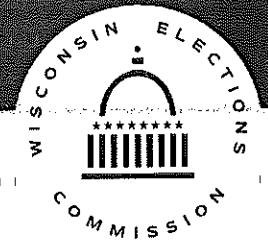
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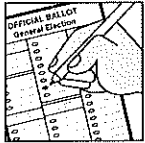
Uniform Instructions for Wisconsin Absentee Voters



STEP 1 Read and follow the instructions on your ballot.
Mistakes may prevent your votes from being counted.

STEP 2 You must vote your ballot in the presence of an adult witness:

- Mark your ballot in the presence of your witness.
- Your witness cannot tell you who or what to vote for and cannot see the choices you make on your ballot.



Who can be a witness?

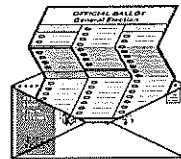
- A witness must be a U.S. Citizen who is at least 18 years old.
- For military or overseas voters, your witness must be at least 18 years old but is not required to be a U.S. Citizen.
- A witness can be a friend, spouse, family member, neighbor, etc.

Who cannot be a witness?

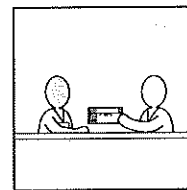
- A candidate on the ballot for this election.

If you're having trouble finding a witness or have questions about the witness requirement, please contact your municipal clerk.

STEP 3 Refold your voted ballot and place it inside of the return envelope.



STEP 4 Seal the envelope in the presence of your witness.



Make sure your envelope is completely sealed

STEP 5 Fill out the required sections of the absentee return envelope.

Required Elements

VOTER	Your voter information <i>(may already be complete)</i>
	Signature
WITNESS	Signature
	Printed Name
	Address

STEP 6 Return your ballot.

Unless you are a voter with a disability, you must personally return your own ballot and it must be received in time to be delivered to your polling place **no later than 8:00 p.m. on Election Day.**

- Mail it back. Allow at least **one week** for mail.
- Drop it off at your municipal clerk's office.
- Drop it off at your polling place or central count location.
- Voters with disabilities have the right to assistance in returning an absentee ballot. The voter's assistant can be anyone who is not the voter's employer, an agent of the employer, a representative of their labor union, or a candidate on the ballot.
- **Absentee ballots may not be returned by email or fax.**

Getting Assistance

If you need help reading or filling out your ballot or absentee return envelope, you may ask for assistance from anyone who is not your employer or a representative of your labor union. **Your assistant may also serve as your witness.** Explaining how to fill out your ballot or return envelope is not "assistance."

With your absentee return envelope

- If someone signs your absentee return envelope on your behalf, make sure they also sign in the *Certification of Assistant* section.
- Your assistant may also serve as your witness.

With your ballot

- Your assistant must sign in the *Certification of Assistant* section.
- Your assistant can read your ballot to you or fill out your ballot under your direction but cannot tell you how to vote.

Ballot Damage & Mistakes

If you make a mistake while marking your ballot or completing the return envelope, **please contact your municipal clerk.** They can also field questions about how to request a new ballot and return it if you make a mistake.

You can find their information below or by scanning the QR code.



Voter Photo ID

- If you have received your ballot, then a copy of your photo ID is already on file or you are exempt from the requirement. You do not need to provide another copy of photo ID unless instructed by your clerk.

myvote.wi.gov/en-us/My-Municipal-Clerk

If you have any questions, please contact your municipal clerk for assistance.

Municipal Clerk Contact Information

(Name of Municipal Clerk)

(Name of Municipality)

Phone:

Email:

Fax:

State Election Official Contact Information Wisconsin Elections Commission

Help Desk: (608) 261-2028

Email: elections@wi.gov



Check absentee ballot return status, find voter information, and more on MyVote.wi.gov


Uniform Instructions for Wisconsin Absentee Voters

EL-128 | Rev 08-2023 | Wisconsin Elections Commission, P.O. Box 7984, Madison, WI 53707-7984 |

(608) 261-2028 | elections.wi.gov | elections@wi.gov



MY VOTER INFORMATION

 Yunker, Andrew John

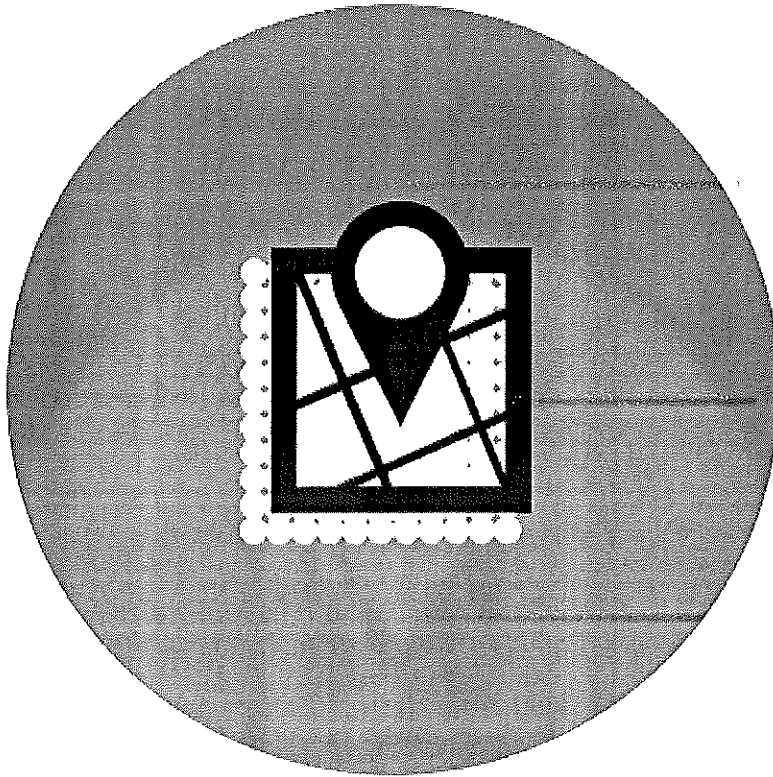
Status: You are Registered to Vote!

Current Address: 17830 W North Ave , Brookfield, WI 53045

MY NEXT ELECTION

**2024 Spring Election and
Presidential Preference Vote**

Tuesday, April 2, 2024



Polling Place:

Brookfield Public Safety Building, Voting Room: Court Room
2100 N Calhoun Rd, Brookfield, WI 53005

Hours:

7.00 AM - 8.00 PM

[More Information](#)

City Of Brookfield - Ward 14

**If you were issued a provisional ballot on Election Day,
please check your voting activity below to see more
information about your provisional ballot.**

MY ABSENTEE STATUS

Absentee request submitted Feb 9, 2024
Absentee request approved Feb 9, 2024
Preparing your absentee ballot Absentee ballot sent
Completed absentee ballot received.

Can't make it to the polls due to age, hospitalization or disability?
[Request an absentee ballot for all elections](#)

MY VOTING ACTIVITY

Feb 20, 2024 - 2024 Spring Primary

You voted in this election!

Voting Method: At Polls

Polling Place: Brookfield Public Safety Building, 2100 N
Calhoun Rd, Brookfield, WI 53005

Voting Municipality: City Of Brookfield - Waukesha
County

Apr 4, 2023 - 2023 Spring Election

Nov 8, 2022 - 2022 General Election

Nov 3, 2020 - 2020 General Election

Aug 11, 2020 - 2020 Partisan Primary

**Apr 7, 2020 - 2020 Spring Election and Presidential
Preference Vote**

Nov 6, 2018 - 2018 General Election

Aug 14, 2018 - 2018 Partisan Primary

Apr 3, 2018 - 2018 Spring Election

Nov 8, 2016 - 2016 General Election

Nov 4, 2014 - 2014 GENERAL ELECTION

Voting activity older than 10 years is available by request to the
Wisconsin Elections Commission. Please contact us at
elections@wi.gov.

[View My Current Elected Officials](#)



Brought to you by the State of Wisconsin Elections Commission. © 2024,
Wisconsin Elections Commission

Contact the State of Wisconsin Elections Commission

Office Address

201 W Washington Ave
2nd Floor
Madison, WI 53703

Mailing Address

P.O. Box 7984 Madison, WI 53707

Phone

Local: [\(608\) 266-8005](tel:6082668005)
Toll-Free: [\(866\) VOTE-WIS](tel:866VOTEWIS)
Fax: [\(608\) 267-0500](tel:6082670500)

Email

Elections@wi.gov



Contact Us

[Wisconsin Elections Commission](#)

[Bring It to the Ballot](#)

ORDINANCE #2591-20 OF THE CITY OF BROOKFIELD, WISCONSIN

Committee: **Legislative & Licensing**
Committee Date: **January 21, 2020**
Committee Action: **Adopted 5-0**

Public Hearing: n/a
Council Date: **January 21, 2020**
Council Action: **Adopted 14-0**

Creating Section 2.16.060 of the Brookfield Municipal Code providing for the Canvassing of Absentee Ballots for all Elections in the City of Brookfield by the Municipal Board of Absentee Ballot Canvassers commonly referred to as Central Count.

