

In the Supreme Court of Wisconsin

DONALD J. TRUMP, MICHAEL R. PENCE, and DONALD J. TRUMP FOR
PRESIDENT, INC.,

PETITIONERS,

v.

ANTHONY S. EVERS, Governor of Wisconsin in his official capacity,
THE WISCONSIN ELECTIONS COMMISSION, ANN S. JACOBS, Chair of
the Wisconsin Elections Commission in her official capacity, SCOTT
MCDONELL, Dane County Clerk in his official capacity, ALAN A.
ARNSTEN, Member of the Dane County Board of Canvassers in his
official capacity, JOYCE WALDROP, Member of the Dane County
Board of Canvassers in her official capacity, GEORGE L.
CHRISTENSON, Milwaukee County Clerk in his official capacity,
TIMOTHY H. POSNANSKI, Member of the Milwaukee County Board
of Canvassers in his official capacity, RICHARD BASS, Member of
the Milwaukee County Board of Canvassers in his official capacity,
and DAWN MARTIN, Member of the Milwaukee County Board of
Canvassers in her official capacity,

RESPONDENTS.

PETITION FOR ORIGINAL ACTION PURSUANT TO WIS. STAT. § 809.70

James R. Troupis, SBN 1005341
Troupis Law Office LLC
4126 Timber Ln.
Cross Plains, WI 53528-9786
Phone: 608.305.4889
Email: troupisjames@gmail.com

R. George Burnett, SBN 1005964
Conway, Olejniczak & Jerry S.C.
231 S. Adams St.
Green Bay, WI 54305-3200
Phone: 920.437.0476
Email: rgb@lcojlaw.com

Counsel for Petitioners

ISSUES PRESENTED BY THE CONTROVERSY

1. Whether absentee ballots issued in-person to voters by municipal clerks' offices in Milwaukee County and Dane County without the required written application, pursuant to Wis. Stat. § 6.86(1)(ar), are illegal and invalid.

2. Whether absentee ballots issued by municipal clerks' offices in Milwaukee County and Dane County without the required written application, pursuant to Wis. Stat. § 6.86(1)(ar), should be excluded from the Presidential Election results in Wisconsin as required by Wis. Stat. § 6.84(2).

3. Whether absentee ballots accompanied by incomplete certifications or on which municipal clerks added missing information in contravention of Wis. Stat. §§ 6.84(2) and 6.87(6d) are illegal and invalid.

4. Whether absentee ballots accompanied by incomplete certifications or on which municipal clerks added missing information in contravention of Wis. Stat. §§ 6.84(2) and 6.87(6d) should be excluded from the Presidential Election results in Wisconsin as required by Wis. Stat. § 6.84(2).

5. Whether absentee ballots cast by electors claiming Indefinite Confinement status, which status was claimed on or after March 25, 2020, for which there was no voter identification provided are illegal and invalid.

6. Whether absentee ballots cast by electors claiming Indefinite Confinement status, which status was claimed on or after March 25, 2020, for which there was no voter identification provided should be excluded from the Presidential Election results in Wisconsin.

7. Whether stationing poll workers, receiving ballots, witnessing ballot certifications and other clerk's office activities in Madison's "Democracy in the Park" events complied with Wisconsin Election laws.

8. Whether relief by drawdown is appropriate for legal violations committed at the "Democracy in the Park" events.

INTRODUCTION¹

The 2020 Presidential Election (the "Election") is one of the closest contests in history, with Wisconsin and other states reporting results within a single percentage point. Recounts or other actions have been undertaken in Georgia, Pennsylvania, Michigan, Arizona, and Nevada as well as in Wisconsin, and the outcome of the Election hangs in the balance.

The unofficial results of the Election in Wisconsin reported by the Wisconsin Elections Commission ("WEC") indicate that President Donald J. Trump and Vice President Michael R. Pence received 1,610,076 votes and

¹ Citations to "App. ___" refer to the page(s) of the Appendix filed with Petitioners' Petition for Original Action in this matter; citations to the transcript of the Recount proceedings in Milwaukee County appear as "Milwaukee Cty. Trans. [date] at [page:line]" and citations to the transcript of the Recount proceedings in Dane County appear as "Dane Cty. Trans. [date] at [page:line]."

