

FILED
07-12-2022
Clerk of Circuit Court
Waukesha County
2022CV001008

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

MICHAEL WHITE,
4650 Lake Club Circle
Oconomowoc, WI 53066,

EVA WHITE,
4650 Lake Club Circle
Oconomowoc, WI 53066,

EDWARD WINIECKE,
1134 Majestic View Lane,
Oconomowoc, WI 53066,

Case No.: 22-CV-_____

Case Code No.: 30701

and

REPUBLICAN PARTY OF
WAUKESHA COUNTY,
1701 Pearl Street Suite # 5
Waukesha, WI 53186,

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION,
201 West Washington Ave., Second Floor
Madison, WI 53707

Defendant.

SUMMONS

THE STATE OF WISCONSIN to each party named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written answer, as that term is used in Wis. Stat. Ch. 802, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the Statutes. The answer must be sent or delivered to the Court, whose address is Waukesha County Circuit Court, 515 West Moreland Boulevard, Waukesha, Wisconsin 53188 and to the Plaintiffs' attorneys, the Law Firm of Conway, Olejniczak & Jerry, S.C., 231 S. Adams Street, Green Bay, Wisconsin 54301. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 12th day of July, 2022.

LAW FIRM OF CONWAY, OLEJNICZAK & JERRY, S.C.
Attorneys for Plaintiffs.

By: Electronically signed by Kurt A. Goehre

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Madison, WI 53707

Defendant.

COMPLAINT

NOW COME the above-named Plaintiffs, Michael White, Eva White, Edward Winiecke, and the Republican Party of Waukesha County, by their attorneys, the Law Firm of Conway, Olejniczak & Jerry, S.C., who complain and allege against the above-named Defendant as follows:

NATURE OF THIS ACTION

1. This is an action against the Wisconsin Elections Commission (“WEC”) seeking a declaratory judgment regarding the proper construction of the Wisconsin Statutes that set forth the legal methods for the correction of the witness certification to an absentee ballot cast by a voter, including Wis. Stat. §§ 6.84, 6.87(2), 6.87(4)(b)1, 6.87(6d), and 6.87(9).

PARTIES

2. The Plaintiff, Michael White, is an adult individual and citizen of the State of Wisconsin. Michael White is a registered voter and resides in Waukesha County and has a mailing address of 4650 Lake Club Circle, Oconomowoc, Wisconsin 53066. Michael White is a registered voter who has voted via absentee ballot in prior elections in Waukesha County and intends to vote by absentee ballot in the upcoming elections in Waukesha County.

3. The Plaintiff, Eva White, is an adult individual and citizen of the State of Wisconsin. Eva White resides in Waukesha County and has a mailing address of 4650 Lake Club Circle, Oconomowoc, Wisconsin 53066. Eva White is a registered voter who has voted via absentee ballot in prior elections in Waukesha County and intends to vote by absentee ballot in the upcoming elections in Waukesha County.

4. The Plaintiff, Edward Winiecke, is an adult individual and citizen of the State of Wisconsin. Edward Winiecke resides in Waukesha County and has a mailing address of 1134 Majestic View Lane, Oconomowoc, Wisconsin 53066. Edward Winiecke is a registered voter who has voted via absentee ballot in prior elections in Waukesha County and intends to vote by absentee ballot in the upcoming elections in Waukesha County.

5. Plaintiffs Michael White, Eva White, and Edward Winiecke are referred to as the “Individual Plaintiffs.”

6. The Plaintiff, Republican Party of Waukesha County (“RPWC”), has offices located at 1701 Pearl Street, Suite #5, Waukesha, Wisconsin 53186. Plaintiff RPWC has numerous members who reside in Waukesha County and, furthermore, has an interest in assuring that elections impacting its members, or involving Republican candidates, are conducted in accordance with the laws of the State of Wisconsin.

7. The Defendant, Wisconsin Elections Commission (“WEC”), is a governmental agency with the responsibility for the administration of Chapters 5 through 10 and 12 of the Wisconsin Statutes. WEC is located at 201 West Washington Ave., Second Floor, Madison, Wisconsin 53707.

JURISDICTION AND VENUE

8. Jurisdiction is appropriate in the State of Wisconsin as the parties reside within the State of Wisconsin and the conduct challenged herein was carried out in the State of Wisconsin, and the declaratory relief sought can be provided for pursuant to Wis. Stat. §§ 806.04 and/or 227.40.

9. Wis. Stat. § 806.04 provides that any person “whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status or other legal relations thereunder.”