The City of Brookfield Common Council do ordain as follows:

PART I. Section 2.16.060 is hereby created to read as follows:

Section:

2.16.60 Municipal Board of Absentee Canvassers (Central Count)

- A. Except as otherwise provided herein, the provisions of Wisconsin Statutes Sections 7.52 and 7.53(2m), as amended, relating to the canvassing of absentee ballots and board of absentee ballot canvassers, are hereby adopted by reference.
- B. The Common Council of the City of Brookfield hereby establishes the Municipal Board of Absentee Ballot Canvassers, pursuant to Wis. Stat. § 7.53(2m). The board and city clerk shall have the duties and authority to act as set forth in Wis. Stat. Sections 7.52 and 7.53(2m). The City Clerk may appoint additional inspectors under §7.30(2)(a), to assist the board in canvassing absentee ballots under this section.
- C. The Common Council of the City of Brookfield hereby provides for the canvassing of absentee ballots by the municipal board of absentee ballot canvassers in lieu of canvassing absentee ballots at polling places, pursuant to Wis. Stat. § 7.52(1)(a), for all elections held in the City of Brookfield.

PART II. All ordinances and parts of ordinances contravening the provisions of this ordinance are hereby repealed.

PART III. Severability. If any section or portion of this ordinance shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other

ORDINANCE #2591-20 OF THE CITY OF BROOKFIELD, WISCONSIN

provisions, sections, or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect.

PART IV. The provisions of this ordinance shall be in full force and effect from and after its passage and publication.

Adopted by the Common Council this 21st day of January, 2020.

Approved:



Mayor Steven V. Ponto

Attested:



Kelly Michaels, City Clerk

Publication Date: January 29, 2020

ORDINANCE #2791-22 OF THE CITY OF BROOKFIELD, WISCONSIN

Committee: Legislative and Licensing
Committee Date: March 15, 2022
Committee Recommendation: 5-0

Public Hearing: n/a
Council Date: April 5, 2022
Council Action: Adopted 14-0

Repeal Section 2.16.060 of the Brookfield Municipal Code Providing for the Canvassing of Absentee Ballots for all Elections in the City of Brookfield by the Municipal Board of Absentee Ballot Canvassers commonly referred to as Central Count.

The Common Council of the City of Brookfield do ordain as follows:

PART I. Section 2.16.060 of the City of Brookfield Municipal Code is hereby repealed.

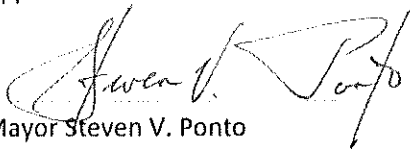
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PART III. If any section or portion of this ordinance shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections, or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect.

PART IV. The provisions of this ordinance shall be in full force and effect from and after its passage and publication.

Adopted this 5th day of April 2022.

Approved:



Mayor Steven V. Ponto

Attested:



City Clerk Michelle Luedtke

Publication Date: April 9, 2022

Chapter 2.16 ELECTIONS

Sections:

- 2.16.010 Aldermanic districts.**
- 2.16.020 Spring primary.**
- 2.16.030 Polling places.**
- 2.16.040 Appointment of alternative election officials.**
- 2.16.050 Election day campaigning restricted.**
- 2.16.060 Repealed.**

2.16.010 Aldermanic districts.

A. Designated. Pursuant to Section 62.08, Wisconsin Statutes, the boundaries of the city's seven aldermanic districts shall be as shown on a map designated as the aldermanic district map of the city as adopted by ordinance. Such map shall be kept in the office of the city clerk. (Ord. 2131-08 § 1 (part), 2008)

2.16.020 Spring primary.

Whenever three or more candidates file nomination papers for an elective city office, a primary election shall be held for the nomination of candidates for such office. (Ord. 2131-08 § 1 (part), 2008)

2.16.030 Polling places.

The polling place for each aldermanic district shall be as follows:

1. First Aldermanic District

Wards 1, 2 and 3

Brookfield East High School

3305 Lilly Road

2. Second Aldermanic District

Wards 4, 5, 6, and 22

Brookfield Central High School

16900 Gebhardt Road

3. Third Aldermanic District

Wards 7, 8, and 9

Brookfield Central High School

16900 Gebhardt Road

4. Fourth Aldermanic District

Wards 10, 11, and 12

Sharon Lynne Wilson Center for the Arts

3270 Mitchell Park Drive

5. Fifth Aldermanic District

Wards 13, 14, and 15

Public Safety Building

2100 N. Calhoun Road

6. Sixth Aldermanic District

Wards 16, 17, and 18

Brookfield Conference Center

325 S. Moorland Road

7. Seventh Aldermanic District

Wards 19, 20 and 21

Brookfield Conference Center

325 S. Moorland Road

(Ord. 2846-23 § 1, 2023; Ord. 2824-22 §§ 1, 2, 2022; Ord. 2807-22 § 3, 2022; Ord. 2021-101921 § 3, 2021; Ord. 2021-060114 § 1, 2021; Ord. 2731-20 § 1, 2020; Ord. 2483-17 § 1, 2017; Ord. 2339-13 § 1, 2013; Ord. 2262-11 § 3, 2011)

2.16.040 Appointment of alternative election officials.

The city clerk shall have the discretion to hire election officials to work less than a full day on the day of the election. (Ord. 2131-08 § 1 (part), 2008)

2.16.050 Election day campaigning restricted.

A. No election official may engage in electioneering on election day.

B. No person may engage in electioneering during polling hours on election day within one hundred (100) feet of an entrance to a building containing a polling place.

C. The city clerk, election inspector or law enforcement officer of the city may remove signs or posters or other advertising which is placed in violation of this section.

D. For purposes of this section, "electioneering" means any activity which is intended to influence voting at an election, but shall not include the placement of signs or posters or other advertising on private real estate/property. (Ord. 2131-08 § 1 (part), 2008)

2.16.060 Municipal board of absentee canvassers (central count).

Repealed by Ord. 2791-22. (Ord. 2591-20 § 1, 2020)

ABSENTEE VOTING

In-Person Absentee Ballots a/k/a EARLY VOTING:

Location/Hours for In-Person Absentee Voting are listed below:

Location: City Hall Clerk's Office, 2000 N Calhoun Road
Brookfield WI 53005

Dates: Begins Tuesday, February 6th, 2024, and Ends:
Friday, February 16th, 2024

Hours: 8:00 am., to 5:00 pm., (Weekdays, Monday-
Friday)

For 2024 - we will ask for poll workers to volunteer for extended hours during in-person voting to offer voting until 8:00PM. Those hours will be listed here when confirmed.

By Mail Absentee Ballots:

[Request an Absentee Ballot ONLINE](#)

[OVERSEAS AND MILITARY ABSENTEE VOTING](#)

REQUESTS FOR ABSENTEE BALLOTS: You must make the request for an absentee ballot in writing. You may do this online, via email, or by mailing us a letter. Acceptable Photo ID is required for voting absentee both by mail and in-person. Absentee voting can be done in-person or by mail ballot as indicated in the Option for Voting materials. Once ballot stock has been received in our office from the printers, we are able to get them in the mail to you within 1 business day of your request.

RETURNING YOUR MAIL BALLOT:

YOU MUST RETURN YOUR BALLOT IN PERSON OR BY USPS MAIL. Any ballots not at the polling location by 8:00 PM on Election Day will not be counted.

- **USPS Mail Return:** The ballot must be received back by no later than Election Day in order to count. The Postal Service advises at least 5 days for local delivery and one month or more for overseas delivery.
- **Personal Delivery Return:**
 - **Before Election Day** - You may personally deliver your ballot to the Clerk's Office at City Hall at 2000 North Calhoun Road, Brookfield WI 53005 Monday to Friday from 8:00 am - 5:00 pm.
 - **On Election Day**, you may vote in person at your polling location. If you want to return your absentee, you may return your absentee ballot to the Clerk's Office.
 - Keep in mind the Clerk must have enough time to get your ballot over to the polling site - Wis Stat 6.87(6). We recommend dropping it off BEFORE 5:00 PM to make sure your vote counts.

CAN I USE A BALLOT DROP BOX?

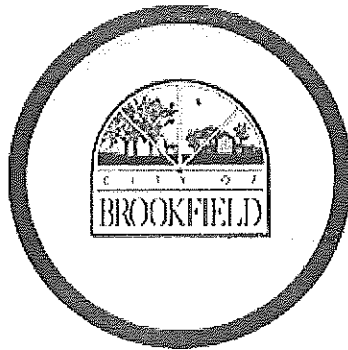
No. Any ballots returned in the drop box will be mailed back to the voter.

