



WSSFC 2022

Substantive Track – Session 6

**What You Need to Know About
Election Law**

Michael R. Haas

About the Presenter...

Michael Haas was named City Attorney for the City of Madison in May 2020. He previously worked for the Wisconsin state elections agency for 12 years, including as the first Interim Administrator of the Wisconsin Elections Commission. He also served as Elections Division Administrator at the Government Accountability Board as well as Staff Counsel for both the G.A.B. and the WEC. Prior to joining the G.A.B., Mike was a partner in the law firm of Roethe Krohn Pope, LLP, where his practice focused on municipal law as well as general practice matters. Mike received his undergraduate degree from Harvard University in Government and his law degree from the University of Wisconsin Law School.



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WHAT YOU NEED TO KNOW ABOUT WISCONSIN ELECTION LAW

Madison City Attorney Michael Haas
Solo and Small Firm Conference
October 28, 2022

I. Regulatory Framework and Election Administration Basics

A. The Law

Wis. Stats. Chapters 5 – 10 and 12
Wis. Adm. Code Chapters EL

B. The Voters

WI Population	5.9 million
Voting Age Population	4.67 million
Registered Voters	3.53 million

2016 General Election Turnout	3.0 million (67% of VAP)
2018 General Election Turnout	2.7 million (59% of VAP)
2020 General Election Turnout	3.3 million (72% of VAP)

C. The Officials

1. Wisconsin Election Commission -- Wis. Stat. § 5.05.

Among its duties, the WEC is responsible for:

- a. Producing and providing voter education. Wis. Stat. § 5.05(12)
- b. Creating and providing election administration training to county and municipal clerks and chief election inspectors. Wis. Stat. §§ 5.05(7), 7.08(11) and 7.31.

- c. Creating and maintaining the statewide electronic voter registration list (WisVote and MyVote). Wis. Stat. § 5.02(15).
- d. Prescribing form of ballots and other election documents. Wis. Stat. § 7.08(1).
- e. Publishing and updating election manuals describing election administration for the benefit of clerks, election inspectors and the public. Wis. Stat. § 7.08(3).
- f. Reviewing nomination papers and certifying candidates for state and local offices. Wis. Stat. § 7.08(2).
- g. Approving voting equipment for use in Wisconsin and auditing voting equipment performance. Wis. Stat. §§ 5.91 and 7.08(6).
- h. Certifying election results for state and federal offices. Wis. Stat. § 7.70
- i. Processing and resolving election complaints. Wis. Stat. §§ 5.02(2m) and 5.06.

2. County Clerks – Wis. Stat. § 7.10 (Milwaukee County Election Commission authority -- Wis. Stat. § 7.21)

Responsible for:

- a. Preparing ballots for national, state and county contests and providing ballots to municipalities. Wis. Stat. § 7.10(1)(a).
- b. Assisting in training municipal clerks. Wis. Stat. § 7.10(9).
- c. Reviewing nomination papers and certifying candidates for county offices. Wis. Stat. § 8.10(6)(b).
- d. Collecting and posting unofficial results on Election Night. Wis. Stat. § 7.60(1).
- e. Serving on county canvass board to certify results of county contests. Wis. Stat. § 7.60(2).

3. Municipal Clerks – Wis. Stat. § 7.15 (City of Milwaukee Election Commission authority – Wis. Stat. § 7.21)

Responsible for conducting elections including:

- a. Processing voter registration applications and updating registration and voting records. Wis. Stat. §§ 6.30 and 7.15(4).
- b. Purchasing and testing voting equipment. Wis. Stat. § 7.15(1)(b)
- c. Reviewing nomination papers and certifying candidates for municipal contests. Wis. Stat. § 8.10(6)(c).
- d. Conducting absentee voting. Wis. Stat. § 7.15(1)(cm).
- e. Training and supervising election inspectors. Wis. Stat. § 7.15(1)(d) and (11).
- f. Reporting suspected election fraud, irregularities or violations to the district attorney. Wis. Stat. § 7.15(1)(g).