Joseph R. Biden and Senator Kamala D. Harris received 1,630,503 votes, a difference of 20,427 votes or 0.620%. WEC, Unofficial Results for the November 3, 2020 General Election, *available at* <https://elections.wi.gov/node/7234>. The final results of the recount and statewide canvas were made by WEC on Monday, November 30, 2020 in the late afternoon. The final totals relevant to this Petition were President Donald J. Trump and Vice President Michael R. Pence 1,610,184 and Joseph R. Biden and Senator Kamala D. Harris 1,630,866. Milwaukee Cty. Trans. 11/27/20 at 27:11-28:7, App. 122-123; Dane Cty. Trans. 11/29/20 at 12:15-13:5, App. 263; WEC, Signed Canvass for President – Vice President, *available at* <https://elections.wi.gov/sites/elections.wi.gov/files/2020-11/Jacobs%20-%20Signed%20Canvass%20for%20President%20-%20Vice%20President.pdf>.

Petitioners, President Donald J. Trump and Vice President Michael R. Pence, as candidates for the offices of President and Vice President of the United States, requested a recount of the results in both Milwaukee County and Dane County pursuant to Wis. Stat. § 9.01(1)(a)1. (the “Recount”). The Recount Petition details mistakes, irregularities and illegal behavior affecting more than enough votes to alter the outcome of the Election. WEC, Trump Campaign Recount Petition, *available at* <https://elections.wi.gov/sites/elections.wi.gov/files/2020->

[11/Trump%20Campaign%20Recount%20Petition.pdf](#). The Recount

verified those claims.

While there was a pattern of activities improperly undertaken that affected the Election, four stand out: (1) a total of at least 170,140 absentee ballots were improperly counted as they were issued without the elector having first submitted a written application as expressly required by Wis. Stat. § 6.86(1)(ar); (2) no less than 5,517 absentee ballots were improperly counted as the certifications were, when received by the clerks' offices, incomplete and, as to a substantial proportion, the clerks' offices subsequently altered the certifications by inserting missing information; (3) 28,395 absentee ballots were counted that were improperly cast by individuals claiming Indefinite Confinement status even as there was "reliable information that [the]... elector no longer qualifies for the service." Wis. Stat. 6.86(2); and (4) 17,271 absentee ballots were improperly cast or received at "Democracy in the Park" events.

Despite clear law to the contrary and the express objections by Petitioners to the inclusion of the ballots identified in the Recount totals, the Milwaukee County and Dane County Boards of Canvassers improperly included those ballots in their Recount totals. The Milwaukee County and Dane County Boards of Canvassers' decisions are in direct conflict with applicable Wisconsin Statutes and case law and implicate an urgent matter

of state-wide and national importance.

The matter has been made even more urgent by Governor Evers' illegal attempt to certify the election and name Wisconsin's electors prior to the closing of the post-recount appeal deadline allowed to Petitioners. *See* Wis. Stat. § 7.70(5)(a) (“When a valid petition for recount is filed ... the governor or commission may not issue a certificate of election until the recount has been completed and the time allowed for filing an appeal has passed, or if appealed until the appeal is decided.”); Wis. Stat. § 9.01(6) (“within 5 business days after completion of the recount determination by the commission chairperson ... any candidate ... aggrieved by the recount may appeal ...”).

This matter warrants the Court's exercise of its original jurisdiction.

STATEMENT OF FACTS

1. Petitioner, Donald J. Trump, is the sitting President of the United States. President Trump is a resident of the State of Florida.

2. Petitioner, Michael R. Pence, is the sitting Vice President of the United States. Vice President Pence is a resident of the State of Indiana.

3. Petitioner, Donald J. Trump for President, Inc. (the “Trump Campaign”), is the Presidential Campaign of the sitting President of the United States. The Trump Campaign's principal office is located at 725 Fifth

Avenue, New York, NY 10022 and the Trump Campaign has numerous local offices throughout the State of Wisconsin.

4. Respondent Anthony S. Evers is the Governor of the State of Wisconsin, with his principal office, in his official capacity, located at 115 East, State Capitol, Madison, WI 53702.

5. The Wisconsin Elections Commission is an agency of the State of Wisconsin established to administer and enforce state election laws, with its principal office located at 212 East Washington Ave., Third Floor, Madison, WI 53707.

6. Respondent Ann S. Jacobs is the Chair of the Wisconsin Elections Commission, with her principal office, in her official capacity, located at 212 East Washington Ave., Third Floor, Madison, WI 53707.

7. Respondent Scott McDonell is the Dane County Clerk and a Member of the Dane County Board of Canvassers, with his principal office, in his official capacity, located at 210 Martin Luther King Jr. Blvd., Madison, WI 53703.