TRACKING YOUR MAIL BALLOT:

You can track the status of your absentee ballot from the request to delivery and also when it has been received back by the City, on the [MyVote Wisconsin website](#) under the MyVoterInfo tab. Once you return an absentee ballot, you may **NOT** vote at your polling location. If you have questions concerning your absentee ballot, please contact the City Clerk's Office at (262) 782-9650

MAIL BALLOT ENVELOPES ARE INSPECTED BY ELECTION INSPECTORS FOR THE FOLLOWING:

- **Voter Signature Required:** Sign the certificate envelope where it indicates Voter Signature. Don't forget to enclose the ballot.
- **Witness Signature Required:** Any qualified elector (18 years or older, US Citizen, Not a felon) can sign as your witness including spouses, siblings, adult children, neighbors, or friends. If you don't have a witness to sign, we encourage you to vote in-person absentee.
- **Witness Address Required:** Even if the address is the same as yours, you must include the witness's address. This means the number, street name, city, state, and zip code.
- **Evidence of Tampering: DON'T TAPE YOUR ENVELOPE!** Election Inspectors will view that as evidence that your envelope was opened and resealed as a tampering event and will reject your ballot. Please use a damp cloth or envelope sealant to seal your ballot envelope.



 Government Websites by [CivicPlus®](#)

Select Language 

Google [Translate](#)



CITY ATTORNEY

Jenna Merten

2000 North Calhoun Road
Brookfield, Wisconsin 53005-0595
(262) 787-3525 - Fax (262) 796-6671
merten@ci.brookfield.wi.us

March 19, 2024

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

Re: Michelle Luedtke's Answer to Andrew Yunker's complaint

Dear Commission,

Please find attached Michelle Luedtke's Answer to Andrew Yunker's complaint, along with 3 attached exhibits. I have also enclosed an Affidavit of Mailing indicating that I mailed a copy of the Answer and Exhibits to Andrew Yunker.

If you have any questions or concerns, please contact me.

A handwritten signature in blue ink that reads "Jenna Merten".

Jenna Merten
City Attorney

Cc: Andrew Yunker

ANDREW YUNKER,

Complainant,

Case No. EL 24-23

v.

MICHELLE LUEDTKE,

Respondent.

ANSWER OF RESPONDENT MICHELLE LUEDTKE

NOW COMES Respondent, Michelle Luedtke by City Attorney Jenna Merten, both duly sworn, reserving all jurisdictional objections and objections to competency, and as and for its Answer to said Complaint, dated February 28, 2024, deposes and states to the Commission the following:

FACTUAL BACKGROUND:

Complainant Andrew Yunker (“Yunker”) is registered to vote at 17830 West North Avenue, Brookfield, WI, which is located in the City’s District 5, Ward 14 voting district. On February 20, 2024, the City of Brookfield held a primary election for the alderperson race in District 5; it was the only District with a primary in the City. The City does not have a central count and does not have an alternate absentee ballot drop off location, pursuant to Wis. Stat. § 6.855. (See Exh. 3., repeal of central count ordinance) Yunker requested an absentee ballot for that election on February 9, 2024 and received it on or about February 12, 2024. Included with his absentee ballot was an instruction sheet that contained, among other information, instructions on how to return the absentee ballot. (See Exh. 1). Specifically, the instructions stated

that “Unless you are a voter with a disability, you must personally return your own ballot to the Clerk’s Office. It must be received by the Clerk with enough time for the Clerk to deliver it to your polling place **no later than 8:00 p.m. on Election Day.**” The instructions do not state anything about returning one’s ballot to their polling place. The ones Yunker attached to the complaint are not the City’s instructions.

On February 20, 2024, Brookfield City Clerk Michelle Luedtke (“Luedtke”) was present at the Public Safety Building, located at 2100 North Calhoun Road, which was the only polling place for the election. At some point during the time the polling place was open, Yunker approached Luedtke while she was working at the polling place and tried to give her his absentee ballot, along with his wife’s absentee ballot. Luedtke told Yunker that she could not receive any absentee ballots at the polling place and that his wife needed to drop hers off at the Clerk’s Office, located at 2000 North Calhoun Road, because he could not perform that task for her. Yunker argued with her and eventually decided to vote in-person because he was at the polling place. Following the guidance promulgated by the Wisconsin Elections Commission, Luedtke spoiled Yunker’s absentee ballot so that he would not have his vote counted twice. After voting in person, Yunker left the polling place.

PROCEDURAL HISTORY:

Yunker filed a sworn complaint with the Wisconsin Elections Commission on or about February 28, 2024. Yunker never mailed or served Luedtke a copy of the complaint. On March 1, 2024, Commission staff attorney Brandon Hunzicker emailed a copy of Yunker’s complaint to the City Clerk email account. The City does not have any knowledge whether any review under Wisconsin Administrative Code Section EL 20.04 was conducted.

ANSWER AND RESPONSE TO COMPLAINT

Allegation #1: The City Website contained incorrect information about polling locations when Yunker viewed the website on his phone.¹

¹ Yunker does not allege how the City’s purported incorrect information on its website violates any election-related laws or is the fault of Ms. Luedtke; nevertheless, rather than allow false information to perpetuate, Ms. Luedtke is addressing it in her response.

Answering Allegation #1, Luedtke denies that the City’s website contained incorrect information about polling locations and affirmatively states the website was correct. Yunker is a resident of District 5, Ward 14 and votes at the Public Safety Building. Yunker alleges that he believed Brookfield Central High School was his polling location because it contained a number 5. (See Compl., p. 3). However, Yunker also admits that he could not recall his district or his ward number despite the ward being written on the mailing label on the absentee ballot that he was holding. Contrary to his claim, the website correctly stated that the Ward 14 polling location was at the Public Safety Building. (See Exh. 2.) Complainant’s inability to recall his actual ward and properly comprehend the City’s website is not Luedtke’s error.

Allegation #2: Michelle Luedtke abused their election official discretion and/or violated laws regarding election administration of absent voter ballots including: Wisconsin State Statutes 6.87(6), 6.86(6), 6.88(1), 6.88(2), 6.88(3)(b), 6.85, 6.20, 12.13(3)(c).

Answering Allegation #2: Luedtke denies that she abused her election official discretion and denies violating any laws regarding election administration of absent voter ballots. Luedtke affirmatively states that she properly adhered to all laws regarding elections.

The crux of Yunker’s complaint is based upon the premise that he was an absentee voter. However, that premise is false. An absentee voter is one “who for any reason is unable or unwilling to appear at the polling place in his or her ward or election district.” Wis. Stat. § 6.85(1). Yunker’s appearing at his polling place on Election Day renders him an in-person voter, not an absentee voter. As such, Yunker’s allegations that Luedtke violated § 6.87(6) (absentee voting procedure); 6.86(6) (methods for obtaining an absentee ballot); 6.88(1), (2), and (3)(b) (voting and recording the absentee ballot); § 6.20 (absent electors); and § 6.85 (absent elector; definition) fail entirely.

The absentee voting instructions mailed to Yunker are consistent with the law regarding absentee ballots. The instructions sent to Yunker specifically state that the ballot must be returned to the City Clerk’s office. (Exh. 1.) Further, the instructions state that the ballot must be received by the clerk with enough time for her to deliver it to the polling place no later than 8:00 p.m. (Exh. 1.)

Nowhere in the instructions does it state that Yunker could return his ballot and his wife's ballot to the polling place. The entire point of the absentee voting law is to serve those voters who cannot or will not attend their polling place on Election Day. Yunker completely disregarded the law and the absentee instructions by bringing his absentee ballot and his wife's absentee ballot to the polling place. Yunker's errors and failure to follow instructions were the sole cause of his inability to cast his absentee ballot.

Yunker's allegations that Luedtke violated Wis. Stat. § 12.13 are also false. While Complainant does not expound on how he believed Luedtke violated this statute, one can assume that it was based upon Luedtke's spoiling Yunker's absentee ballot at the polling place when he decided to vote in person. Again, by Yunker appearing in person at the polling place and choosing to vote in person, Yunker could no longer vote absentee. If Luedtke did not destroy Yunker's ballot after he decided to vote in person, Yunker would have committed election fraud by voting twice. If Luedtke were to have accepted his ballot at the polling place, Luedtke would have violated state law by accepting an absentee ballot from an in-person voter. Luedtke's actions essentially saved Yunker from his own ignorance and prevented him from committing voter fraud.

AFFIRMATIVE DEFENSES

As and for its affirmative defenses to Yunker's Complaint, the Respondent, Luedtke, states as follows:

1. Upon information and belief, the Complaint fails to state a claim upon which relief can be granted against the Respondent.
2. The Commission lacks subject matter jurisdiction over Yunker's complaint because Yunker failed to mail or personally serve Luedtke with a copy of the complaint in compliance with Wisconsin Administrative Code Section EL 20.03(6).

3. The Commission lacks competency over the Yunker's complaint because Yunker failed to mail or personally serve Luedtke with a copy of the complaint in compliance with Wisconsin Administrative Code Section EL 20.03(6).