10. The Individual Plaintiffs’ voting rights are affected by the statutes at issue here and they seek to have the correct construction of those statutes declared by this Court. The Plaintiff RPWC, likewise, has an interest in ensuring that the votes of its members will not be harmed or diminished by the incorrect or unequal administration of our elections.

11. Furthermore, Wis. Stat. § 227.40 specifically provides that Plaintiffs may challenge the validity of any rule or guidance document by declaratory judgment. Wis. Stat. § 227.40 is applicable to the following two documents published by WEC: “AMENDED: Missing or Insufficient Witness Address on Absentee Certificate Envelopes (Oct. 18, 2016)” and “Spoiling Absentee Ballot Guidance (October 19, 2020).” Consequently, Plaintiffs bring this action under that statute as well as, or as an alternative to, Wis. Stat. § 806.04.

12. Venue is appropriate in Waukesha County pursuant to Wis. Stat. §§ 227.40(1) and 801.50(3)(b).

BACKGROUND FACTS

13. Wisconsin saw an unprecedented rise in the use of absentee ballots in the 2020 elections.

14. Following the November 2020 election, WEC noted “clerks in nearly every town, village, and city in Wisconsin processed more absentee ballot requests than ever before—nearly 2 million statewide.” Press Release, Wisconsin Elections Commission, WEC Releases Analysis of November 2020 Election Data (Jan. 29, 2021) (**Exhibit 1**).

15. As WEC itself acknowledged, the exponential increase in absentee voters “revealed public confusion about the process and differing opinions about previously obscure statutory provisions and administrative procedures.” *Id.*

Clerks Altering Witness Address Information on Absentee Ballot Certification

16. One of the practices that came to light with the massive increase in absentee balloting was the practice of municipal clerks and local election officials altering or inserting information in the witness certification portion of the absentee ballot envelope. *See* Scott Bauer, *Wisconsin Elections Commission Deadlocks on Absentee Ballot Rule*, Mar. 9, 2022, available at

<https://www.wsaw.com/2022/03/09/wisconsin-elections-commission-deadlocks-absentee-ballot-rule/> (Noting that, despite errors or omissions in the absentee ballot certifications during the last Presidential election, “[i]n many cases, clerks fixed the errors and approved the ballots.”)

17. By way of background, an elector who submits an absentee ballot to a municipal clerk must sign a certification in the presence of “one witness who is an adult U.S. citizen” pursuant to Wis. Stat. § 6.87(4)(b)1.

18. To facilitate the certification process, voters are provided with a return absentee ballot envelope, which includes the required witness certification that must be completed prior to returning the absentee ballot. *See* Wis. Stat. § 6.87(2).

19. Indeed, Wis. Stat. § 6.87(2) expressly indicates, in pertinent part, that “[t]he 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.”

20. A copy of the certificate located on the outside of the absentee ballot envelope is found on WEC’s website and appears, in pertinent part, as follows:

Official use only:	Ward # _____	District (if applicable) _____	Voted in clerk's office <input type="checkbox"/>
3 Sign and date this section.			
CERTIFICATION OF VOTER (Required)			
I certify, subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b), that I am a resident of the ward of the municipality in the county of the state of Wisconsin indicated hereon, and am entitled to vote in the ward at the election indicated hereon; that I am not voting at any other location in this election; that I am unable or unwilling to appear at the polling place in the ward on election day, or I have changed my residence within the state from one ward to another later than 28 days before the election. I certify that I exhibited the enclosed ballot, unmarked, to the witness, that I then in the presence of the witness and in the presence of no other person marked the ballot and enclosed and sealed the ballot in this envelope in a manner that no one but myself and any person providing assistance under Wis. Stat. § 6.87(5), if I requested assistance, could know how I voted. I further certify that I requested this ballot.			
X _____		_____	
▲ Signature of Voter ▲ (All voters must sign.)		Today's Date	
REQUIRED OF MILITARY AND OVERSEAS VOTER ONLY: I further certify my birth date is: _____/_____/_____			
4 Have your witness sign and write their address below.			
CERTIFICATION OF WITNESS (signature and address of witness are required)			
I, the undersigned witness, subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b), certify that I am an adult U.S. Citizen and that the above statements are true and the voting procedure was executed as stated. I am not a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk). I did not solicit or advise the voter to vote for or against any candidate or measure. I further certify that the name and address of the voter is correct as shown.			
1. _____			
▲ Signature of ONE adult U.S. citizen witness.▲			
2. _____			
▲ If witnesses are Special Voting Deputies, both must sign ▲			
▼ Address of witness or addresses of both SVDs ▼			
1. _____			
2. _____			
Provide house number and street name or fire number and street name, city, state and zip code OR If your rural address does not include a house number, fire number and street name, provide rural route number and box number, city, state and zip code			
CERTIFICATION OF ASSISTANT (If applicable) - assistant may also be witness			
I certify that the voter named on this certificate is unable to sign his/her name or make his/her mark due to a physical disability and that I signed the voter's name at the direction and request of the voter			
X _____			
▲ Signature of Assistant ▲			
5 Mail back your ballot. Allow 4-5 days for delivery to ensure your ballot is received by Election Day. Ballots received after Election Day will NOT be counted.			

