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ERICK G. KAARDAL

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November 3, 2020

**VIA US MAIL
AND FEDERAL EXPRESS MAIL**

State of Wisconsin
Wisconsin Elections Commission
212 Washington Avenue, Third Floor
P.O. Box 7984
Madison, WI 53737-7984

Stephanie D. Findley – Chair
Election Commission - City Hall
200 E. Wells Street, Suite 501
Milwaukee, WI 53202

Carmen Cabrera
Election Commission - City Hall
200 E. Wells Street, Suite 501
Milwaukee, WI 53202

Jess Ripp
Election Commission - City Hall
200 E. Wells Street, Suite 501
Milwaukee, WI 53202

Re: *Jonathan Hunt v. Stephanie Findley, Carmen Cabrera, & Jess Ripp, the City of Milwaukee Elections Commission.*

Dear Sir or Madam:

Enclosed for filing in the above referenced Complaint is Attorney for Complainant Erick Kaardal's Declaration and referenced exhibits. By copy of this correspondence we are serving all Respondents the same.

Very truly yours,

/s/Erick G. Kaardal

EGK/jmj/encls.

cc: Counsel of Record (via ECF)

**State of Wisconsin
Wisconsin Elections Commission
212 Washington Avenue, Third Floor
P.O. Box 7984
Madison WI 53707-7984**

In the Matter of:
City of Milwaukee
Non-Resident Absentee
Ballots

Case No.

Jonathan Hunt
Wisconsin Voters Alliance
1511 N. Water Street, Unit 414
Milwaukee WI 53202

v.

Declaration of Erick G. Kaardal

Stephanie D. Findley
Chair
Elections Commission
City of Milwaukee
City Hall
200 E. Wells Street
Room 501
Milwaukee, WI 53202;

Carmen Cabrera
Elections Commission
City of Milwaukee
City Hall
200 E. Wells Street
Room 501
Milwaukee, WI 53202;

Jess Ripp
Elections Commission
City of Milwaukee
City Hall
200 E. Wells Street
Room 501
Milwaukee, WI 53202;

Respondents.

I, Erick G. Kaardal, being duly sworn, declares as follows:

1. I have personal knowledge of the following.
2. I am the attorney for Plaintiff Jonathan Hunt.
3. Attached as Exhibit A is a copy of the Verified Complaint submitted to the

Wisconsin Election Commission on November 2, 2020.

4. Attached as Exhibit B is a copy of a statement by Kewaunee County Clerk Jamie Annoye regarding whether the county processes non-resident ballots.

5. Attached as Exhibit C is a copy of a statement by Kewaunee County Clerk Jamie Annoye regarding the availability of unattended absentee ballot boxes.

6. Attached as Exhibit D is a copy of a statement by Kewaunee County Clerk Jamie Annoye regarding county practices for submitted non-resident ballots.

7. Attached as Exhibit E is a copy of an October 29, 2020 article from the Wisconsin Center for Investigative Journalism titled, "Ballot drop boxes offer 'a safe place' for voting in Wisconsin's election."

I declare under penalty of perjury under the laws of the United States of America such as 28 U.S.C. § 1746 that the forgoing is true and correct.

Dated: November 3, 2020.

/s/Erick G. Kaardal
Erick G. Kaardal

State of Minnesota
County of Hennepin.

State of Wisconsin
Wisconsin Elections Commission
212 Washington Avenue, Third Floor
P.O. Box 7984
Madison WI 53707-7984

In the Matter of:
City of Milwaukee
Non-Resident Absentee
Ballots

Case No.

Jonathan Hunt
Wisconsin Voters Alliance
1511 N. Water Street, Unit 414
Milwaukee WI 53202

v.

Verified Complaint

Stephanie D. Findley
Chair
Elections Commission
City of Milwaukee
City Hall
200 E. Wells Street
Room 501
Milwaukee, WI 53202;

Expedited Proceeding Requested

Carmen Cabrera
Elections Commission
City of Milwaukee
City Hall
200 E. Wells Street
Room 501
Milwaukee, WI 53202;

Jess Ripp
Elections Commission
City of Milwaukee
City Hall
200 E. Wells Street
Room 501
Milwaukee, WI 53202;

Respondents.