4. Yunker's complaint is barred by the statute of limitations.

5. Luedtke reserves the right to supplement her answer to assert any affirmative defenses which may be disclosed during discovery or hearings herein.

WHEREFORE, Respondent, Michelle Luedtke, hereby demands judgment as follows:


1. Dismissing Yunker's Complaint upon its merits and with prejudice;
2. For costs, disbursements, and attorneys' fees of this action allowed by law; and
3. For further relief as ordered by the Commission.

Dated at Brookfield, Wisconsin, this 19th day of March, 2024.


CITY OF BROOKFIELD
Jenna Merten, City Attorney
Attorney for Michelle Luedtke

I, Michelle Luedtke, being first duly sworn upon oath, state that I personally read the above answer and that the answer is true and correct based on my personal knowledge and, as to those answers stated on information and belief, I believe them to be true. See sworn signature on next page.

Dated this 19th day of March, 2024.



Jenna Merten

Subscribed and sworn to before me
This 19th day of March, 2024.



Notary Public-State of Wisconsin
My commission expires 9-30-25

MARY L. SCHULZ
NOTARY PUBLIC
STATE OF WISCONSIN

Dated this 19th day of March, 2024.


Michelle Luedtke

Subscribed and sworn to before me
this 19th day of March, 2024.


Notary Public-State of Wisconsin
My commission expires 9-30-25

MARY L. SCHULZ
NOTARY PUBLIC
STATE OF WISCONSIN

P.O. Address
2000 North Calhoun Road
Brookfield, WI 53005
262-787-3635
merten@ci.brookfield.wi.us

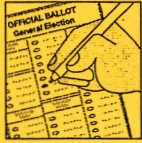
Uniform Instructions for Wisconsin Absentee Voters



STEP 1 Read and follow the instructions on your ballot.
Mistakes may prevent your votes from being counted.

STEP 2 You must vote your ballot in the presence of an adult witness:

- Mark your ballot in the presence of your witness.
- Your witness cannot tell you who or what to vote for and cannot see the choices you make on your ballot.



Who can be a witness?

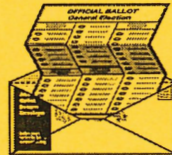
- A witness must be a U.S. Citizen who is at least 18 years old.
- For military or overseas voters, your witness must be at least 18 years old but is not required to be a U.S. Citizen.
- A witness can be a friend, spouse, family member, neighbor, etc.

Who cannot be a witness?

- A candidate on the ballot for this election.

If you're having trouble finding a witness or have questions about the witness requirement, please contact your municipal clerk. The Clerk's Office can be your witness during in-person absentee voting.

STEP 3 Refold your voted ballot and place it inside of the return envelope.



STEP 4 Seal the envelope in the presence of your witness.



Make sure your envelope is completely sealed.
Do not use tape!

STEP 5 Fill out the required sections of the absentee return envelope.

Required Elements

VOTER	Your voter information <i>(may already be complete)</i>
	Signature
WITNESS	Signature
	Printed Name
	Address

STEP 6 Return your ballot.

Unless you are a voter with a disability, you must personally return your own ballot to the Clerk's Office. It must be received by the Clerk with enough time for the Clerk to deliver it to your polling place **no later than 8:00 p.m. on Election Day.**

- Mail it back. Allow at least **one week** for mail.
- Drop it off at your municipal clerk's office.
- Voters with disabilities have the right to assistance in returning an absentee ballot. The voter's assistant can be anyone who is not the voter's employer, an agent of the employer, a representative of their labor union, or a candidate on the ballot.
- **Absentee ballots may not be returned by email or fax.**

Getting Assistance

If you need help reading or filling out your ballot or absentee return envelope, you may ask for assistance from anyone who is not your employer or a representative of your labor union. **Your assistant may also serve as your witness.** Explaining how to fill out your ballot or return envelope is not "assistance."

With your absentee return envelope	With your ballot
<ul style="list-style-type: none">• If someone signs your absentee return envelope on your behalf, make sure they also sign in the <i>Certification of Assistant</i> section.• Your assistant may also serve as your witness.	<ul style="list-style-type: none">• Your assistant must sign in the <i>Certification of Assistant</i> section.• Your assistant can read your ballot to you or fill out your ballot under your direction but cannot tell you how to vote.

Ballot Damage & Mistakes

If you make a mistake while marking your ballot or completing the return envelope, **please contact your municipal clerk.** They can also field questions about how to request a new ballot and return it if you make a mistake.

You can find their information below or by scanning the QR code.



Voter Photo ID

- If you have received your ballot, then a copy of your photo ID is already on file or you are exempt from the requirement. You do not need to provide another copy of photo ID unless instructed by your clerk.

myvote.wi.gov/en-us/My-Municipal-Clerk

If you have any questions, please contact your municipal clerk for assistance.

Municipal Clerk Contact Information

Michelle Luedtke

(Name of Municipal Clerk)

City of Brookfield

(Name of Municipality)

Phone: 262-782-9650

Email: CityClerk@ci.brookfield.wi.us

Fax: None

State Election Official Contact Information

Wisconsin Elections Commission

Help Desk: (608) 261-2028

Email: elections@wi.gov



Check absentee ballot return status, find voter information, and more on MyVote.wi.gov

Uniform Instructions for Wisconsin Absentee Voters

EL-128 | Rev 08-2023 | Wisconsin Elections Commission, P.O. Box 7984, Madison, WI 53707-7984 | (608) 261-2028 | elections.wi.gov | elections@wi.gov

ELECTIONS

ELECTION DATES

2024 (Regularly Scheduled Elections in Even Numbered Years)

1. Third Tuesday in February (2/20/2024)
2. First Tuesday in April (4/2/2024)
3. Second Tuesday in August (8/13/2024)
4. First Tuesday following the first Monday in November (11/5/2024)

2025 (Regularly Scheduled Elections in Odd Numbered Years)

1. Third Tuesday in February (2/18/2025)
2. First Tuesday in April (4/1/2025)
3. No Fall Elections

ELECTION POLLING PLACES

Voting Hours are from 7:00AM to 8:00PM. Bring your photo ID.

Alderman District	Wards	Location
1	1, 2, 3	Brookfield East High School 3305 Lilly Road
2	4, 5, 6, 22	Brookfield Central High School 16900 Gebhardt Road

Alderman District	Wards	Location
3	7, 8, 9	Brookfield Central High School 16900 Gebhardt Road
4	10, 11, 12	Sharon Lynne Wilson Center for the Arts 3270 Mitchell Park Drive
5	13, 14, 15	Brookfield Public Safety Bldg., Courtroom 2100 N. Calhoun Road
6	16, 17, 18	Brookfield Conference Center 325 S. Moorland Road
7	19, 20, 21	Brookfield Conference Center 325 S. Moorland Road

MYVOTE WISCONSIN

You can find out where you vote, what is on your ballot, register to vote, request an absentee ballot, track your absentee ballot, and see your voting history by visiting <https://myvote.wi.gov>.

OTHER ELECTION-RELATED ITEMS

- [Absentee Voting](#)
- [Election History](#) - Going back to 1991, see what the turnout has been in the City of Brookfield.
- [Election Notices](#) - Use this link to find legal postings about elections.
- [Election Signs](#) - The election is over. When will residents be required to remove the signs?
- [Election Results](#) - Unofficial results from Election night can be found on the Waukesha County Clerk's website. The Official City of Brookfield Election results are posted after the Board of Canvass has been completed and can be found in Election Notices above.
- [Poll Worker Information](#)
- [Registering to Vote](#)
- [Sample Ballot](#) - MyVote
- [Voter Information](#)
- [Ward Map](#)

If you need additional information, contact the City Clerk's Office.



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Select Language 



EXHIBIT 3

ORDINANCE #2791-22 OF THE CITY OF BROOKFIELD, WISCONSIN

Committee: Legislative and Licensing
Committee Date: March 15, 2022
Committee Recommendation: 5-0

Public Hearing: n/a
Council Date: April 5, 2022
Council Action: Adopted 14-0

Repeal Section 2.16.060 of the Brookfield Municipal Code Providing for the Canvassing of Absentee Ballots for all Elections in the City of Brookfield by the Municipal Board of Absentee Ballot Canvassers commonly referred to as Central Count.

The Common Council of the City of Brookfield do ordain as follows:

PART I. Section 2.16.060 of the City of Brookfield Municipal Code is hereby repealed.

PART II. All ordinances and parts of ordinances contravening the provisions of this ordinance are hereby repealed.

PART III. If any section or portion of this ordinance shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections, or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect.

PART IV. The provisions of this ordinance shall be in full force and effect from and after its passage and publication.


Adopted this 5th day of April 2022.

Approved:



Mayor Steven V. Ponto

Attested:



City Clerk Michelle Luedtke

Publication Date: April 9, 2022

In re Complaint filed by Andrew Yunker, Case No. EL 24-23

AFFIDAVIT OF MAILING

STATE OF WISCONSIN)
: ss
WAUKESHA COUNTY)

I, Jenna Merten, being first duly sworn on oath say that I am an employee of the City of Brookfield and not a party of this action.