8. Respondent Alan A. Arnsten is a Member of the Dane County Board of Canvassers, with his principal office, in his official capacity, located at 210 Martin Luther King Jr. Blvd., Madison, WI 53703.

9. Respondent Joyce Waldrop is a Member of the Dane County Board of Canvassers, with her principal office, in her official capacity,

located at 210 Martin Luther King Jr. Blvd., Madison, WI 53703.

10. Respondent George L. Christenson is the Milwaukee County Clerk, with his principal office, in his official capacity, located at 901 North 9th Street, Milwaukee, WI 53233.

11. Respondent Timothy H. Posnanski is a Member of the Milwaukee County Board of Canvassers, with his principal office, in his official capacity, located at 901 North 9th Street, Room 105, Milwaukee, WI 53233.

12. Respondent Richard Bass is a Member of the Milwaukee County Board of Canvassers, with his principal office, in his official capacity, located at 901 North 9th Street, Milwaukee, WI 53233.

13. Respondent Dawn Martin is a Member of the Milwaukee County Board of Canvassers, with her principal office, in her official capacity, located at 901 North 9th Street, Milwaukee, WI 53233.

14. The unofficial results of the Election in Wisconsin indicate that President Donald J. Trump's and Vice President Michael R. Pence's electors received 1,610,076 votes and Joseph R. Biden's and Senator Kamala D. Harris' electors received 1,630,503 votes, a difference of 20,427 votes or 0.620%. The Wisconsin Elections Commission, Unofficial Results for the November 3, 2020 General Election, *available at* <https://elections.wi.gov/node/7234>. The totals following the recount and

canvas reported by WEC on November 30, 2020 were President Donald J. Trump's and Vice President Michael R. Pence's electors received 1,610,184 votes and Joseph R. Biden's and Senator Kamala D. Harris' electors received 1,630,866 votes. WEC, Signed Canvass for President – Vice President, available at <https://elections.wi.gov/sites/elections.wi.gov/files/2020-11/Jacobs%20-%20Signed%20Canvass%20for%20President%20-%20Vice%20President.pdf>.

15. Petitioners, President Trump and Vice President Pence, requested, and the respective Boards of Canvassers have now completed, a recount of the results in both Milwaukee County and Dane County for the Election, pursuant to Wis. Stat. § 9.01(1)(a)1. (the “Recount”).

16. The Recount began on Friday, November 20, 2020 and was completed on Sunday, November 29, 2020. The Wisconsin Election Commission completed its review of the recount on November 30, 2020.

17. In what appears to be an attempt to deny Petitioners their right to appeal the determination of the recount, Governor Evers publicly stated: “Today I carried out my duty to certify the November 3rd election, and as required by state and federal law, I've signed the Certificate of Ascertainment for the slate of electors for President-elect Joe Biden and Vice President-elect Kamala Harris,” *See*

<https://www.jsonline.com/story/news/politics/elections/2020/11/30/showdo>

18. The Governor’s actions violate Wisconsin statutory law and the due process rights of the Petitioners under both the Wisconsin and U.S. Constitutions. *See* Wis. Stat. § 7.70(5)(a)(“When a valid petition for recount is filed ... the governor or commission may not issue a certificate of election until the recount has been completed and the time allowed for filing an appeal has passed, or if appealed until the appeal is decided.); Wis. Stat. § 9.01(6)(“within 5 business days after completion of the recount determination by the commission chairperson ... any candidate ... aggrieved by the recount may appeal ...”). These actions must not be allowed to stand.

19. A total of 170,140 absentee ballots were issued and cast in Milwaukee (108,947) and Dane (61,193) Counties during the 14-day period in which in-person absentee balloting was allowed, pursuant to Wis. Stat. § 6.86(1)(b) (the “In-Person Absentee Ballots”)². Milwaukee Cty. Trans. 11/21/20 at 184:14-187:22, App. 61-64; Dane Cty. Trans. 11/22/20 at 57:23-59:13; 59:14-62:22, App. 144-145.