EL-122 Absentee Certificate Envelope (rev. 2020-08)

WEC, EL-122 Standard Absentee Ballot Certificate-portrait (rev. 2020-08).pdf, available at <https://elections.wi.gov/sites/elections/files/2020-08/EL-122%20Standard%20Absentee%20Ballot%20Certificate-portrait%20%28rev.%202020-08%29.pdf>.

21. This certificate provides a space for, among other things, an elector to certify eligibility to vote, and the absentee ballot witness to certify that he or she, in fact, witnessed the lawful marking of the ballot and completion of the certification by the voter. Wis. Stat. § 6.87(2).

22. In addition to signing and printing his or her name on the certification, the witness must provide his or her address on the Absentee Ballot certificate. *Id.*

23. Importantly, the statute also mandates: “If a certificate is missing the address of a witness, the ballot may not be counted.” Wis. Stat. § 6.87(6d).

24. As provided by statute, there is only one way for local election officials to facilitate the correction of missing witness addresses:

If a municipal clerk receives an absentee ballot with an improperly completed certificate or with no certificate, the clerk may return the ballot to the elector, inside the sealed envelope when an envelope is received, together with a new envelope if necessary, whenever time permits the elector to correct the defect and return the ballot [no later than 8:00 p.m. of election day.]

Wis. Stat. § 6.87(9).

25. Wis. Stat. § 6.84(1) provides that while voting is a constitutional right, the vigorous exercise of which should be strongly encouraged, “voting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place.” As a result, in § 6.84(1), the Legislature concluded “that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse.”

26. To further implement this finding, Wis. Stat. § 6.84(2) specifically directs that the provisions of §§ 6.87(3)-(7) (which would clearly include §§ 6.87(4)(b)(1) and 6.87(6d)) “shall be construed as mandatory.”

27. The Wisconsin Supreme Court has held that where an election statute is mandatory, its exercise requires strict compliance (citing *State ex rel. Ahlgrimm v. State Elections Bd.*, 82 Wis. 2d 585, 597, 263 N.W.2d 152 (1978)) and that consequently, “[b]allots counted in contravention of the procedures ... may not be included in the certified result of any election.” *Jefferson v. Dane Cty.*, 2020 WI 90, ¶ 16, 394 Wis. 2d 602, 951 N.W.2d 556.

28. Despite these clear and mandatory provisions of Wisconsin law, WEC has issued, and continues to provide, guidance and information that is inconsistent with, and contradicts, the express requirements of the statutes.

29. WEC has instructed, and continues to instruct, municipal clerks and local election officials, through publications maintained on its website, on how to “rehabilitat[e] an absentee certificate that does not contain the street number and street name (or P.O. Box) and the municipality of the witness address.” AMENDED: Missing or Insufficient Witness Address on Absentee Certificate Envelopes, Wisconsin Elections Commission (Oct. 18, 2016), available at https://elections.wi.gov/sites/elections/files/memo/20/guidance_insufficient_witness_address_amended_10_1_38089.pdf. (Exhibit 2).

30. WEC’s guidance provides a number of options for clerks when confronted with an insufficient absentee ballot witness certification; however, of significance, WEC instructs local election officials to not involve the voter or witness at all to fix the ballots and further indicates that the clerk can fill in information that the clerk can “reasonably discern.” *Id.*

31. For example, WEC instructs that local election officials need not involve the voter in correcting or adding witness address information if:

- The voter has provided his or her complete address and the clerk has personal knowledge that the witness resides at the same address as the voter.
- The clerk has personal knowledge of the witness and knows his/or her address.
- The voter’s complete address appears on the address label, and the witness indicates the same street address as the voter.
- The clerk is able to utilize lists or databases at his or her disposal to determine the witness’s address.
- The clerk is not required to contact the voter if the clerk can “remedy the address insufficiency from extrinsic sources.”