- g. Assisting WEC in providing voter education. Wis. Stat. § 7.15(9).
- h. Transmitting unofficial Election Night results to county clerk. Wis. Stat. § 7.51(4)(c).
- i. Serve on municipal board of canvassers to certify official results of municipal contests. Wis. Stats. § 7.53(2)(a).

4. Decentralized Election Administration System

- a. WEC consists of three Democratic and three Republican appointees of legislative leadership and the Governor, and includes one former county clerk and one former municipal clerk. WEC staff is subject to nonpartisan requirements. Wis. Stat. §§ 5.05(4) and 15.61.
- b. 72 county clerks elected on a partisan basis.
- c. Approximately 1850 municipal clerks appointed or elected on a nonpartisan basis. About 2/3 are part-time and 25 – 30% turnover each year.
- d. Approximately 30,000 election inspectors at 2800 polling places at major elections.
- e. Wisconsin has 1/6 of all U.S. election officials.

II. **Basics of Voter Registration**

A. Voter Qualifications – Wis. Stat. §§ 6.02 and 6.03

- 1. U.S. citizen age 18 or older.
- 2. Resident of election district or ward for 28 consecutive days before an election.
- 3. Disqualified if serving a sentence for treason, felony or bribery until pardoned or sentence is completed, including probation or parole.
- 4. Disqualified if the person has been adjudicated as incompetent.
- 5. Rules regarding determining residency are in Wis. Stat. § 6.10 and they can get complicated for students, individuals who are homeless, and those who move frequently or close to an election.

B. Methods of Registration

- 1. Online via MyVote Wisconsin – Available year-round except within 20 days of an election and requires Wisconsin driver license or State ID. Wis. Stat. §§ 6.28(1)(a) and 6.30(5)4)
- 2. By Mail -- Available year-round except within 20 days of an election. Wis. Stat. §§ 6.28(1)(a) and 6.30(4)

3. In Person – Available year-round until the 5:00 p.m. on the Friday before an election. Wis. Stat. §§ 6.29
4. At In-Person Absentee Voting sites and at the polls on Election Day. Wis. Stat. §§ 6.28(1)(a) and 6.55
5. Special provisions for hospitalized electors. Wis. Stat. § 6.86(3)(a)2.

C. Proof of Residence Required

1. All voters are required to provide proof of residence demonstrating residency in the jurisdiction except military voters and former Wisconsin residents living overseas permanently. Wis. Stat. § 6.34(2).
2. The most common form of acceptable proof of residence is a current and valid Wisconsin driver license or State ID card (even if the driving privileges are suspended or revoked). This is required to register online on the MyVote Wisconsin website.
3. Other common forms of acceptable proof of residence include a property tax bill or receipt, utility bill, residential lease, bank or credit card statement, or any document issued by a unit of government. More examples of acceptable proof of residence are listed in Wis. Stat. § 6.34(3)(a) and at <https://elections.wi.gov/Register>
4. Except for student photo identification cards, all proof of residence documents must contain a current and complete name, and a current and complete residential address, including a numbered street address, if any, and the name of a municipality. Wis. Stat. § 6.34(3)(b). Student photo ID cards may be used as proof of residence if accompanied by a tuition receipt dated within the last 9 months or if the institution provides a certified housing list to the municipal clerk. Wis. Stat. § 6.34(3)(a)7.
5. Proof of residence establishes where the voter lives in Wisconsin and is used only when registering to vote, and is separate from the Photo ID requirement. Photo ID is shown when requesting an absentee ballot or when requesting a ballot at the polling place. A current and valid Wisconsin driver license or State ID card may serve as both proof of residence and Photo ID.

D. Voter Registration Data Matching and List Maintenance

1. DMV and Social Security Administration records – Matched as part of voter registration application process as a means of verifying accuracy of information on the application. Help America Vote Act of 2002 § 21083(a)(5).