20. Despite the fact that Wis. Stat. § 6.86(1)(ar) expressly prohibits

² Although colloquially referred to as “early voting,” Wisconsin law does not actually permit early voting. Instead, Wisconsin law authorizes a 14-day window preceding the election during which electors are authorized to apply for their absentee ballot in person at their clerk’s office and during which the clerk is authorized to act as the witness on an elector’s absentee ballot envelope. Wis. Stat. § 6.86(1)(b). Once the completed absentee ballot envelope is witnessed by the clerk, an elector’s absentee ballot is added to any absentee ballots the clerk has received by mail and processed and counted in the same manner as all other absentee ballots in the elector’s ward. *Id.* These are, as a matter of law, no different than any other absentee ballot and are treated as such.

a clerk from issuing an absentee ballot without having first received a written application, both the Milwaukee and Dane County Clerks did not require voters to submit a written application in order to receive an absentee ballot during the 14-day in-person absentee voting period. Instead, in both Dane and Milwaukee Counties, the Canvassing Boards found that the Clerk's receipt of form EL-122 (the "Envelope" in which the absentee ballot is placed by the elector after it has already been received by the elector and after it has been completed) was sufficient to satisfy the statutory written application requirement. Milwaukee Cty. Trans. 11/20/2020 at 57:1-66:2, App. 10-19; Dane Cty. Trans. 11/22/2020 at 58:7-59:7. Other municipalities, outside of Dane and Milwaukee County followed the statute by requiring a written Application. Dane Cty. Trans. 11/28/20 at 7:7-25; Aff. Lori Opitz; App. 115 at 6:7-25, 182-183.

21. A total of 5,517 ballots were cast in Milwaukee (2,215) and Dane (3,302) Counties with incomplete or incorrect EL-122 Ballot Envelopes. Aff. Joseph Voiland at ¶4, App. 271; Aff. Kyle Hudson dated 11/30/2020 at ¶4, App. 268. Clerks changed the Ballot Envelopes after they had been submitted by supplying missing witness address information or Ballot Envelopes were left incomplete but nonetheless counted (collectively, the "Altered-Certification Absentee Ballots"). *Id.*; Aff. Claire Woodall-Vogg at ¶¶5-8. All of these ballots were improperly counted.

22. The Wisconsin Legislature recently reaffirmed via the passage of 2015 Wis. Act 261 the long-held legal position of the State, that explicitly prohibits those actions of the Clerks and requires the exclusion of ballots contained in incomplete or improperly completed Ballot Envelopes. Wis. Stat. § 6.87(6d) (“If a certificate is missing the address of a witness, the ballot may not be counted.”); *see also* 2015 Wis. Act 261, § 78 (creating Wis. Stat. § 6.87(6d)).

23. 28,395 Indefinitely Confined Absentee Ballots issued to those claiming that status after March 25, 2020, without the required photo identification, were cast in violation of law and must be excluded from any certified results of the Election. Milwaukee Cty. Trans. 11/27/20 at 19:23-22:3, App. 118-121; Dane Cty. Trans. 11/28/20 at 7:2-12:6, App. 155-156; Aff. Jordan Moskowitz (dated 11/27/20) ¶¶ 2-6, Exs. 1-4, App. 224-233.

24. Municipal Clerks are expressly charged with the responsibility to review and expunge from the voter rolls those claiming to be Indefinitely Confined Voters when the Clerk has “reliable information that [the]... elector no longer qualifies for the service.” Wis. Stat. 6.86(2)(b). Electors who claimed they were Indefinitely Confined, but were not themselves physically, ill, infirm, elderly, or disabled were also obligated to take steps to be removed from that status prior to the November 3, 2020, election. Wis. Stat. § 6.86(2)(a). Those registering for such status after March 25, 2020

were necessarily suspect and include numerous persons easily identified. Milwaukee Cty. Trans. 11/27/20 at 19:23-22:3; App. 118-121; Dane Cty. Trans. 11/28/20 at 7:2-12:6, App. 155-156; Aff. Jordan Moskowitz (dated 11/27/20) ¶¶ 2-6, Exs. 1-4, App. 224-233.

25. 17,271 absentee ballots were completed and/or delivered to employees of the City of Madison on September 26, 2020, and October 3, 2020, at 206 separate locations in an event dubbed “Democracy in the Park.” Dane Cty. Trans. 11/24/20 at 52:16-56:15, App. 148-149; Aff. Kyle J. Hudson (11/23/20) ¶¶3-6, Exs. B-E, App. 163-184. The Biden Campaign widely advertised the event (Dane Cty. Trans. 11/24/20 at 57:11-58:16, App. 149-150; Aff. Kyle J. Hudson (11/23/20) ¶2, Ex. A, App. 163-166), as did the Madison City Clerk. (City of Madison, Statement of Madison City Clerk Maribeth Witzel Behl Regarding Democracy in the Park (Sept. 25, 2020), *available at* <https://www.cityofmadison.com/clerk/news/statement-of-madison-city-clerk-maribeth-witzel-behl-regarding-democracy-in-the-park>; *See also* App. 168-184 (City of Madison post regarding “Democracy in the Park”). The representatives of the City Clerk’s Office registered voters, received ballots, helped in the completion of Ballot Envelopes, instructed on the ballot process, and acted as witnesses for voters. Dane Cty. Trans. 11/24/20 at 52:16-64:10, App. 148-151.