32. Likewise, WEC instructs local election officials in a substantially similar manner in its “Spoiling Absentee Ballot Guidance (Oct. 19, 2020)” document, available at <https://elections.wi.gov/sites/elections.wi.gov/files/2020-10/Spoiling%20Ballot%20Memo%2010.2020.pdf>. **(Exhibit 3).**

33. For example, in its Spoiling Absentee Ballot Guidance, WEC instructs local election officials to alter absentee ballot certifications by adding missing addresses for witnesses “through reliable information (personal knowledge, voter registration information, through a phone call with the voter or witness).”

34. In addition to maintaining the foregoing guidance on its website, the “Spoiling Absentee Ballot Guidance” and “AMENDED: Missing or Insufficient Witness Address on Absentee Certificate Envelopes” document were sent by WEC to 1,850 municipal clerks in the State of Wisconsin, which has led to the incorrect application of Wisconsin law by some municipal clerks in the past, and presents a clear and present risk that municipal clerks and local election officials may incorrectly apply Wisconsin law in the upcoming 2022 general election.

35. The requirements of Wis. Stats. §§ 6.87(2), 6.87(4)(b)(1), 6.87(6d), and 6.87(9) are the established policy of the State of Wisconsin as mandated by the Legislature.

36. WEC does not have the power to set aside the policy decisions of the Wisconsin Legislature. Wis. Stat. § 5.05(1); Wis. Const. art. IV, § 1 and art. III, § 2.

37. Moreover, WEC did not promulgate its interpretation of these election statutes as required under Chapter 227, Wis. Stats., despite the fact that Wis. Stat. § 227.10(1) specifically requires that each interpretation of a statute which an agency adopts to govern or enforce its administration of a statute shall be promulgated as a rule.

38. WEC's incorrect interpretation of the election statutes harms the Plaintiffs in several ways, including: the Individual Plaintiffs are harmed as voters because they are uncertain as to the lawful method to cast absentee ballots in the future; the Individual Plaintiffs are harmed by the unequal administration of our election system in the event that local election officials and municipal clerks may comply with WEC's incorrect guidance, while other local election officials and municipal clerks may comply with the express requirements of Wisconsin statutes as it relates to witness certification of votes cast via absentee ballot; and the Plaintiffs are harmed by the counting of votes that violate Wisconsin statutes, which dilutes or otherwise diminishes the value of their votes and/or other lawful votes (including the votes of members of the RPWC).

39. Plaintiffs are entitled to have the elections in which they participate administered properly and in accordance with the law.

40. If WEC is allowed to continue its administration of the 2022 election and future elections in a manner other than that required by law, it will only cast doubt on the administration of our elections and cause a lack of voter confidence in our electoral process.

CLAIM FOR RELIEF: DECLARATORY RELIEF

41. Plaintiffs reincorporate by reference the previously alleged paragraphs as if fully set forth herein.

42. The October 18, 2016 memorandum from WEC regarding "AMENDED: Missing or Insufficient Witness Address on Absentee Certificate Envelopes," and the October 19, 2020 Memorandum entitled "Spoiling Absentee Ballot Guidance" issued by WEC both explain WEC's interpretations of election statutes and provide guidance and advice with respect to how WEC will apply the statutes to voters and how WEC directs local election officials concerning the applicability of the statutes.

43. Accordingly, the legal interpretations set forth in these documents are challengeable in an action for declaratory judgment.

44. There exists an actual and justiciable controversy between Plaintiffs, on the one hand, and WEC on the other hand.

45. WEC's interpretations of these statutes are entitled to no deference by this Court. Wis. Stat. § 227.57(11); *see also Lamar Cent. Outdoor, LLC v. Div. of Hearings & Appeals*, 2019 WI 109, ¶ 9, 389 Wis. 2d 486, 936 N.W.2d 573. Instead, courts follow the plain meaning rule when interpreting statutes. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110.

46. The parties dispute the validity of the aforementioned documents published by WEC and the legal interpretation offered by WEC in the above-described documents.

47. The interests of Plaintiffs and WEC are adverse.

48. The controversy is ripe for a judicial determination as to whether the legal analysis set forth in WEC's guidance documents is a correct interpretation of the law.

49. Such judicial determination is necessary to terminate the controversy between the parties, and to clarify Wisconsin law in anticipation of future elections.

RELIEF REQUESTED

The Plaintiffs demand Judgment against the Defendant, Wisconsin Election Commission, as follows:

1. A declaration that municipal clerks and election officials are prohibited from altering or adding information in the witness certification to an absentee ballot cast by a voter.