2. Death records – Matched to cancel registrations of deceased individuals and remove names of deceased persons from the poll lists. Wis. Stat. § 6.55(4).
3. Felon lists – Matched to inactivate registrations of individuals convicted of felonies until pardoned or sentence is completed. Wis. Stat. §§ 6.29(1)(am) and 6.55(2)(cs),
4. Incompetency records – Matched to inactivate registrations of individuals adjudicated to be incompetent to vote. Wis. Stat. § 54.25(2)(c)1.g.
5. Four-Year Maintenance – Registrations of individuals who have not voted in past four years and who do not respond to notification from clerk are inactivated. Wis. Stat. § 6.50.
6. ERIC records (Electronic Registration Information Center) – Wisconsin voter records compared to voter records of other member states to detect individuals who may be registered in multiple states or who may have died in another state. Wis. Stat. § 6.36(1)(ae).

III. Absentee Voting

1. Fundamental Policy Distinction

a. Wis. Stat. § 5.01:

(1) CONSTRUCTION OF CHS. 5 to 12. Except as otherwise provided, chs. 5 to 12 shall be 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.

b. Wis. Stat. § 6.84:

(1) LEGISLATIVE POLICY. The legislature finds that voting is a constitutional right, the vigorous exercise of which should be strongly encouraged. In contrast, voting by absentee ballot is a privilege exercised wholly outside traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse; to prevent overzealous solicitation of absent electors who may prefer not to participate in an election; to prevent undue influence on an absent elector to vote for or against a candidate or to cast a particular vote for or

against a candidate or to cast a particular vote in a referendum; or other similar abuses.

- (2) INTERPRETATION. Notwithstanding 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. Ballots cast in contravention of the procedures specified in those provisions may not be counted. Ballots counted in contravention of the procedures specified in those provisions may not be included in the certified result of any election.

2. Categories of Absentee Voters and Methods of Absentee Voting – Wis. Stat. § 6.86(1) and (2).

- a. Single election or calendar year requests
- b. Indefinitely confined electors
- c. Military and overseas electors
- d. Online request via MyVote Wisconsin
- e. Mail, Email or Fax request
- f. In-person request at Clerk’s Office or IPAV site.
- g. Special voting deputies at nursing homes and adult-care facilities
- h. Hospitalized elector voting
- i. Sequestered juror voting

Municipal clerks must issue absentee ballots to voters with a request on file at least 47 days before each partisan primary and general election and 21 days before Wis. Stat. § 7.15(1)(cm). The 47-day deadline for the 2022 General Election falls on September 22, 2022.

3. Recent Absentee Voting Court Decisions

a. Teigen v. Wisconsin Elections Commission

In an oral ruling on January 13, 2022 and written decision issued on January 20, 2022, Waukesha County Circuit Court Judge Michael Bohren issued a declaratory judgment and permanent injunction against the WEC, declaring that the Commission’s guidance related to the return of absentee ballots was inconsistent with state law. During the COVID pandemic in 2020, WEC had issued guidance stating that absentee voters could obtain assistance with returning their ballots and that municipalities may use drop boxes as a way to facilitate the return of absentee ballots.

Judge Bohren’s decision declared that 1) electors must personally mail or deliver their own absentee ballot, except

where the law explicitly authorizes an agent to act on an elector's behalf; 2) the only lawful methods for casting an absentee ballot are for the elector to place the envelope containing the ballot in the mail or for the elector to deliver the ballot in person to the municipal clerk; and 3) the use of absentee ballot drop boxes is not permitted under Wisconsin law unless the drop box is staffed by the clerk and located at the office of the clerk or a properly designated alternate site under Wis. Stat. § 6.855. Judge Bohren ordered the WEC to withdraw its guidance by January 24, 2022. *Teigen v. WEC* (Waukesha County Circuit Court Case No. 2021 CV 958).

On January 24, 2022, the Court of Appeals, District IV, issued a stay of Judge Bohren's decision through the date of the Spring Primary, citing the risks of voter confusion and administrative challenges close to the election. The stay expired after the Spring Primary and the WEC retracted its 2020 guidance in advance of the 2022 Spring Election on April 5, 2022 pursuant to Judge Bohren's order.

Prior to the Spring Election, municipalities attempted to determine how to implement the Court's order, whether it conflicted with federal laws ensuring that voters with disabilities could receive assistance with voting, and whether the decision was even binding on municipalities which were not parties to the litigation.