This complaint is under Wisconsin Statutes § 5.06.

I, Jonathan Hunt, on behalf of myself and the Wisconsin Voters Alliance, allege the following for their complaint against the City of Milwaukee.

1. This complaint is made pursuant to Wisconsin Statutes § 5.06(1) and other laws applicable to elections and election campaigns.
2. I am a resident, elector and voter in the City of Milwaukee.
3. The Complainants seek an immediate order under § 5.06(6) to refrain and enjoin the Respondent Milwaukee election officials from inconsistently transferring absentee ballots of out-of-municipality residents received in Milwaukee's drop boxes to other election jurisdictions.
4. Complainants respectfully request the Wisconsin Elections Commission to issue an order refraining and enjoining election officials of Milwaukee from inconsistently transferring absentee ballots to other municipalities because under Wisconsin Statutes § 6.97 (2) and § 7.52 (3) municipalities are to reject these absentee ballots of non-residents and have no legal authority to transfer them to other municipalities unless it is done consistently.
5. Wisconsin law requires Milwaukee election officials to reject absentee ballots of out-of-municipality residents unless there is a consistent policy of transferring them to the municipality of the non-resident.
6. Wisconsin Statutes § 7.52 (3) as to "canvassing of absentee ballots" states that a municipality's election officials must reject an absentee ballot received from a resident outside the municipality:

- (3) (a) ... If the poll list indicates that proof of residence is required and no proof of residence is enclosed or the name or address on the document that is provided is not the same as the name and address shown on the poll list, the board of absentee ballot canvassers shall proceed as provided under s. 6.97 (2). ...
- (b) When the board of absentee ballot canvassers finds 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 that the certificate of an elector who received an absentee ballot by facsimile transmission or electronic mail is missing, or if proof is submitted to the board of absentee ballot canvassers that an elector voting an absentee ballot has since died, the board of absentee ballot canvassers shall not count the ballot. Each member of the board of absentee ballot canvassers shall endorse every ballot not counted on the back as "rejected (giving the reason)." The board of absentee ballot canvassers 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 board of absentee ballot canvassers shall endorse the envelope as "rejected ballots," with a statement of the ward or election district and date of the election, and each member of the board of absentee ballot canvassers shall sign the statement. The board of absentee ballot canvassers shall then return the envelope containing the ballots to the municipal clerk.

7. Wisconsin Statutes § 6.97 (2) also states that a municipality's election officials must reject an absentee ballot when there is no proof of residence because the absentee voter lives outside the municipality:

(2) Whenever any individual who votes by absentee ballot is required to provide proof of residence in order to be permitted to vote and does not provide the required proof of residence under s. 6.34, the inspectors shall treat the ballot as a provisional ballot under this section. Upon removing the ballot from the envelope, the inspectors shall write on the back of the ballot the serial number of the individual corresponding to the number kept at the election on the poll list or other list maintained under s. 6.79 and the notation "s. 6.97". The inspectors shall indicate on the list the fact that the individual is required to provide proof of residence but did not do so. The inspectors shall promptly notify the municipal clerk or executive director of the municipal board of election commissioners of the name, address, and serial number of the individual. The inspectors shall then place the ballot inside an envelope on which the name and serial number of the elector is entered and shall place the envelope in a separate carrier envelope.

8. Nothing in Wisconsin law allows municipal election officials to deliver absentee ballots to different election jurisdictions instead of rejecting them.

9. If municipal election officials were to do so, they would have to have a consistent policy statewide.

10. Contrary to Wisconsin law, Milwaukee election officials have adopted an inconsistent policy violating Wisconsin law by delivering absentee ballots to other municipalities but not to others instead of rejecting them:

Milwaukee officials process ballots every day that were incorrectly dropped off by residents of surrounding suburbs, said Claire Woodall-Vogg, executive director of the Milwaukee Election Commission. Workers have immediately mailed ballots to the correct municipality, but to avoid delays in the days before the election, the commission is asking other municipalities to send runners to pick up the ballots, Woodall-Vogg said.