2. A declaration that the only means to correct a deficient absentee ballot witness certification is for the municipal clerk or election official to return the ballot to the elector, inside the sealed envelope when an envelope is received, together with a new envelope if necessary,

whenever time permits the elector to correct the defect and return the ballot no later than 8:00 p.m. on election day, pursuant to Wis. Stats. §§ 6.87(9), (6).

3. A declaration that the guidance as set forth in the October 18, 2016 Memorandum regarding “AMENDED: Missing or Insufficient Witness Address on Absentee Certificate Envelopes,” and the October 19, 2020 Memorandum entitled “Spoiling Absentee Ballot Guidance” are contrary to Wisconsin law, and must therefore be removed from WEC’s website. The Court should further declare that municipal clerks and election officials are not permitted to correct, or otherwise add information to, an insufficient witness certification, except as specifically authorized by Wis. Stat. § 6.87(9).

4. A declaration that WEC failed to promulgate its interpretations in the October 18, 2016 Memorandum regarding “AMENDED: Missing or Insufficient Witness Address on Absentee Certificate Envelopes,” and the October 19, 2020 Memorandum entitled “Spoiling Absentee Ballot Guidance” as administrative rules pursuant to, and as required by, Chapter 227, Wis. Stats.

5. A permanent injunction requiring that WEC cease and desist in offering incorrect guidance concerning the above-described matters, and directing clerks to no longer rely on the above-described guidance and/or documents.

6. An order directing WEC to promptly issue corrected guidance to all Wisconsin municipal clerks and election officials statewide consistent with the relief sought herein.

7. All statutory costs and disbursements incurred in pursuing this action.

8. Judgment for such other and further relief the Court may deem just and equitable.

Dated this 12th day of July, 2022.

THE LAW FIRM OF CONWAY, OLEJNICZAK & JERRY, S.C.
Attorneys for the Plaintiffs.

By: Electronically signed by Kurt A. Goehre
Attorney Kurt A. Goehre, State Bar No. 1068003
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Wisconsin Elections Commission

State of Wisconsin

212 E. Washington Ave., Third Floor • Madison, WI 53703 • elections@wi.gov • (608) 266-8005 • <https://elections.wi.gov>

FOR IMMEDIATE RELEASE:
January 29, 2021

FOR MORE INFORMATION, CONTACT:
Reid Magney, 608-267-7887

WEC Releases Analysis of November 2020 Election Data

MADISON, WI – The people of Wisconsin overcame challenges posed by the COVID-19 pandemic for the November 2020 General Election, voting in record numbers with few problems, according to a data report released today by the Wisconsin Elections Commission.

“Wisconsin voters, clerks and poll workers have much to be proud of,” said Meagan Wolfe, administrator of the WEC and the state’s chief election official. “Thousands of election officials across the state worked countless nights and weekends to deliver a well-administered election despite the challenges of an ongoing pandemic, a battle against election misinformation, and a heightened level of scrutiny which often unfairly villainized them for simply doing their jobs.”

Wolfe said that despite the success of the election, there is still room for improvement. “This is especially true when it comes to public understanding of how things like absentee voting work and how we ensure the integrity of the vote.”

“The concerns expressed by many residents after the election suggest election officials should continue to seek greater transparency, simplicity and clarity in election processes,” Wolfe said. “Sharing data openly, as we do with this report, is one step toward that goal.”

The bipartisan Wisconsin Election Commission will discuss the report at its meeting on Wednesday, February 3. A copy of the report and information about the meeting are available on the commission’s website: <https://elections.wi.gov/node/7305>.

Wolfe said the remarkable data contained in this report represents the labor of tens of thousands of volunteer poll workers, and election officials in every town, village, city and county in Wisconsin.

- Nearly 3.3 million Wisconsin residents voted in the General Election – representing more than 72% of the state’s voting age population of 4,536,417.
- Voter registrations climbed by 11.9% from 3,406,952 on July 1 to 3,811,193 on December 1.
- Clerks in nearly every town, village, and city in Wisconsin processed more absentee ballot requests than ever before – nearly 2 million statewide.
- The statewide absentee ballot rejection rate was exceptionally low in November – 0.2% statewide compared to 1.8% in April 2020.
- Of the 216,490 absentee voters who claimed status of indefinitely confined, 79.6% have provided an acceptable photo ID to receive a ballot since 2016.



- In-person voting on Election Day more than tripled between April and November, which required election officials to manage both the increase in absentee voting and prepare for high in-person voter turnout on November 3.
- Wisconsin voters used a new absentee ballot tracking system on the MyVote Wisconsin website more than 1.5 million times.
- Wisconsin Elections Commission staff responded to over 300 calls and emails per hour on Election Day.