The Wisconsin Supreme Court granted the plaintiffs' petition to bypass the Court of Appeals and issued a decision affirming the Circuit Court order on July 8, 2022. The Court held that the WEC guidance was invalid because unsupervised drop boxes are not legal under Wisconsin Statutes. The Court declared that absentee ballots must be returned by mail or the voter must personally deliver the ballot to the municipal clerk at the clerk's office or at a designated in-person absentee voting site. The Court declined to specifically address whether federal laws affording assistance to voters with disabilities permitted absentee voters to obtain assistance in placing their ballot in the mail. *Teigen v. WEC*, 2022 WI 64.

b. *Carey v. Wisconsin Elections Commission*

On August 30, 2022, Judge James Peterson of the Western District of Wisconsin federal court issued a related decision in the matter of *Carey v. Wisconsin Elections Commission* (22-cv-402jdp). The Court concluded that the Voting Rights Act preempts Wis. Stat. § 6.87(4)(b)1 to the extent that the state

statute prohibits third-party ballot-return assistance to disabled voters who require such assistance. Therefore the Court determined that the Voting Rights Act permits Wisconsin voters with disabilities to obtain assistance with mailing or delivering their absentee ballot to the municipal clerk.

c. *White v. Wisconsin Elections Commission*

On September 7, 2022, Waukesha County Circuit Court Judge Michael Aprahamian ruled that municipal clerks are not allowed to fill in missing information on absentee ballot witness certificates, and directed the WEC to withdraw guidance it issued in 2016 permitting the practice. *White v. Wisconsin Elections Commission* (Waukesha County Circuit Court Case No. 2022 CV 1008). The decision is on appeal.

Wis. Stat. § 6.87(9) provides that if a clerk receives an absentee ballot with an “improperly completed certificate or with no certificate,” the clerk may return the ballot to the elector along with a new certificate if necessary to correct the defect. Wis. Stat. § 6.87(6d) states that “If a certificate is missing the address of a witness, the ballot may not be counted.” The statute does not define the required elements of a witness address.

An audit of the Legislative Audit Bureau reviewed a sample of absentee ballots from the 2020 General Election from 20 municipalities. Approximately 7% were missing parts of witness addresses, and clerks had corrected about 0.4% of those certificates without returning the ballot to the elector. The zip code and the state were the most common missing elements of the witness address.

IV. Selected Election Resources

- A. Wisconsin Elections Commission (<https://elections.wi.gov/>) and MyVote Wisconsin (<https://myvote.wi.gov/en-us/>)
- B. Election Assistance Commission (<https://www.eac.gov/>)
- C. University of Wisconsin Elections Research Center (<https://elections.wisc.edu/>)
- D. Marquette University Law School Poll (<https://law.marquette.edu/poll/>)
- E. Election Law Blog (<https://electionlawblog.org/>)

F. The Voting Wars by Richard Hasen: From Florida 2000 to the Next Election (Richard Hasen, Yale University Press, 2012)
(<https://thevotingwars.com/>)

G. Election Podcasts

1. High Turnout/Wide Margins
2. Election Law Blog Podcast
3. Ballots and Bagels

WISCONSIN SOLO AND SMALL
FIRM CONFERENCE 2022

**What You Need to Know
About Wisconsin Elections**

Michael Haas – Madison City Attorney

Wisconsin Dells, Wisconsin ☞ October 28th, 2022



Wisconsin's Decentralized
Elections System

Facts and Figures

Population:	5.9 million
Voting Age Population:	4.67 million
Registered Voters:	3.53 million
2016 General Election Turnout:	3.0 million – 67% of VAP
2018 General Election Turnout:	2.7 million – 59% of VAP
2020 General Election Turnout:	3.3 million – 72% of VAP