That on March 19, 2024, I caused an Answer of Respondent Michelle Luedtke with attached Exhibits, dated March 19, 2024, to be enclosed in a sealed envelope for mailing and deposited it at the United States Postal facility, with first-class postage prepaid, to the following:

Andrew Yunker
17830 West North Avenue
Brookfield, WI 53045

Dated this 19th day of March 2024 in Brookfield, Wisconsin.


Jenna Merten

Subscribed and sworn to before me
this 19th day of March 2024.


Mary L. Schulz

Notary Public, State of Wisconsin
My Commission is permanent / expires: 9-30-25

MARY L. SCHULZ
NOTARY PUBLIC
STATE OF WISCONSIN

**STATE OF WISCONSIN
ELECTIONS COMMISSION**

COMPLAINT FORM

Please provide the following information about yourself:

Name Andrew Yunker
Address 17830 W North Ave, Brookfield, WI 53045
Telephone Number 262-488-7302
E-mail yunker88@gmail.com

**State of Wisconsin
Before the Elections Commission**

The Complaint of Election Official Abuse or Violation (§5.06)
of Wisconsin State Statutes 6.87(6), 6.86(6), 6.88(1), 6.88(2), 6.88(3)(b), 6.85, 6.20, 12.13(3)(c),
Complainant(s) against
Michelle Luedtke, Brookfield City Clerk, Respondent, whose
address is 2000 North Calhoun Road, Brookfield, WI 53005-5095

This complaint is under Election Official Abuse or Violation (§5.06), Wisconsin State Statutes 6.87(6) _____ (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, Andrew Yunker, allege that:

Michelle Luedtke abused their election official discretion and/or violated
laws regarding election administration of absent voter ballots including:

Wisconsin State Statutes 6.87(6), 6.86(6), 6.88(1), 6.88(2), 6.88(3)(b), 6.85, 6.20, 12.13(3)(c)

This is my reply to Luedtke's answer to my complaint.

(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: 3/22/24

Andrew J Yunker
Complainant's Signature

I, Andrew Yunker, 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.

Andrew J Yunker
Complainant's Signature

STATE OF WISCONSIN

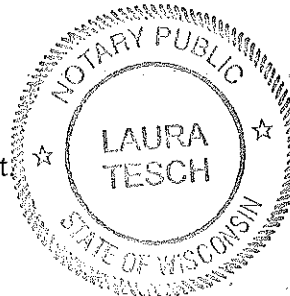
County of Milwaukee,
(county of notarization)

Sworn to before me this 22 day of
March, 2024.

Laura Tesch
(Signature of person authorized to administer oaths)

My commission expires 3/1/2025, 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

Luedtke states on page two of their answer to my complaint that Brookfield's version of the Uniform Instructions for Wisconsin Absentee Voters does not say anything about returning one's ballot to their polling place. Their statement isn't entirely true because it does talk about delivering my ballot to the polling place. Besides, why aren't the approved uniform absentee ballot instructions being used?

STEP 6 Return your ballot.

Unless you are a voter with a disability, you must personally return your own ballot and it must be received in time to be delivered to your polling place **no later than 8:00 p.m. on Election Day.**

approved instructions

Step 6 of Brookfield's version of the Uniform Instructions for Wisconsin Absentee voters has been edited with additional text, see step 6 from exhibit 1 of Luedtke's response to my complaint.

STEP 6 Return your ballot.

Unless you are a voter with a disability, you must personally return your own ballot to the Clerk's Office. It must be received by the Clerk with enough time for the Clerk to deliver it to your polling place **no later than 8:00 p.m. on Election Day.**

Brookfield's edited instructions

The additional text and underlined notations are contrary to the commission's directives to make the instructions more legible with less text.

<https://elections.wi.gov/memo/commission-approves-revised-uniform-absentee-ballot-instructions>

<https://elections.wi.gov/sites/default/files/documents/Clerk%20Comm%20Revised%20Uniform%20Instructions%2012.27.23.pdf>

These Brookfield instructions have been edited despite receiving the following guidance promulgated by the Wisconsin Elections Commission to not modify the instructions:

3. Changes to the Uniform Instructions. The approved forms should not be modified, except to add the municipal clerk contact information where indicated on the bottom of page two. Should municipalities

wish to provide voters with any additional information specific to the municipality, please prepare a separate document instead of modifying the Uniform Instructions.

From page 2 of Luedtke's response to my complaint:

Luedtke told Yunker that she could not receive any absentee ballots at the polling place and that his wife needed to drop hers off at the Clerk's Office, located at 2000 North Calhoun Road, because he could not perform that task for her.

As I stated in my complaint, after refusing to accept my absentee ballot, Luedtke convinced me that going to the clerk's office would be a waste of time because everyone there was in a meeting, and it would be unlikely for my absentee ballot to be accepted.

Luedtke continues page 2 of their response:

Yunker argued with her and eventually decided to vote in-person because he was at the polling place.

That statement is false. I was forced to vote in-person because my ballot wasn't accepted.

This is Election Official Abuse or Violation of Wisconsin State Statute 6.88(1),

<https://docs.legis.wisconsin.gov/document/statutes/6.88>

From page 93 of the Wisconsin Election Commission's February 2024 Election Administration Manual for Wisconsin Municipal Clerks:

When is a Ballot Returned

The Kormanik circuit court decision concluded that the only way to read § 6.86(5) is that the spoiling or damaging were already done when the absentee ballot was returned. The circuit court concluded that a ballot that is not damaged or spoiled, and is otherwise complete, is "returned" when it arrives at the clerk's office. The circuit court noted that § 6.88(1) "requires that upon arrival at the clerk's office, the ballot shall be sealed in a carrier envelope and must be opened when and where election day votes are being cast...Once the clerk has that returned ballot, it is to be sealed until election day." Kormanik, at 13. A reasonable interpretation of § 6.88(1) and Kormanik is that a ballot is returned when it is in possession of the clerk.

Election Official Abuse or Violation of Wisconsin State Statute 6.87(6)

[https://docs.legis.wisconsin.gov/document/statutes/6.87\(6\)](https://docs.legis.wisconsin.gov/document/statutes/6.87(6))

The ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day. Except in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided in this subsection may not be counted.

The municipal clerk had our ballots in her hands, on election day, at the polling place, over an hour before 8 PM. It looks like they violated wi ss 6.87(6).

Luedtke then admits to spoiling my ballot citing no specific “guidance promulgated by the WEC”, so that I wouldn’t have my vote counted twice. However, it appears they did the exact opposite of what the WEC promulgated on February 12, 2024, to the State of Wisconsin Elections Officials in the February 2024 Election Administration Manual for Wisconsin Municipal Clerks.

This is Election Official Abuse or Violation of Wisconsin State Statute 6.86.

<https://docs.legis.wisconsin.gov/document/statutes/6.86>

<https://elections.wi.gov/sites/default/files/documents/EA%20Manual-February%202024.pdf>

<https://elections.wi.gov/memo/election-administration-and-election-day-manuals-revised-february-2024>

For information on a municipal clerk’s ability to return absentee ballots to electors under § 6.86(5) when the ballot is spoiled or damaged, see “Spoiling and Replacement Ballots” on page 92.

If a clerk receives an absentee ballot that is spoiled or damaged from a voter, statute directs that the clerk shall issue a new ballot to the elector, provided there is enough time for the elector to properly return the ballot. Wis. Stat. § 6.86(5). The clerk must also believe that the first ballot was issued to or on behalf of the elector who is returning it, or that the first ballot was issued to a person with disabilities and on whose behalf the ballot is being returned. before issuing the second ballot. Wis. Stat. § 6.86(5). If the clerk issues a new ballot pursuant to § 6.86(5), the clerk should destroy the spoiled or damaged ballot. Wis. Stat. § 6.86(5). The spoiled or damaged ballot should be destroyed to the extent that it cannot be tabulated, but should still be preserved as a defective ballot per § 7.51(2)(b). If the clerk does not believe the person requesting the replacement ballot is the one to whom the original ballot was provided, the clerk should not issue the replacement ballot, document the incident for a subsequent challenge on Election Day under § 6.92, and contact law enforcement immediately.

A circuit court has recently concluded on a motion for summary judgment that there is no statutory authority for a clerk to return or spoil an otherwise complete, undamaged absentee ballot that was

properly previously returned by an elector. *Kormanik v. WEC* (2022CV001395, Nov. 29, 2023). If an absentee ballot is complete and in totally acceptable condition and was properly returned in an unspoiled and undamaged state, “the statutes provide no basis upon which the voter may ever possess that ballot again.” *Kormanik*, at 13.