Despite these superlatives, this report does not conclude that the 2020 General Election was without difficulties or room for improvement. The massive increase in by-mail absentee voting this year revealed public confusion about the process and differing opinions about previously obscure statutory provisions and administrative procedures. More than a quarter-million Wisconsin voters chose to certify they were indefinitely confined under Wis. Stat. § 6.86(2)(a), generating controversy over their right to do so. Likewise, long-term care facilities accustomed to the assistance of Special Voting Deputies had to make do without hands-on support.

“We understand that some voters still have questions about how the 2020 elections were conducted, and we hope this report will answer many of them,” Wolfe said. She also encouraged voters to visit the commission’s FAQ page for the 2020 election, which answers many common questions and misconceptions about the election. The page is available at <https://elections.wi.gov/faq/2020>.

###

The Wisconsin Elections Commission is responsible for administration and enforcement of election laws in Wisconsin. The Commission is made up of six Commissioners – four appointed directly by the State Senate Majority Leader, Speaker of the Assembly and the Minority Leaders in the State Senate and Assembly. The remaining two Commissioners are appointed by the Governor with confirmation by the State Senate from lists of former municipal and county clerks submitted by the legislative leadership in each party.

WISCONSIN ELECTIONS COMMISSION

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COMMISSIONERS

BEVERLY R. GILL
JULIE M. GLANCEY
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STEVE KING
DON MILLIS
MARK L. THOMSEN, CHAIR

MEMORANDUM

DATE: October 18, 2016

TO: Wisconsin Municipal Clerks and the Milwaukee City Elections Commission
Wisconsin County Clerks and the Milwaukee County Elections Commission

FROM: Michael Haas, Interim Elections Administrator
Diane Lowe, Lead Elections Specialist

SUBJECT: **AMENDED:** Missing or Insufficient Witness Address on Absentee Certificate Envelopes

PLEASE NOTE: The previous guidance on this topic, which was issued on October 4, 2016, has been modified by the WEC and is replaced with the guidance below.

One of the components of 2015 Wisconsin Act 261 is the requirement for an absentee ballot witness to provide their address when signing the absentee certificate envelope.

SECTION 78. 6.87 (6d) of the statutes is created to read:

6.87 (6d) If a certificate is missing the address of a witness, the ballot may not be counted.

In implementing this requirement, the first question that comes to mind is “What constitutes an address?” The Wisconsin Elections Commission (WEC) has set a policy that a complete address contains a *street number, street name and name of municipality*. But in many cases, at least one component of the address could be missing; usually the municipality.

The purpose of this memorandum is to offer guidance to assist you in addressing this issue. The WEC has determined that clerks **must** take corrective actions in an attempt to remedy a witness address error. If clerks are reasonably able to discern any missing information from outside sources, clerks are not required to contact the voter before making that correction directly to the absentee certificate envelope.

Clerks may contact voters and notify them of the address omission and the effect if the deficiency is not remedied but contacting the voter is only required if clerks cannot remedy the address insufficiency from extrinsic sources. When contacting a voter, you should advise that their ballot will not be counted with an incomplete address so that they can take action and also prevent a similar issue in the future. Clerks shall offer suggestions for correcting the certificate envelope to ensure the voter’s absentee ballot will not be rejected.



AMENDED: Missing/Insufficient Witness Address on Absentee Certificate Envelopes

October 18, 2016

Page 2

Clerks shall assist in rehabilitating an absentee certificate that does not contain the street number and street name (or P.O. Box) and the municipality of the witness address. If a clerk adds information to an absentee certificate, either based on contact with the voter or based on other sources, clerks shall indicate such assistance was provided by initialing next to the information that was added on the absentee certificate. The Commission recognized the concern some clerks have expressed about altering information on the certificate envelope, especially in the case of a recount. On balance, in order to promote uniformity in the treatment of absentee ballots statewide, the Commission determined that clerks must attempt to obtain any information that is missing from the witness address and document any addition by including their initials.