Wisconsin's Decentralized Elections System

Facts and Figures

72 County Clerks

1,850 Municipal Clerks

2/3 are part-time

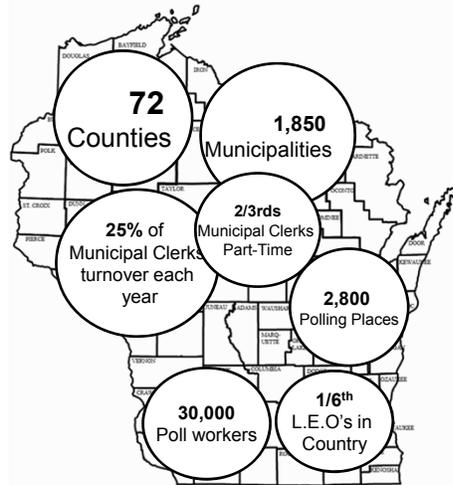
25% turnover each year

~30k election inspectors

at 2,800 polling places

Wisconsin has 1/6th of all

U.S. election officials



Wisconsin Elections Commission

June 30, 2016 – 2015 | Wisconsin Act 118

Four Commissioners Directly Appointed by Legislative Leaders without Senate Confirmation for 5-Year Terms.

Two Commissioners Appointed by Governor from Lists of Former Clerks Submitted by Each Party's Legislative Leadership for 5-Year Terms - Subject to Senate Confirmation.



Marge Bostelmann (R)



Julie M. Glancey (D)



Ann S. Jacobs (D)



Don M. Millis (R) Chair



Robert F. Spindell, Jr. (R)



Mark L. Thomsen (D)



WEC Background

Commission Staff – Administrator

Administrator appointed for four-year term by Commission with advice and consent of the WI Senate.

Serves as State’s Chief Election Official.

May never have been a lobbyist or held a partisan state or local office.

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WEC Background

Commission Staff Requirements

Nonpartisan Staff Serves under Direction and Supervision of Administrator

- Cannot be a candidate for state or partisan local office.
- Prohibitions on campaign contributions during and 12 months prior to employment.
- 32 Full-time employees and 5 IT contractors.



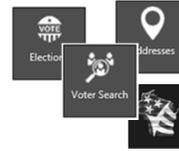
5

Jurisdiction & Responsibilities

Wisconsin Statutes Chapters 5–10 and 12

WisVote

Statewide Voter Registration System



- “The commission shall compile and maintain electronically an official registration list.” Wis. Stat. § 6.36(1)(a).
- Contains voter information such as name, address, birthdate, ward, election participation, and whether the individual is serving a felony sentence or is deceased.
- Provides information to create poll lists, candidate lists, polling place locations, and reports for clerks and the public.

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Jurisdiction & Responsibilities

Wisconsin Statutes Chapters 5–10 and 12

WisVote

Statewide Voter Registration System



Serves as data source for MyVote Wisconsin

- | | |
|----------------------------|--------------------------|
| Allows registration online | Request absentee ballots |
| Find registration status | Find municipal clerk |
| Find polling place | Find ballot information |

Also allows military and permanent overseas electors to obtain absentee ballots online

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Jurisdiction & Responsibilities

Wisconsin Statutes Chapters 5–10 and 12

Local Election Officials

Training, Support and Supervision

- Commission produces on-site and electronic training programs and resources for municipal clerks and election inspectors.
- Commission creates manuals, guides, forms and communications to assist with election administration tasks and responsibilities.
- Staff provides daily support to municipal and county clerks regarding WisVote and election administration duties.
- Supervision through “soft diplomacy” and complaint process.

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Jurisdiction & Responsibilities

Wisconsin Statutes Chapters 5–10 and 12

Voter Information and Outreach

Commission creates voter information resources in a variety of formats.

Subject matter focuses on voter registration requirements, Photo ID Law, voting process and electronic voting equipment.

Ballot Access

Nomination paper review and challenge process.

Appeals of local filing officer decisions.

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Jurisdiction & Responsibilities

Wisconsin Statutes Chapters 5–10 and 12

Voting Equipment Certification and Audits

Federal certification of voting equipment by U.S. Election Assistance Commission.

WEC functional testing and certification primarily based on voluntary federal standards required before voting equipment may be sold and used in the state.

Post-election audits of randomly-selected wards conducted by municipalities and supervised by WEC to evaluate accuracy of equipment tabulation.

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Jurisdiction & Responsibilities

Wisconsin Statutes Chapters 5–10 and 12

Polling Place and Election Day Issues

Commission provides support to clerks, election inspectors and voters.