26. The creation of 206 separate locations for the Clerk’s Office

did not comply with Wis. Stat. 6.855(1) in numerous respects. As such, the activities conducted were illegal. In the alternative, if the recipients of the ballots were not representatives of the Clerk's Office, then their actions did not comply with the requirement that ballots must be returned by mail or delivered in person to the municipal clerk. Wis. Stat. 6.87(4)(b).

27. Absentee balloting, as opposed to voting in person at the polls on election day, is a "privilege." 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 the 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. . . .*") (emphasis added).

28. Because of the higher probability that absentee balloting may be subject to "fraud or abuse ... overzealous solicitation of absent electors who may prefer not to participate in an election ... undue influence on an absent elector ... or other similar abuses," the Legislature has made clear that the statutory requirements for absentee balloting are mandatory and must be strictly applied. *Id.*; Wis. Stat. § 6.84(2) (requiring that "matters relating to the absentee ballot process," including Wis. Stat. §§ 6.86 and 6.87(3) to (7) "shall be strictly construed as mandatory.").

The In-Person Absentee Ballots

29. During the Recount, representatives and/or agents of Petitioners objected to the counting of any In-Person Absentee Ballots issued without a corresponding written application and requested that such ballots be rejected. Milwaukee Cty. Trans. 11/22/20 at 4:20-24, App. 68; Dane Cty. Trans. 11/20/20 at 15:9-18:14, App. 126-127.

30. Both the Milwaukee County and Dane County Boards of Canvassers overruled Petitioners' objections to the counting of In-Person Absentee Ballots without a corresponding written application, and such ballots were included and counted in the Recount. Milwaukee Cty. Trans. 11/21/20 at 186:11-187:10, App. 63-64; Dane Cty. Trans. 11/20/20 at 36:15-40:25, App. 129-130.

31. The Milwaukee County and Dane County Boards of Canvassers were wrong, as a matter of law, to include in the Recount In-Person Absentee Ballots issued without a corresponding written application.

32. Wisconsin's statutes forbid clerks from issuing an absentee ballot to an elector unless the elector first submits a written application therefor: "[T]he municipal clerk ***shall not issue an absentee ballot unless the clerk receives a written application therefor*** from a qualified elector of the municipality." Wis. Stat. § 6.86(1)(ar) (emphasis added).

33. The clerk must retain the written applications for absentee

ballots. Wis. Stat. § 6.86(1)(ar) ("The clerk shall retain each absentee ballot application until destruction is authorized under s. 7.23 (1).").

34. Our Statutes not only allow an elector to submit a written application for an absentee ballot in person, they require it.

Any elector of a municipality who is registered to vote whenever required and who qualifies under ss. 6.20 and 6.85 as an absent elector may make written application to the municipal clerk of that municipality for an official ballot by one of the following methods:

* * *

2. In person at the office of the municipal clerk or at an alternate site under s. 6.855, if applicable.

Wis. Stat. § 6.86(1)(a).

35. Likewise, the Statutes dispel the notion that a *written* application is not required when an elector applies in person. Indeed, when an elector applies for an absentee ballot in person, the clerk must compare the name on the written application to the name on the proof of identification produced by the elector: "The clerk shall verify that the name on the proof of identification presented by the elector conforms to the name on the elector's application and shall verify that any photograph appearing on that document reasonably resembles the elector." Wis. Stat. § 6.86(1)(ar); *see also* WI Application for Absentee Ballot, Form EL-121, App. 161-162 ("If in-person voter, check here:").

36. Compliance with the rules for absentee balloting is mandatory, and ballots cast in violation of those rules must not be counted:

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.**

Wis. Stat. § 6.84(2) (emphasis added); *see also Lee v. Paulson*, 2001 WI App 19, 241 Wis.2d 38, 623 N.W.2d 577 (excluding 5 absentee ballots from the certified election results because there was no corresponding written application, and the removal of the 5 ballots changed the outcome of the election).