<https://www.channel3000.com/ballot-drop-boxes-offer-a-safe-place-for-voting-in-wisconsins-election/> (last visited Nov. 1, 2020).

11. A copy of the online article is attached as Exhibit A.

12. Since Wisconsin law does not legally authorize a municipality's election officials to transfer a voter's absentee ballot to another municipality, Milwaukee's policy of inconsistently delivering absentee ballots to other municipalities is legally unauthorized under Wisconsin law.

Request for expedited proceeding

13. The Complainants, under Wisconsin EL § 20.06(3) request an expedited proceeding due to the emergency threat to the integrity of the pending November 3 election.

Prayer for relief

WHEREFORE, Complainants respectfully request the Wisconsin Elections Commission to issue an order refraining and enjoining election officials of Milwaukee from inconsistently delivering absentee ballots to other municipalities because under Wisconsin Statutes § 6.97 (2) and § 7.52 (3) municipalities are to reject these absentee ballots of non-residents and have no legal authority to transfer them to other municipalities unless it is done under a consistent statewide policy.

Dated: November 2, 2020


Jonathan Hunt

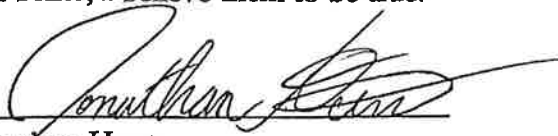
Dated: November 1, 2020

/s/ Erick G. Kaardal
Electronically signed by Erick G. Kaardal
Erick G. Kaardal, No. 1035141
Gregory M. Erickson, No. 1050298
Mohrman, Kaardal & Erickson, P.A.
Counsel for Thomas More Society
150 South Fifth Street, Suite 3100
Minneapolis, MN 55402
Telephone: (612) 341-1074
Facsimile: (612) 341-1076
Email: kaardal@mklaw.com
Email: erickson@mklaw.com
Attorneys for the Complainants

VERIFICATION

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


Dated: November 2, 2020

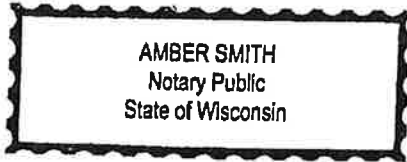

Jonathan Hunt


STATE OF WISCONSIN)
)ss.
COUNTY OF MILWAUKEE)

Signed and sworn before me this November 2, 2020, by Jonathan Hunt.

(Seal, if any)


Signature of Notarial Officer




Title (and Rank)

My Commission Expires
December 27, 2021

My Commission expires: 12-27-2021

From: **Jamie Annoye** <annoye.jamie@kewauneeeco.org>
Date: Mon, Nov 2, 2020 at 11:37 AM
Subject: Kewaunee County Drop Box Locations
To: RHH <ronheuer@gmail.com>

Good morning Ron,

Kewaunee County does not have any unattended drop box locations.

Jamie Annoye

From: **Jamie Annoye** <annoye.jamie@kewauneeeco.org>
Date: Mon, Nov 2, 2020, 3:11 PM
Subject: returning absentee ballots
To: RHH <ronheuer@gmail.com>

Hi Ron,

You had asked if an absentee voter can return their ballot to any dropbox, even another county.....the answer to that is no, they must return their ballots to the municipal clerk in the township & county which they reside.

You had also asked if you can return a ballot to the county clerk...the answer to this question is not, again, they must return their ballots to the municipal clerk in the township & county which they reside.

Hope this helps!

Jamie Annoye

From: **Jamie Annoye** <annoye.jamie@kewauneeeco.org>
Date: Mon, Nov 2, 2020 at 4:31 PM
Subject: Re: Disposition of a non-resident ballot
To: RHH <ronheuer@gmail.com>

Jamie, can you answer this question?