In short, the Commission's guidance is that municipal clerks shall do all that they can reasonably do to obtain any missing part of the witness address. Those steps may include one or more of the following options:

1. The clerk is able to reasonably discern the missing address or address component by information appearing on the envelope or from some other source, such as:
 - The voter has provided his or her complete address and the clerk has personal knowledge that the witness resides at the same address as the voter.
 - The clerk has personal knowledge of the witness and knows his/or her address.
 - The voter's complete address appears on the address label, and the witness indicates the same street address as the voter.
 - The clerk is able to utilize lists or databases at his or her disposal to determine the witness's address.
2. The voter or witness may wish to appear in person to add the missing information, or provide the address information by phone, fax, email or mail. The voter may provide the address separately as an alternative to returning the certificate envelope and having the voter mail it back again as outlined below.
3. The voter may request that the clerk return the certificate envelope so the voter can personally add the witness address.
 - Be sure to include a self-addressed stamped envelope in which the voter may return the certificate envelope containing the ballot. The post office does not approve of placing another stamp over a cancelled stamp. Contact your postmaster or a Mail Piece Design Analyst before attempting to re-stamp or re-meter the certificate envelope. Also, note that the U.S. Postal Service is advising that voters mail absentee ballots at least one week before Election Day to accommodate new delivery standards. We suggest advising the voter of the importance of timely mailing if the voter wishes to have the certificate envelope mailed back to them.
4. The voter may wish to spoil the original ballot and vote a new one.

If the request to spoil the ballot is within the proper time frame, the clerk mails a second ballot and new certificate envelope to the voter. (See procedure for *Spoiling and Replacement Ballots*, beginning on page 109 of Election Administration Manual.)

I hope this guidance is helpful as you continue to issue and receive absentee ballots. Thank you for your efforts to assist voters in completing the absentee certificate sufficiently so their votes may be counted.

If you have questions, please contact the Elections Help Desk at 608-261-2028 or elections@wi.gov.



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984

DATE: October 19, 2020

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

FROM: Meagan Wolfe
Administrator

SUBJECT: Spoiling Absentee Ballot Guidance

Many voters are contacting the Wisconsin Elections Commission regarding spoiling their absentee ballot. Issues include damaged ballots, making an error when voting the ballot (such as filling in the wrong circle or voting for too many candidates), or voters changing their mind after returning their absentee ballots. Absentee voters can request to spoil their absentee ballot and have another ballot issued as long as the appropriate deadline to request the new absentee ballot has not passed. In addition, voters can request to have their returned absentee ballot spoiled and instead vote in person, either during the in-person absentee period or at their polling place on election day, but they must request their ballot be spoiled by the appropriate deadlines. Once that deadline has passed, a returned absentee ballot cannot be changed, and the voter cannot be issued another ballot on Election Day. The spoiling absentee ballot deadlines for the November 3 General Election are:

- For regular absentee voters who spoil their ballot and request a new ballot by mail: October 29, 2020.
- For indefinitely confined by absentee voters who spoil their ballot and request a new ballot by mail: October 30, 2020.
- For all absentee voters who spoil their ballot and request a new ballot in person at the clerk's office or at their in-person absentee voting location: For most municipalities it is October 30, 2020, but may be as late as November 1, 2020, depending on their in-person absentee hours.

Spoiling Absentee Ballot Deadlines

	Spoils ballot; requests new ballot by mail	Spoils ballot; requests new ballot in person at the clerk's office or in-person absentee location
Regular Voters	October 29	October 30 in most munis, but could be as late as November 1
Indefinitely Confined Voters	October 30	October 30 in most munis, but could be as late as November 1

Wisconsin Elections Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark

Administrator
Meagan Wolfe



Spoiling Absentee Guidance
Page 2

Please note an absentee voter cannot spoil their returned absentee ballot at their polling place on Election Day. If an absentee ballot has been returned to the clerk, or is in the mail, a voter cannot spoil their returned ballot at the polling place and request a new one. 2011 Wisconsin Act 227 changed the law and that option is no longer permitted. The voter also cannot spoil a returned absentee ballot on Election Day even if that ballot is expected to be rejected due to an error made by the voter on the ballot. Please note that a voter, whether voting by absentee ballot in the clerk's office or by mail, or at the polling place, can receive up to three ballots (the first two are spoiled). This has been the law in Wisconsin for many years.

Spoiling an Absentee Ballot

After a voter has been issued an absentee ballot at the clerk's office or by mail, they can request to spoil that ballot and receive a new one in the event the voter makes a mistake or changes their mind. The voter must request to spoil their ballot in writing (by mail or email) so that the clerk can confirm the request to spoil the ballot is being made by the original requestor of the absentee ballot.

Voters may also go to the clerk's office and make the request for a new ballot in person during the in-person voting hours offered by the municipality. The deadline to request a new absentee ballot is the last day the clerk offers in-person absentee voting. For most clerks that is Friday, October 30, but voters should contact their municipal clerk for scheduled hours.