Election Official Abuse or Violation of Wisconsin State Statute 6.86(6)

[https://docs.legis.wisconsin.gov/document/statutes/6.86\(6\)](https://docs.legis.wisconsin.gov/document/statutes/6.86(6))

Except as authorized in sub. (5) and s. 6.87(9), if an elector mails or personally delivers an absentee ballot to the municipal clerk, the municipal clerk shall not return the ballot to the elector. An elector who mails or personally delivers an absentee ballot to the municipal clerk at an election is not permitted to vote in person at the same election on election day.

I delivered my absentee ballot personally to the municipal clerk who immediately returned the ballot to me the elector. For me to vote, I then had to return my absentee ballot to the clerk who would only allow me to vote in-person in the same election as the absentee ballot I gave them! I was informed my ballot would be documented as not returned, even though I returned it they just didn't accept it.

Election Official Abuse or Violation of Wisconsin State Statute 6.88(1), 6.88(2),

<https://docs.legis.wisconsin.gov/document/statutes/6.88>

6.88 Voting and recording the absentee ballot.

(1) When an absentee ballot arrives at the office of the municipal clerk, or at an alternate site under s. 6.855, if applicable, the clerk shall enclose it, unopened, in a carrier envelope which shall be securely sealed and endorsed with the name and official title of the clerk, and the words “This envelope contains the ballot of an absent elector and must be opened in the same room where votes are being cast at the polls during polling hours on election day or, in municipalities where absentee ballots are canvassed under s. 7.52, stats., at a meeting of the municipal board of absentee ballot canvassers under s. 7.52, stats.” If the elector is a military elector, as defined in s. 6.34(1), or an overseas elector, regardless of whether the elector qualifies as a resident of this state under s. 6.10, and the ballot was received by the elector by facsimile transmission or electronic mail and is accompanied by a separate certificate, the clerk shall enclose the ballot in a certificate envelope and securely append the completed certificate to the outside of the envelope before enclosing the ballot in the carrier envelope. The clerk shall keep the ballot in the clerk's office or at the alternate site, if applicable until delivered, as required in sub. (2).

(2) When an absentee ballot is received by the municipal clerk prior to the delivery of the official ballots to the election officials of the ward in which the elector resides or, where absentee ballots are canvassed under s. 7.52, to the municipal board of absentee ballot canvassers, the municipal clerk shall seal the ballot envelope in the carrier envelope as provided under sub. (1), and shall enclose the envelope in a package and deliver the package to the election inspectors of the proper ward or election district or, in municipalities where absentee ballots are canvassed under s. 7.52, to the municipal board of absentee ballot canvassers when it convenes under s. 7.52 (1). When the official ballots for the ward or election district have been delivered to the election inspectors before the receipt of an absentee ballot, the clerk shall immediately enclose the envelope containing the absentee ballot in a carrier envelope as provided under sub. (1) and deliver it in person to the proper election officials.

Upon delivery of our absentee ballots in-person to the clerk, the clerk did not secure our absentee ballots or deliver them to the proper election officials. Instead, our absentee ballots were confiscated, and we were required to vote in-person. Our absentee ballots were not delivered to the proper election officials. My wife's ballot was ripped up in front of her, which was rude and looks like violation of WI SS 6.88 (1) and (2).

Election Official Abuse or Violation of Wisconsin State Statute 6.88(3)(b)

[https://docs.legis.wisconsin.gov/document/statutes/6.88\(3\)\(b\)](https://docs.legis.wisconsin.gov/document/statutes/6.88(3)(b))

When the inspectors find that a certification is insufficient, that the applicant is not a qualified elector in the ward or election district, that the ballot envelope is open or has been opened and resealed, that the ballot envelope contains more than one ballot of any one kind or, except in municipalities where absentee ballots are canvassed under s. 7.52, that the certificate of a military or overseas elector who received an absentee ballot by facsimile transmission or electronic mail is missing, or if proof is submitted to the inspectors that an elector voting an absentee ballot has since died, the inspectors shall not count the ballot. The inspectors shall endorse every ballot not counted on the back, "rejected (giving the reason)". The inspectors shall reinsert each rejected ballot into the certificate envelope in which it was delivered and enclose the certificate envelopes and ballots, and securely seal the ballots and envelopes in an envelope marked for rejected absentee ballots. The inspectors shall endorse the envelope, "rejected ballots" with a statement of the ward or election district and date of the election, signed by the chief inspector and one of the inspectors representing each of the 2 major political parties and returned to the municipal clerk in the same manner as official ballots voted at the election.

My wife's absentee ballot was ripped up in front of her, so I doubt it made it into the collection of rejected ballots. I didn't see what happened to my absentee ballot after it was confiscated from me. I doubt it made it in the collection of rejected ballots but if it did, I want to see what the rejection reason was.

I demand Clerk Luedtke searches in the envelope of rejected ballots, finds mine and my wife's ballots that Clerk Luedtke inappropriately and intentionally spoiled, provide me with the reason they were rejected as written on the back of our spoiled ballots, and prove they followed the law of WI SS 6.88(3)(b).

Election Official Abuse or Violation of Wisconsin State Statute 6.85.

<https://docs.legis.wisconsin.gov/document/statutes/6.85>

6.85 Absent elector; definition.

(1) An absent elector is any otherwise qualified elector who for any reason is unable or unwilling to appear at the polling place in his or her ward or election district.

(2) Any otherwise qualified elector who changes residence within this state by moving to a different ward or municipality later than 28 days prior to an election may vote an absentee ballot in the ward or municipality where he or she was qualified to vote before moving.

(3) An elector qualifying under this section may vote by absentee ballot under ss. 6.86 to 6.89.

History: 1971 c. 304 s. 29 (2); 1975 c. 85, 199; 1977 c. 394; 1979 c. 232; 1983 a. 484; 1999 a. 182; 2011 a. 23.

Discussing voter residency and absentee voting. 60 Atty. Gen. 214

Michelle asked me why we were voting absentee if I was able to make it to the poll. I didn't answer because I don't think that is any of their business. Michelle told me in-person on election day that absentee voting is only for people who couldn't make it to the polls. Michelle continues to incorrectly interpret the definition of an absentee voter when I asked for clarification via email between February 21, 2024, and February 23, 2024. Michelle completely ignores the fact that absentee voting is also for people unwilling to appear at the polling place. Honestly after this experience I am unwilling to appear at my

polling place. I maintain that I met the definition of an absentee voter. I was unwilling (not willing, not eager, not ready, not prepared, reluctant, unenthusiastic, hesitant, resistant, etc..) to go to the polls. Just because I appeared at my polling location doesn't mean I was willing to be there.

Election Official Abuse or Violation of Wisconsin State Statute 6.20

<https://docs.legis.wisconsin.gov/document/statutes/6.20>

6.20 Absent electors. Any qualified elector of this state who registers may vote by absentee ballot under ss. 6.84 to 6.89.

Michelle refuses to acknowledge that an absent elector is more than someone who can't make it to the polls. Michelle insists absent voting is only allowed for people that cannot make it to the polls, even after asking for clarification multiple times in email.

Election Official Abuse or Violation of Wisconsin State Statute 12.13(3)(c)

[https://docs.legis.wisconsin.gov/document/statutes/12.13\(3\)\(c\)](https://docs.legis.wisconsin.gov/document/statutes/12.13(3)(c))

(3) Prohibited Acts. No person may:

(c) Willfully or negligently fail to deliver, after having undertaken to do so, official ballots prepared for an election to the proper person, or prevent their delivery within the required time, or destroy or conceal the ballots.

My wife's absentee ballot was destroyed by a poll worker named Jim, he ripped it up in front of her after being rude and condescending. My absentee ballot was confiscated and concealed. We were both informed our absentee ballots would be, in a way concealed, marked as "not returned" although they were received by election officials, destroyed, and/or concealed as being "not returned".

This is what the Brookfield elections website looked like on my phone on February 20. The wards and districts are not labeled.

- 1. Third Tuesday in February (2/18/2025)
- 2. First Tuesday in April (4/1/2025)
- 3. No Fall Elections

ELECTION POLLING PLACES

Voting Hours are from 7:00AM to 8:00PM.

Bring your photo ID.

1

1, 2, 3

Brookfield East High School
3305 Lilly Road

2

4, 5, 6, 22

Brookfield Central High School
16900 Gebhardt Road

3

7, 8, 9

Brookfield Central High School
16900 Gebhardt Road

4

Exhibit 2 provided by the respondent is not what I viewed on my phone on election day.