If you had in your possession, a non-resident ballot, how would you handle it?

Hi Ron,

The ballot would be rejected at the place it was received at. I would think that clerk might try and contact the municipal clerk where the ballot should have been returned, but it would be pretty hard to find a clerk that would have the time on election day to run and pick it up.

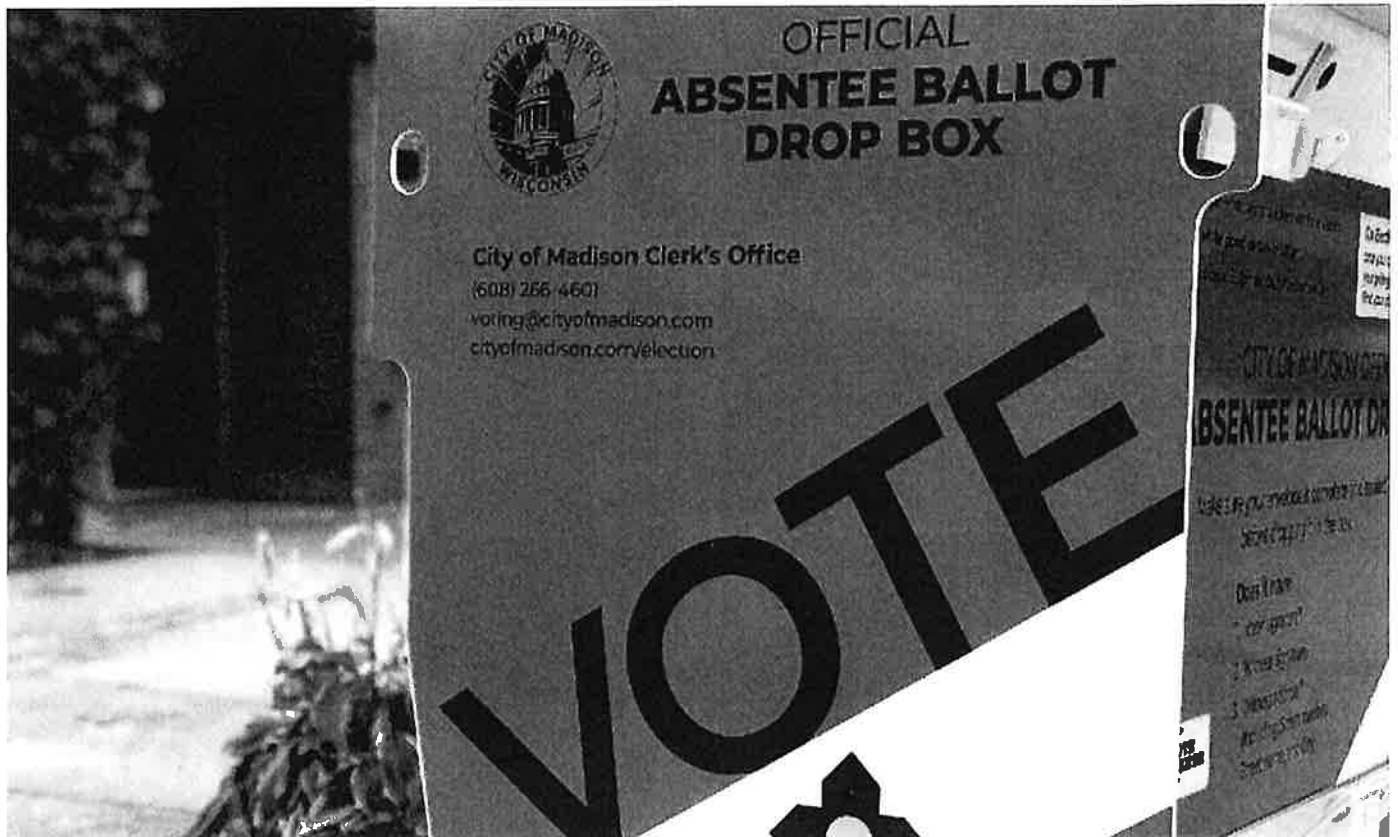
Jamie

ELECTIONS

Ballot drop boxes offer 'a safe place' for voting in Wisconsin's election

Among the changes to help make voting safer during the COVID-19 pandemic: absentee ballot drop boxes installed by local clerks around the state