If the voter returned their ballot by mail, but their ballot has not been received at their polling place by Election Day, the voter cannot spoil their absentee ballot and get a new ballot. It is suggested that voters return their ballot as soon as possible to ensure that it makes it to their polling place on time. The voter can only cancel the returned ballot (whether or not it was received) prior to the spoiling deadlines listed above.

Spoiling an Election Day Ballot (NOT Absentee) at the Polling Place

For voters who make an error while marking their ballot, the voter can request another ballot at their polling place as long as the ballot has not been cast (placed in a ballot box or tabulator). The first ballot must be returned to the election officials and spoiled (torn to make it unusable). Then, the inspectors place the spoiled ballot in the spoiled ballot envelope to be returned to the clerk with other election materials. A notation (2nd or 3rd ballot) should be made on the Inspectors' Statement (EL-104) and poll list for each additional ballot issued to each voter.

Voters Who Have Not Returned their Absentee Ballot

Please note that voters who have not returned their absentee ballots can vote at their polling place and do not need to "spoil" their absentee ballot. State law only prohibits voters who returned an absentee ballot from receiving and voting a new ballot at the polling place on Election Day. Voters who have not returned the absentee ballot can be issued a new ballot at their polling place on Election Day. It is suggested that those individuals discard their absentee ballot at home, but if they do bring it into the polling place, the voter should rip in half and discard that ballot on their own. Poll workers should not take the unvoted absentee ballot from the voter.

Determining if an Absentee Ballot Has Been Returned by a Voter

Care should be taken in relying only on the poll book to determine whether an absentee ballot has been issued, re-issued or returned. If the poll book is printed prior to receiving a valid request to spoil a ballot, the information will not appear on the poll book. Since the absentee ballot log should be printed only after the completion of absentee voting, the log should be consulted to determine whether a voter's ballot has been returned. If so, the voter may not spoil the ballot and receive another one. (If the voter insists that the log is incorrect, the inspector should attempt to confirm with the municipal clerk whether the ballot was returned or spoiled by the deadline.)

If the absentee ballot log indicates that an absentee ballot has been issued but has not been returned, election inspectors should ask the voter whether they returned (placed their absentee ballot in the mail) or personally delivered the absentee ballot. If the voter says yes, the voter is prohibited from spoiling that ballot on Election Day, even if their ballot has not yet been processed. If the voter says no, they haven't returned their ballot, then they can be issued a ballot and vote at the polling place. See the Election Day Manual for further guidance and a helpful flow chart regarding this process.

Absentee Voter Errors or Ballot Damage After the Spoiling Deadline

If the deadline to spoil and receive a replacement ballot has passed, and a voter has mistakenly filled out or damaged their ballot in their possession, they have two options: 1) Choose not to return their absentee ballot, discard it and vote in person at their polling location, or 2) Make their voter intent/candidate choices clear on their ballot. For example, if they mistakenly voted for two candidates, they could make it clear on the ballot that they meant to only vote for one of those candidates. Intent should be determined by the election officials. These clarifying actions such as crossing a vote out, writing a note next to a contest, or highlighting a certain candidate should all be considered when inspectors are process the absentee ballot and determining voter intent on the ballot.

On Election Day, if a voter needs to correct information on the absentee certificate envelope, they and/or their original witness, depending on what the error is, must appear at the polling place or central count. This would be due to missing voter information, missing voter signature, or missing witness signature. The witness can appear without the voter to add their signature or address. Please note that the clerk should attempt to resolve any missing witness address information prior to Election Day if possible, and this can be done through reliable information (personal knowledge, voter registration information, through a phone call with the voter or witness). The witness does not need to appear to add a missing address.

Legal Citations

Wis. Stat. § 6.80(2)(c) states that "An elector who by accident or mistake, spoils or erroneously prepares a ballot may receive another, by returning the defective ballot, but not to exceed 3 ballots in all." At a polling place, a voter informs the inspector that they have spoiled their ballot and the inspector issues a new one, noting the number of replacement ballots a voters has

Spoiling Absentee Guidance
Page 4

requested and received. Absentee voters are afforded the same opportunity to obtain a replacement ballot if their original ballot has been spoiled.

Wis. Stat. § 6.86(5) directs clerks to issue a new ballot to voters who return a damaged or spoiled ballot and specifies that any request for a replacement ballot must be made within the applicable time limits to request an absentee ballot.

Wis. Stat. § 6.86(6) states that “An elector who mails or personally delivers an absentee ballot to the municipal clerk is not permitted to vote in person at the same election on election day.”

Wis. Stat. § 7.50(2) explains the process of determining voter intent.

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