Public's right to observe the voting process.

Electioneering prohibited at polling places and in-person absentee voting locations, subject to \$1,000 fine and/or 6 months imprisonment.

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Jurisdiction & Responsibilities

Wisconsin Statutes Chapters 5–10 and 12

Election Results Certification

Local board of canvassers

Municipal canvass

County canvass

State canvass

Certification of results

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Jurisdiction & Responsibilities

Wisconsin Statutes Chapters 5–10 and 12

Special Election Events

Administration of Recounts

Recall Elections

Special Elections

Presidential Preference Primary
and Electoral College

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County Clerks

Responsibilities

- Prepare and provide ballots for national, state and county contests.
- Assist in training municipal clerks.
- Review nomination papers and certify candidates for county offices.
- Collect and post unofficial results on Election Night.
- Serve on county canvass boards to certify results of county contests.
- Often coordinate purchase of voting equipment for municipalities.

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Municipal Clerks

Responsibilities

- Process voter registration applications and update voter records.
- Purchase and test voting equipment.
- Review nomination papers and certify candidates for municipal offices.
- Conduct absentee voting by mail and in-person.
- Train and supervise election inspectors (poll workers).
- Report suspected election fraud, irregularities or violations to the district attorney.

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Municipal Clerks

Responsibilities (cont.)

- Assist WEC in providing voter education.
- Transmit unofficial Election Night results to county clerk.
- Serve on municipal boards of canvassers to certify official results of municipal contests and transmit official results of contests to county clerk.
- Establish and set up polling places and supervise Election Day activities.
- Be an expert in election law, budgeting, purchasing, recruitment and hiring, facilities management, IT and cybersecurity, and public relations (as a part-time gig preserving democracy while the whole world looks over your shoulder)

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Voter Registration - Qualifications

- U.S. citizen age 18 or older.
- Resident of election ward for 28 consecutive days before an election.
- Disqualified if serving a sentence for treason, felony or bribery until pardoned or sentence is completed, including probation or parole.
- Disqualified if the person has been adjudicated as incompetent.
- Disqualified if place a wager on the outcome of the election.

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Voter Registration - Methods

Online registration available year-round except within 20 days of an election.

Requires Wisconsin driver license or State ID card.



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Voter Registration – Methods (cont.)

- By Mail – Available year-round except within 20 days of an election.
- In-Person – Available year-round except until 5:00 p.m. on the Friday before an election.
- At In-Person Absentee Voting Sites and at the polls on Election Day.
- Special provisions for hospitalized electors.

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Proof of Residence

- Required for voter registration except for military and overseas electors.
- Common examples include WI driver license, State ID card, property tax bill, residential lease, utility bill, bank or credit card statement, or any document issued by a unit of government.
- Except for student ID cards, must contain current and complete name and a current and complete residential address.
- POR establishes where the voter lives in Wisconsin and is required for voter registration. Photo ID is shown when requesting a ballot. WI driver license or State ID card may serve both functions.

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Voter List Maintenance

Data Matching includes:

DMV or Social Security records

Death records

Felon lists

Incompetency records

Four-Year Maintenance

ERIC records

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Absentee Voting

Statutory Tension:

Wis. Stat. s. 5.01(1): “Except as otherwise provided, chs. 5 to 12 shall be 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 the their provisions.”

Wis. Stat. s. 6.84(1): “. . . Voting by absentee ballot is a privilege exercised wholly outside traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse; to prevent overzealous solicitation of absent electors who may prefer not to participate in an election; to prevent undue influence on an absent elector to vote for or against a candidate or to cast a particular vote for or against a candidate or to cast a particular vote in a referendum; or other similar abuses.”

22

Absentee Voting

Statutory Tension:

Wis. Stat. s. 6.84(2): “INTERPRETATION. Notwithstanding 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. Ballots cast in contravention of the procedures specified in those provisions may not be counted. Ballots counted in contravention of the procedures specified in those provisions may not be included in the certified result of any election.”

