



Election Commission

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December 7, 2020

Mr. James Witecha, Staff Attorney
Wisconsin Elections Commission

Sent via Email to james.witecha@wisconsin.gov

RE: Complaint Filed by David J. Bolter

This letter is in response to the November 30, 2020 (received by the City of Milwaukee Election Commission on December 3, 2020), complaint filed by David J. Bolter alleging that the City of Milwaukee Election Commission knowingly violated elections law by allowing ballots to be tampered with when deadlines were manually changed, witness information was added/modified, and observers were not given reasonable access to ballots at Central Count.

A. Mr. Bolter asserts that I declined his “challenge” of envelopes where my staff, prior to mailing the envelope and ballot to the voter, had crossed out “10” days and written “28” days to reflect current law. First, these ballots were marked out according to Wisconsin Election Commission guidance issued on July 29th which reads:

Absentee Ballot Certificate Envelope: State law requires the certification language on the absentee ballot return envelope to include the residency requirement in the voter affirmation section. Wis. Stat. § 6.87(2). Existing stock of return envelopes that list the 10-day residency reference may still be used, but the clerk should manually change the reference to the 28-day residency requirement, and initial this change, before issuing the return envelope to an absentee voter.

Additionally, the process for challenging a ballot focuses on the voter’s qualifications, not on the formatting of the ballot or of the accompanying envelope. Any challenger must show cause to believe that the voter is not a “qualified elector.” See Wis. Stat. §§ 6.02, 6.03. As a result, I correctly issued guidance to the room that challenges based solely on the marking out of “10” and writing of “28” days on the envelope would not be heard based solely on these grounds.

B. Per a phone call with Wisconsin Election Commission (WEC) Administrator Meagan Wolfe on Election Day, WEC staff instructed that envelopes that had an assistant signature and address but not a witness signature on the correct line should be counted. I instructed the room accordingly. Mr. Bolter asserts that many of these envelopes had an assistant signature in red ink. The majority, if not all, of envelopes were signed in black ink in the incorrect spot by an in-person absentee voting worker. The Milwaukee County recount did not reveal any ballots with assistant signatures in a different color ink to my knowledge.



- C. The City of Milwaukee Election Commission staff operate under a vision statement that “every eligible City of Milwaukee voter who wishes to participate in our democracy is able to successfully vote.” Because of this commitment, we continued to contact voters whose ballots were to be rejected on Election Day if we had phone numbers on file for those voters, giving them or their witness an opportunity to come in by 8:00pm and have their envelope corrected and counted. As a result, several envelopes lacking a witness signature were likely removed from Mr. Bolter’s table so that phone calls could be placed.
- D. The November 3, 2020 General Election took place in the midst of global pandemic. In Wisconsin, we have experienced a surge that has garnered national attention. As a result, Central Count was set-up with worker and observer safety in mind when figuring out how to accommodate over 500 people safely. We limited observers to 60 at a time on Election Day to ensure that we did not overcrowd the room and create an unsafe environment. Each political party was allotted 15 spaces, unaffiliated or independent observers were allotted 15 spaces, and media were allotted the remaining 15 spaces.

We placed workers into 12 pods in order to limit their movement through the room and limit their interaction. These pods were set up around tabulating machines to ensure that wards were processed on the correct machine; machines had to be laid out in the room according to electricity availability. Observers were asked to remain behind orange cones, which were spaced throughout the room. Observers had access to every single area of the room. In the interior areas of pods that did not allow for freedom of movement due to the number of workers and tables in the area, we accommodated observers by placing them at stationary chairs within 6-8 feet of tables. As with any polling place, there is not an obligation to allow an observer freedom of movement, although we did allow free movement in approximately 80% of the room.

Per the Wisconsin Observer “Rules At A Glance”:

Observers may ask the chief inspector or designee to view other documents, such as the poll list, that are available when doing so will not delay or disrupt the process, but this may not be possible when polls are busy, and they may not view confidential information. The chief inspector or designee has sole discretion to determine whether such documents may be viewed or photographed

The statute related to observers reads, 7.41(2): “The chief inspector may restrict the location of any individual exercising the right under sub. (1) to certain areas within a polling place. The chief inspector shall clearly designate such an area as an observation area. Designated observation areas shall be so positioned to permit any authorized individual to readily observe all public aspects of the voting process.”

These measures of observer access were both met, despite pandemic conditions. To assert that observers had access to only 20% of the tables has been disproven by the plethora of media images and video footage from Central Count:

Photo credit to Jeremy Jannene:

https://www.amazon.com/photos/shared/GbUBPKYIRBa3w_78orE09w.3Aez7S0FQ1VNX0ioKDKPqV/gallery/7I_IZTkkT-u9s3ObtGTXaw

Photo credit to Lee Matz:

<https://www.facebook.com/media/set/?set=a.1564711320396895&type=3>

Video Credit to Milwaukee Journal Sentinel:

<https://www.jsonline.com/videos/communities/lake-country/news/2020/11/03/inside-central-count-milwaukee/6147356002/>

In this particular photo by Jeremy Jannene of Urban Milwaukee, Mr. Bolter is in the black square on the right-hand side of the frame. His table was able to be accessed within 6 feet to his left (to the right on the photo), exactly in the same way that the observers in the left of this photo are shown observing from the aisle.



- E. Mr. Bolter states that he saw several dozen ballots with only the Presidential contest completed, as well as some that were overvoted. He is correct that the Election Commission teaches and continued to instruct on Election Day that staff at tables should not be looking at how voters completed the ballots. At Central Count, staff are announcing voters' names and recording voter numbers on ballots. In order to preserve a voters' right to a secret ballot, we instruct that the table pairs should not be looking at how the person voted. Instead, the tabulator machine will kick out anything problematic such as an overvote. Tabulators only

see a voter number, not a voter name, so the vote remains anonymous. Tabulators work in pairs to review the ballots to see if intent is clear; they then give any ballots that need to be reconstructed according to voter intent to a pair of reconstructionist.

- F. Mr. Bolter's assertion that around 12:30am on November 4th it was announced that "a huge truckload of ballots were going to be delivered" is outlandish and not factual. Central Count was livestreamed and media were present at all times for additional transparency. No announcement was made regarding truckloads of ballots. Our last delivery of ballots was made by 13 separate teams of ballot runners shortly before 8:00pm. These teams completed chain of custody logs for each transport between a drop box and Central Count, documenting box seal numbers and the seal numbers put on the bags to transport the ballots.


Sincerely,

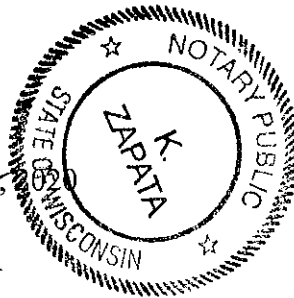


Claire Woodall-Vogg
Executive Director

STATE OF WISCONSIN
County of Milwaukee

Sworn to before me this 7 day of December, 2020


Notary Signature



My commission expires 6-9-2024, or is permanent