ELECTIONS

ELECTION DATES

2024 (Regularly Scheduled Elections in Even Numbered Years)

1. Third Tuesday in February (2/20/2024)
2. First Tuesday in April (4/2/2024)
3. Second Tuesday in August (8/13/2024)
4. First Tuesday following the first Monday in November (11/5/2024)

2025 (Regularly Scheduled Elections in Odd Numbered Years)

1. Third Tuesday in February (2/18/2025)
2. First Tuesday in April (4/1/2025)
3. No Fall Elections

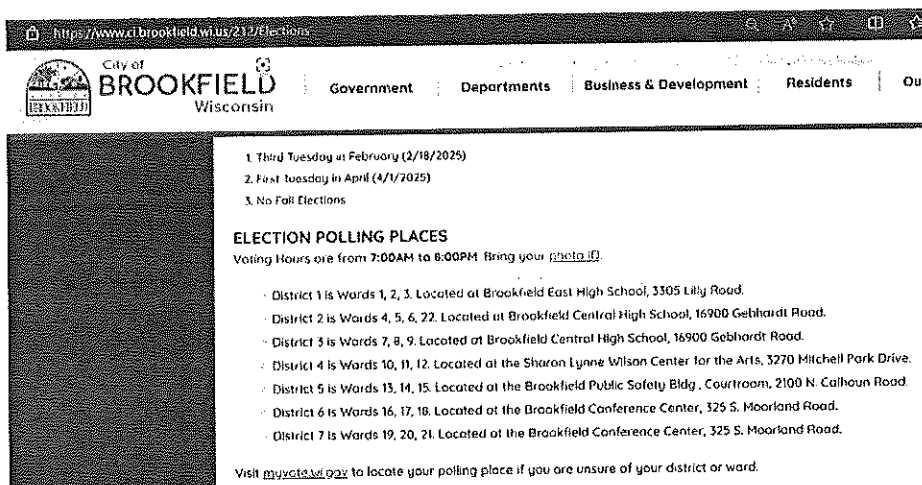
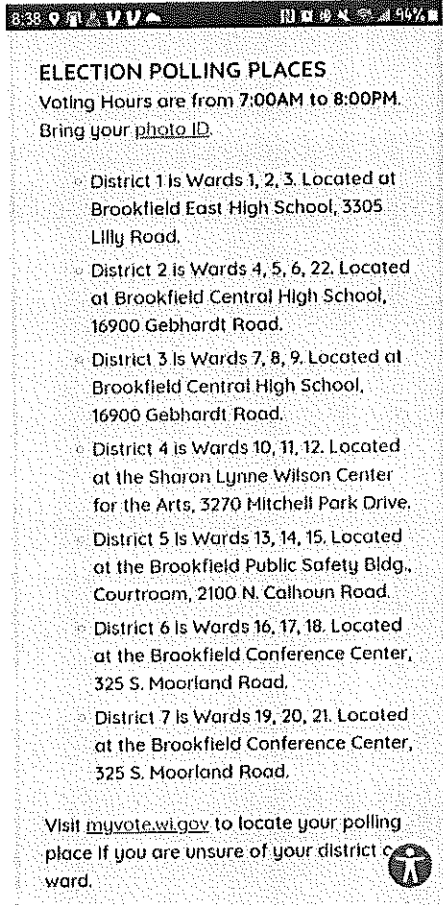
ELECTION POLLING PLACES

Voting Hours are from 7:00AM to 8:00PM. Bring your photo ID.

Alderman District	Wards	Location
1	1, 2, 3	Brookfield East High School 3305 Lilly Road
2	4, 5, 6, 22	Brookfield Central High School 16900 Gebhardt Road

Alderman District	Wards	Location
3	7, 8, 9	Brookfield Central High School 16900 Gebhardt Road
4	10, 11, 12	Sharon Lynne Wilson Center for the Arts 3270 Mitchell Park Drive
5	13, 14, 15	Brookfield Public Safety Bldg., Courtroom 2100 N. Calhoun Road

This is what the Brookfield elections website looks like now on my phone and computer. The districts, wards, and associated polling places are clear now. This change was made after I called the city clerk's office and explained this problem.



I found another error on the Brookfield elections website while reading exhibit 2 of Luedtke's response to my complaint. The website states the official election results are posted after the board of canvass is complete.

- Election Results - Unofficial results from Election night can be found on the Waukesha County Clerk's website. The Official City of Brookfield Election results are posted after the Board of Canvass has been completed and can be found in Election Notices above.

However, Brookfield's board of canvass (central count) ordinance was repealed nearly two years ago, as shown in exhibit 3 of Luedtke's response to my complaint.

ORDINANCE #2791-22 OF THE CITY OF BROOKFIELD, WISCONSIN

Committee: Legislative and Licensing
Committee Date: March 15, 2022
Committee Recommendation: 5-0

Public Hearing: n/a
Council Date: April 5, 2022
Council Action: Adopted 14-0

Repeal Section 2.16.060 of the Brookfield Municipal Code Providing for the Canvassing of Absentee Ballots for all Elections in the City of Brookfield by the Municipal Board of Absentee Ballot Canvassers commonly referred to as Central Count.

I think a Brookfield election official such as Luedtke should be using their election official discretion to review and correct errors such as these on the Brookfield elections website. Not performing this duty is questionable election official discretion.

I demand a stop to this voter suppression.



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: December 27, 2023

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

FROM: Wisconsin Elections Commission

SUBJECT: Commission Approves Revised Uniform Absentee Ballot Instructions

1. Summary. The Wisconsin Elections Commission voted unanimously to approve revised Uniform Absentee Ballot Instructions (“Uniform Instructions”) on December 19, 2023. The approved Uniform Instructions are attached to this memorandum. These revised instructions replace previous editions and are effective immediately.

2. Background. The Commission directed staff to prepare revised Uniform Instructions to ensure that the instructions complied with the latest legal determinations. Specific topics addressed by recent court decisions and Legislative Audit Bureau findings included:

- a) Ballot Return. Interpreting § 6.87(4)(b)1. to mean that only the voter may return their absentee ballot to the office of the municipal clerk. *Richard Teigen v. Wisconsin Elections Commission*, 403 Wis.2d 607 (Wis. 2022).
- b) Ballot Return. Affirming the right of a disabled person to receive assistance returning an absentee ballot. *Timothy Carey v. Wisconsin Elections Commission*, No. 3:22-CV-402-jdp (W.D. Wis. Aug. 31, 2022).
- c) Witness Addresses. A court declined to make any alterations to the Commission’s longstanding guidance that minimum address requirements include street number, street name, and name of municipality. A zip code is not required. *Michael White v. Wisconsin Elections Commission*, 22-CV-1008
- d) Witness Signatures. Clarifying that a witness must provide both a signature and a printed name. Wisconsin Legislative Audit Bureau, Elections Administration (Report 21-19, Oct. 2021)

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

- e) **Correcting Mistakes.** Limiting a voter's ability to spoil a ballot. A court ruled that a clerk may not return or spoil an otherwise complete, undamaged ballot that was properly returned by an elector. *Kormanik v. WEC, 2022CV1395*

The Uniform Instructions were also revised to comply with Commission directives that called for a new design that improved legibility with larger fonts, less text, and clear step-by-step guidance. The design features approved by the Commission were then incorporated in each of the three versions attached to this memorandum.

Additional information about the reasons for revision can be found in Commission materials for June 1, September 7, and December 19, 2023. Material from past Commission meetings is available on the Commission website under "About the WEC" and "Meetings and Minutes," here:

[https://elections.wi.gov/news-events/events/past?audience=All&event_type\[\]=248](https://elections.wi.gov/news-events/events/past?audience=All&event_type[]=248)

3. Changes to the Uniform Instructions. The approved forms should not be modified, except to add the municipal clerk contact information where indicated on the bottom of page two. Should municipalities wish to provide voters with any additional information specific to the municipality, please prepare a separate document instead of modifying the Uniform Instructions.

4. Questions. If you have any questions regarding the Uniform Instructions, please contact the Elections Help Desk at elections@wi.gov or 608-261-2028.

Attachments

- Revised Uniform Instructions
- Revised Uniform Instructions for UOCAVA Voters
- Revised Uniform Instructions for Central Count Jurisdictions



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: February 12, 2024

TO: State of Wisconsin Election Officials

FROM: WEC Staff

SUBJECT: Election Administration and Election Day Manuals Revised February 2024

The Election Day and Election Administration Manuals have been updated to better assist clerks and election workers ahead of the many elections in the 2024 cycle. The revised manuals approved by the Wisconsin Elections Commission at its quarterly meeting Thursday, Feb. 8 – provide updates on election processes, legislative and legal updates, current forms, information about Badger Book usage and its impact on certain election procedures, updated accessible voting best practices and resources, and more. They also include more statutory citations and improvements to some formatting issues so that information is clearly presented.

The updated Election Administration and Election Day manuals also reflect the status of new legislation and various court decisions that have impacted election processes in recent years. They include two new sections titled “Spoiling and Replacement Ballots,” which covers a municipal clerk’s ability send a new absentee ballot to a voter when the returned ballot is spoiled or damaged, and “Voter Correction of Incomplete Absentee Certificate Envelopes,” which covers a clerk’s ability to return absentee ballots to voters when there are defects on the certificate envelopes. The revised manuals include guidance updates or process changes that were discussed in various clerk communications issued over the past few years. The revised manuals now consolidate the various pieces of guidance in one resource.