Posted: October 29, 2020 10:28 PM
by Wisconsin Center for Investigative Journalism



An absentee ballot drop box is shown on Williamson Street in Madison, Wis. on Oct. 17,

2020. Madison is among hundreds of Wisconsin communities that have installed drop boxes to ensure absentee ballots arrive on time for Tuesday's election. Jim Malewitz / Wisconsin Watch

By Nora Eckert

Wisconsin Watch

This article is made possible through Votebeat, a nonpartisan reporting project covering local election integrity and voting access.

When Amanda Vincent and her family embarked on their routine Friday night grocery store and Chipotle run in late September, they had a special item on their list: a trip to the absentee ballot drop box in Allouez, Wisconsin.

In the past, Vincent usually voted in person and took her daughters along. But she and her husband were worried about exposing their 4-year-old and newborn baby to coronavirus. After considering sending the ballot by mail, they felt even more secure placing it directly in the designated box. Plus, the family outing seemed the best way to mimic the excitement of Election Day.

ADVERTISING

"In the past, we've always gone with our daughters and made a big deal of it to talk about why voting is important and how you can have an impact on your community and your nation," Vincent said. With that option off the table, the drop box trip felt "a little more climactic," she said with a laugh.

The drop box in the Green Bay suburb where Vincent deposited her ballot is one of more than 500 in the state, according to the Wisconsin Elections Commission. Before the pandemic, the commission did not track drop box locations, but spokesman Reid Magney said there were very few in 2016.

As of Thursday, 1.9 million ballots had been sent and just over 254,000 had yet to be returned. Voters also can see when their ballot has safely arrived at its destination using the myvote.wi.gov website. To find out whether your municipality has an absentee drop box, search this tool developed by Wisconsin Watch.



Amanda Vincent and her family dropped off their absentee ballots at the drop box in Allouez, Wis., during a Friday night grocery run in late September. They didn't want to risk infecting their newborn and 4-year-old daughter with COVID-19 and felt more comfortable depositing their ballot in a drop box instead of sending it via mail. Courtesy of Amanda Vincent

Ballots must arrive by Tuesday

The Elections Commission lists several reasons why voters might choose to vote using a drop box, including, "lack of trust in the postal process, fear that their ballot could be tampered with, or concern that their information will be exposed." This year, another factor is fear of exposure to COVID-19 at a crowded polling place as Wisconsin experiences a record-breaking upsurge in cases and deaths.