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Absentee Voting Categories and Methods

- Single election or calendar-year requests.
- Indefinitely confined electors.
- Military and overseas electors.
- Online requests via MyVote Wisconsin.
- Mail, email or fax requests.
- In-person requests at Clerk's Office or In-Person Absentee Voting site.
- Special voting deputies at nursing homes and adult-care facilities.
- Hospitalized electors.
- Sequestered juror electors.

* Municipal clerks must issue absentee ballots to voters with a request on file at least 47 days before each partisan primary and general election and 21 days before other elections.

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Absentee Voting

- Single election or calendar-year requests.
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- Sequestered juror electors.

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Absentee Voting – Recent Court Decisions

July 8, 2022

Teigen v. Wisconsin Elections Commission, 2022 WI 64

Wisconsin Supreme Court held that WEC guidance approving the use of absentee ballot drop boxes was invalid and that drop boxes are not legal under Wisconsin Statutes. Held that absentee ballots must be returned by mail or personally delivered to the municipal clerk's office or an in-person absentee voting site.

Declined to address the impact of the ruling on voters with disabilities.

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Absentee Voting – Recent Court Decisions

August 30, 2022

Carey v. Wisconsin Elections Commission, 22-cv-402

Western District of Wisconsin Federal Court held that Voting Rights Act preempted state law to the extent state law prohibits third-party assistance for return of ballots by voters with disabilities. Held that VRA permits voters with disabilities to obtain assistance with mailing or delivering absentee ballots.

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Absentee Voting – Recent Court Decisions

September 7, 2022

White v. Wisconsin Elections Commission, Waukesha County Case No. 22 CV 1008

Waukesha County Circuit Court ordered WEC to withdraw guidance which permitted municipal clerks to fill in missing witness information on absentee ballot certificate envelopes and to count such ballots. Held that municipal clerks may not complete missing address information on witness certificates and that missing information may only be completed by returning the ballot to the voter.

Decision did not affect WEC guidance defining a complete address as including at least the street number, street name and municipality. State and zip code are not required for the certificate to be valid and ballot to be counted.

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Elections Litigation

The Purcell Principle:

“Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election grows closer, that risk will increase.”
Purcell v. Gonzalez, 549 U.S. 1 (2006)



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Security of Elections and Election Officials

- Increasing threats of interference and harassment from both foreign and domestic actors, elected officials and candidates.
- U.S. elections declared part of critical infrastructure by Department of Homeland Security in 2016 in response to threats of foreign interference.
- 1 in 6 local election officials reported experiencing threats because of their job and nearly 1 in 3 reported they knew at least one election worker who left their job at least in part because of fears for their safety due to increased threats or intimidation. “Local Election Officials Survey (March 2020).” The Brennan Center (Mar. 10, 2022)
<https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-march-2022>

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Security of Elections and Election Officials

Governmental and Non-Governmental Responses

- U.S. Department of Justice Election Threats Task Force created in 2021 to “address the rise in threats against election workers, administration, officials, and others associated with the electoral process.”
- Election Official Legal Defense Network (<https://eoldn.org>) created by the Center for Election Innovation and Research in September 2021 to match election officials in need of legal help as a result of their official duties with attorneys willing to provide legal services on a pro bono basis, to address efforts to undermine officials’ job duties or to threaten or harass them.
- Committee for Safe and Secure Elections created in June 2022 to develop solutions to curb intimidation and threats of violence, as well as create and share best practices for election officials and law enforcement.
(<https://safeelections.org/>).

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Security of Elections and Election Officials

Local Government Response

- Madison General Ordinance sec. 24.02 amended in July 2022 to create a penalty enhancer for disorderly conduct directed at individuals working in their capacity as election officials.
- Bond amount increased to \$691 forfeiture as compared to \$439 for other disorderly conduct violations in municipal to reflect the impact on officials performing their public duties as well as on the election system itself.
- In repeated or egregious cases, law enforcement may refer the matter to the district attorney to consider criminal charges.

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Participate in Our Democracy

General Election is November 8, 2022

- Register and Vote
- Be a poll worker.
- Observe at the polls (and at voting equipment testing).
- Correct misinformation and disinformation to instill confidence in elections.
- Use your influence and civic organizations to promote election officials as the source of credible and accurate information regarding elections.

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Contact

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