We understand that many clerks have previous versions of the Election Administration and Election Day manuals. To assist clerks in finding what areas of the manual were updated, WEC staff have published redlined versions of the manuals that show the additions and deletions from previous editions of the manuals. Both documents are attached to this communication. WEC staff also plan on having a webinar in the coming weeks to discuss the changes made in the manuals and offer clerks a time to ask questions about the updated topics.

Both manuals can be printed from the WEC website: <https://elections.wi.gov/clerks/manuals>. Physical manuals can also be ordered for a fee. You can find an order form at <https://elections.wi.gov/wec-form/manuals-webinars-order-form>. If you have any questions, please contact the WEC Help Desk at elections@wi.gov, or 608-261-2028.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

DATE: For the September 24, 2024, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Jim Witecha, Chief Legal Counsel
Wisconsin Elections Commission

SUBJECT: Absentee Ballot Witness Address Litigation Update: Rise, Inc. et al. v. Wisconsin Elections Commission et al. (22-CV-2446)

ATTACHMENTS: **Attachment A:** Amended Declaratory Judgement and Permanent Injunction in Rise, Inc. et al. v. WEC et al.
Attachment B: Draft clerk communication

Attached as “Attachment A” to this memorandum is the September 17, 2024, Amended Declaratory Judgment and Permanent Injunction issued by the Dane County Circuit Court in Rise, Inc. et al. v. Wisconsin Elections Commission et al. (“Rise”). Also included as “Attachment B” is a sample clerk communication providing the necessary updates for Wisconsin’s election officials.

The original Rise judgment and injunction was appealed, and the only change ordered by the Wisconsin Court of Appeals was the use of a “municipal clerk” reasonableness standard for address identification, rather than a “reasonable person in the community” standard. The appeals court determined that the community member standard could be too varied, and the local clerk was the best guidepost for community address identification. The amended judgment and declaration order of the circuit court codifies the appellate court’s order, directs the Commission to “promptly rescind or revise and reissue any Commission guidance documents or other publications that are inconsistent with this Order,” and “to promptly advise all municipal and county election officials of this Order.”

The Commission has already published comprehensive updates regarding the decisions in Rise and League of Women Voters of Wisconsin v. WEC, et al., (2022-CV-002472), two cases relating to absentee ballot witness address requirements. (<https://elections.wi.gov/memo/wec-clerk-communications-relating-absentee-ballot-certificate-witness-addresses>) The Election Day and Election Administration Manuals have also already been updated to include this guidance, including the appellate decision from the Court of Appeals. Slight modifications or invalidation of previous guidance is now necessary, after the Rise court issued the amended judgment and injunction.

As such, Exhibit B was drafted to comply with the amended judgment and declaration and meet the Commission’s obligations under Wis. Stat. § 5.05(5t).

Recommended Motion:

The Commission hereby approves for publication, distribution, and use, the clerk communication titled “Absentee Ballot Witness Address Litigation Update: Rise, Inc. et al. v. Wisconsin Elections Commission et al. (22-CV-2446),” in accordance with the discussion or edits provided by the Commission at its September 24,

2024, meeting. The cross-referenced guidance and communications in Attachment B shall be updated, invalidated, or otherwise marked as noted in that document.

For the reasons given in the Court's January 2, 2024, Decision and Order, Dkt. 223, and as directed by the Court of Appeals' mandate in its July 11, 2024, decision, the Court hereby:

1. **DECLARES** that, with respect to a witness's address on an absentee ballot certificate, the term "address" in Wis. Stat. § 6.87(2) and (6d) means "a place where the witness may be communicated with";
2. **DECLARES** that Wis. Stat. § 6.87's requirement that the witness's address be included on the absentee ballot certificate does not require that any particular components or information be included, but only that the face of the certificate contains sufficient information to enable a municipal clerk to reasonably identify a place where the witness may be communicated with;
3. **DECLARES** that an absentee ballot certificate is not "improperly completed" under Wis. Stat. § 6.87(9), based on a witness's address, so long as the face of the certificate contains sufficient information to enable a municipal clerk to reasonably identify a place where the witness may be communicated with;
4. **DECLARES** that Wis. Stat. § 6.87 does not authorize the rejection of, return for cure of, or refusal to count an absentee ballot on based on a witness's address, if the face of the certificate contains sufficient information to enable a municipal clerk to reasonably identify a place where the witness may be communicated with;
5. **DECLARES** that the Wisconsin Elections Commission's September 14, 2022, Memorandum entitled "Temporary Injunction on WEC Guidance re Missing Absentee Witness Address," Dkt. 38 Ex. 8, is invalid and contrary to law to the extent that it adopts a different definition of "address" for purposes of the witness address requirement than the definition adopted in this Order;

6. **ORDERS** Defendant the Wisconsin Elections Commission to promptly rescind or revise and reissue any Commission guidance documents or other publications that are inconsistent with this Order;
7. **ORDERS** Defendant the Wisconsin Elections Commission to promptly advise all municipal and county election officials of this Order;
8. **ENJOINS** Defendant the Wisconsin Elections Commission from promulgating rules, guidance documents, or other materials inconsistent with this Order, or from otherwise taking any action inconsistent with this Order; and
9. **ENJOINS** Defendants Maribeth Witzel-Behl, Tara McMenamin, and Celestine Jeffreys from rejecting or returning for cure any absentee ballot based on a witness's address, if the face of the certificate contains sufficient information to enable a municipal clerk to reasonably identify a place where the witness may be communicated with.
10. Provided, however, that nothing in this Order shall require Defendant the Wisconsin Elections Commission to modify the printed text of the absentee ballot certificate as the Wisconsin Elections Commission approved it at its December 19, 2023, meeting, so long as Defendant the Wisconsin Elections Commission advises municipal and county election officials of this Court's Order and of their obligation not to reject, return for cure, or refuse to count any absentee ballot based on a witness's address, if the face of the certificate contains sufficient information to enable a municipal clerk to reasonably identify a place where the witness may be communicated with.

SO ORDERED this 16th day of September, 2024

This order is final for purposes of appeal.

DATE: September 24, 2024

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

FROM: Wisconsin Elections Commission Staff

SUBJECT: Absentee Ballot Witness Address Litigation Update: Rise, Inc. et al. v. Wisconsin Elections Commission et al. (22-CV-2446)

The Dane County Circuit Court issued an Amended Declaratory Judgment and Permanent Injunction in the Rise, Inc. et al. v. Wisconsin Elections Commission et al. case (“Rise”) on September 17, 2024. The amended decision is attached to this communication for your convenience.

The original Rise judgment and injunction was appealed, and the only change ordered by the Wisconsin Court of Appeals was the use of a “municipal clerk” reasonableness standard for address identification, rather than a “reasonable person in the community” standard. The appeals court determined that the community member standard could be too varied, and the local clerk was the best guidepost for community address identification. The amended judgment and declaration order of the circuit court codifies the appellate court’s order, directs the Commission to “promptly rescind or revise and reissue any Commission guidance documents or other publications that are inconsistent with this Order,” and “to promptly advise all municipal and county election officials of this Order.” Clerks should now apply the municipal clerk standard when examining whether a witness address is sufficient to “enable a municipal clerk to reasonably identify a place where the witness may be communicated with.”

When the Commission opts or is directed to rescind outdated guidance, it has occasionally removed that document from the website while retaining the public record separately. However, the Commission will now maintain an historical record in its original web location, while marking that webpage with “CONTENT NOTICE: This is older content that may possibly be out of date at this time.” For ease of use, the Commission will also place a link to the current guidance or judicial decision on that out-of-date webpage, so users can quickly navigate to updated information.

The list included on page two of this communication includes outdated and/or rescinded guidance, or guidance requiring additional clarification, for your reference.

Please contact the WEC Help Desk at 608-261-2028 or elections@wi.gov if you have any additional questions.

List of Outdated and/or Rescinded Guidance, or Guidance Requiring Further Clarification, Pertaining to Absentee Witness Addresses

- WEC Clerk Communications Relating to Absentee Ballot Certificate Witness Addresses, Feb. 9, 2024, <https://elections.wi.gov/memo/wec-clerk-communications-relating-absentee-ballot-certificate-witness-addresses>
- AMENDED February 8, 2024: Permanent Injunction on WEC Guidance re: Missing Absentee Witness Address in White et al. v. Wisconsin Elections Commission (2022-CV-001008), Feb. 8, 2024, <https://elections.wi.gov/memo/amended-february-8-2024-permanent-injunction-wec-guidance-re-missing-absentee-witness-address>
- Action Regarding Corrections On Absentee Ballot Envelopes, Sept. 12, 2022, <https://elections.wi.gov/news/action-regarding-corrections-absentee-ballot-envelopes>
- What did the WEC tell clerks about fixing problems with witness addresses on absentee ballot certificates?, Dec. 15, 2020, <https://elections.wi.gov/resources/quick-reference-topics/what-did-wec-tell-clerks-about-fixing-problems-witness-addresses>