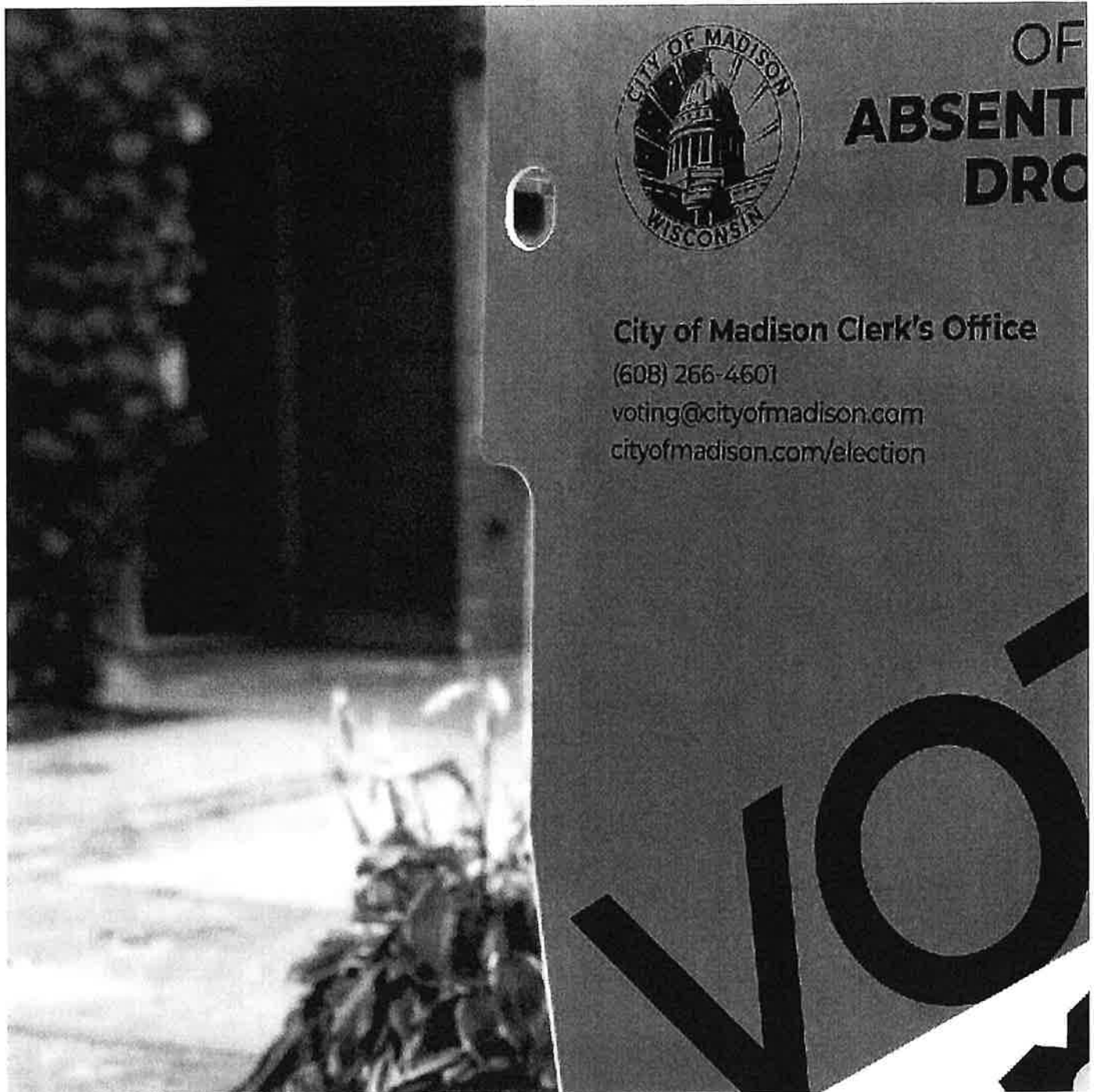
With less than a week before the election, officials are recommending that voters use drop boxes to deposit their absentee ballots, rather than the Postal Service. The U.S. Supreme Court ruled Monday that Wisconsin ballots received after Nov. 3 would not be counted in the general election, unlike in the April 7 election, when ballots could be counted if they were postmarked by Election Day.

Voters can submit ballots at most drop box locations up until Election Day, though some locations have earlier deadlines or time restrictions. Smaller communities with drop boxes right outside of the municipal building may accept ballots later into the day, whereas larger communities with more ballots to count may close drop boxes earlier, Magney said.

If this cutoff has passed and the drop box is sealed, a notice should be posted somewhere on the box with instructions on where to deposit the ballot in person, Magney added.

Some voters fear the possibility of the receptacles being compromised, jeopardizing their votes. On Sunday, a drop box in Boston was set on fire, destroying some ballots inside.

Drop boxes have become a flashpoint in some states, with Republicans in Texas and Pennsylvania suing to limit their use, alleging the potential for fraud. A Texas decision upheld Gov. Greg Abbott's limit of one drop box per county. A legal challenge by President Donald Trump's campaign to the use of drop boxes in Pennsylvania was dismissed after a judge found the campaign's argument about fraud "speculative."



An absentee ballot drop box is shown on Williamson Street in Madison, Wis. on Oct. 17, 2020. Madison is among hundreds of Wisconsin communities that have installed drop boxes to ensure absentee ballots arrive on time for Tuesday's election.
Jim Malewitz / Wisconsin Watch

There are no laws regulating the security of drop boxes in Wisconsin, but the state Elections Commission follows guidance from the U.S. Cybersecurity and Infrastructure Security Agency.

The guidance states that drop boxes should be constantly monitored by a person or a video camera and placed in a well-



Madison resident River Horn, 6, drops the absentee ballot belonging to her father, Brad Horn, into a ballot drop box on Williamson Street in Madison, Wis., on Oct. 24, 2020. Madison is among hundreds of Wisconsin communities that have installed drop boxes to ensure absentee ballots arrive on time for Tuesday's election. Coburn Dukehart / Wisconsin Watch

lit area. The boxes should be locked and only accessible to an election official or designated drop box team.

Jennifer O'Hear, executive director of Common Ground, a nonpartisan education and advocacy group working primarily in Milwaukee, said although she's heard concerns about drop b

ox security, voters "overwhelmingly" prefer to deposit their ballots in a drop box rather than mail them in or vote in person.

O'Hear is working to maintain voters' trust in drop boxes by educating them about the safeguards around them.

"We try to reassure people that it is a very safe place, and that somebody is coming and picking up ballots from them every single day. And usually people seem reassured by that," she said. Milwaukee has 15 drop box locations, including 13 public libraries, according to the Milwaukee Election Commission.

Don't put ballots in the wrong boxes

Even if voters safely cast their ballots in a drop box, it might not be the right one. Cities such as Milwaukee and Wausau have run into problems with voters from other municipalities dropping off their ballots when they come into town. Voters must put their ballots in a drop box located in the municipality where they are registered to vote.

This creates a bit more work for the clerk, and could affect voters if it happens too close to Tuesday's election.

Milwaukee officials process ballots every day that were incorrectly dropped off by residents of surrounding suburbs, said Claire Woodall-Vogg, executive director of the Milwaukee Election Commission. Workers have immediately mailed ballots to the correct municipality, but to avoid delays in the days before the election, the commission is asking other municipalities to send runners to pick up the ballots, Woodall-Vogg said.

Wausau in central Wisconsin also received ballots from residents of other communities. When the city got coronavirus relief funding from the federal government, one of Mayor Katie Rosenberg's first actions was adding a shiny, blue behemoth outside of City Hall: a drop box that can hold up to 3,000 absentee ballots.

Some of those ballots came from people who didn't live in the city, but dropped off their ballots while driving through Wausau.

"I think as nervous as everyone is about the Post Office, they feel like, 'Oh, it's a municipality, we're fine. It's dropped off,'" Rosenberg said.

For those who live in Wausau, that drop box made voting a lot safer and easier. Lila Hobson was too wary of using the Postal Service, which has experienced delays and missing ballots in previous elections. She considered dropping it off at City Hall, as she had in the April election. Even that was worrisome, as she and her husband have conditions that make them especially vulnerable to coronavirus.

"It's just not worth the exposure risk to my family," Hobson said. "I just knew that there was a safe alternative."

Drop boxes can be housed inside buildings, outside under video surveillance or under the supervision of a team of workers, sometimes in a drive-through setting. Hobson participated in drive-through voting on Friday, when she and her husband submitted their ballots under the supervision of masked workers who verified they were filled out correctly and placed them in the drop box as she watched.

Seeing her ballot go straight into the box was a great relief for Hobson.

"We didn't want to leave room for error," she said.



Lila and Bartholomew Hobson voted absentee at Wausau, Wis., City Hall in April's primary. For the November election, they felt safer using a drive-through absentee ballot drop box. Lila Hobson says a poll worker verified they correctly filled out their ballots, and they watched as the ballots were placed in the drop box.
Courtesy of Lila Hobson

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A Flourish data visualization

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