37. Clear and unambiguous statutory law and associated case law dictates that all In-Person Absentee Ballots issued by municipalities without the required application “*may not be counted*” and if such ballots were erroneously counted, they “*may not be included in the certified result of any election.*” *Id.* (emphasis added).

38. The Boards of Canvassers for Dane and Milwaukee County, however, in direct contravention of the unambiguous law, improperly included in the Recount totals the In-Person Absentee Ballots despite the lack of a written application. Municipal clerks elsewhere followed the law and required a separate application. Aff. Lori Opitz; App. 222-223.

Altered-Certification Absentee Ballots

39. During the Recount, the Petitioners objected to the counting of any Incomplete or Altered-Certification Absentee Ballots. Dane Cty. Trans.

11/20/20 at 48:25-49:8, App. 131; Milwaukee Cty. Trans. 11/23/20 at 25:19-27:21, App. 106-108.

40. Both the Milwaukee County and Dane County Boards of Canvassers overruled Petitioners' objections to the counting of Altered-Certification Absentee Ballots, and such ballots were counted and included in the Recount. Dane Cty. Trans. 11/20/20 at 60:1-65:14, App. 134-135; Milwaukee Cty. Trans. 11/20/20 at 115:11-128:17, App. 28-41.

41. The Milwaukee County and Dane County Boards of Canvassers were wrong, as a matter of law, to include Altered-Certification Absentee Ballots in the Recount.

42. When casting an absentee ballot, the elector completes his or her ballot, places it inside the ballot certification envelope and seals it, which process must be witnessed, and the certification on the outside of the envelope requires the witness to sign *and provide his or her address*. Wis. Stat. § 6.87 (2) (emphasis added).

43. Without the witness's address on the certification, the absentee ballot may not be counted: "If a certificate is missing the address of a witness, the ballot *may not be counted*." Wis. Stat. sec. 6.87 (6d) (emphasis added).

44. There is only one statutorily authorized method for remedying an improperly completed absentee ballot certification (such as a certification lacking the witness's address), and that is to return it to the elector: "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 . . .” Wis. Stat. § 6.87 (9).

45. The Boards of Canvassers for Dane and Milwaukee County improperly included in the recount totals from the Incomplete and Altered-Certification Absentee Ballots.

Improper Indefinitely Confined Ballots.

46. Municipal Clerks are expressly charged with the responsibility to review and expunge from the voter rolls those claiming to be Indefinitely Confined Voters when the Clerk has “reliable information that [the]... elector no longer qualifies for the service.” Wis. Stat. § 6.86 (2) (b). Likewise, electors who claimed they were Indefinitely Confined, but were not themselves physically ill, infirm, elderly, or disabled, are obligated to take steps to be removed from that status prior to the November 3, 2020 election. Wis. Stat. § 6.86(2)(a). Those registering for such status after March 25, 2020 were necessarily suspect and include numerous persons easily identified. Milwaukee Cty. Trans. 11/27/20 at 19:23-22:3, App. 118-121; Dane Cty. Trans. 11/28/20 at 7:2-12:6, App. 155-156; Aff. Jordan Moskowitz (dated 11/27/20) ¶¶ 2-6, Exs. 1-4, App. 224-233.

47. During the Recount, Petitioners objected to the counting of any Indefinitely Confined Absentee Ballots and, as the review of recount materials progressed, objected more narrowly to a specific subset of the group identified. That precise subset included persons claiming the status after March 25 (the date of the Clerk's improper posts) who did vote using the status on November 3 and who had no ID on file. Dane Cty. Trans. 11/20/20 at 53:22-55:20, App. 132-133; Milwaukee Cty. Trans. 11/27/20 at 19:23-22:2, App. 118-121. Petitioners' objection was denied, and all the ballots were counted. Dane Cty. Trans. 11/28/20 at 28:3-6, App. 160; Milwaukee Cty. Trans. 11/27/20 at 21:7-22:2, App. 120-121.

48. Both the Milwaukee County and Dane County Boards of Canvassers overruled Petitioners' objections to the counting of Indefinitely Confined Absentee Ballots and, as a result, such ballots were improperly counted and included during the entire Recount. *Id.*

49. The Milwaukee County and Dane County Boards of Canvassers were wrong, as a matter of law, to include the specific subset of Indefinitely Confined Absentee Ballots in the Recount.

50. Wisconsin statutory law expressly requires that all eligible electors must provide proof of identification in order to register to vote, and each time they vote. Wis. Stat. §§ 6.79(2)(a), 6.87(1).

51. Photo identification is also required when requesting to vote by

absentee ballot. Wis. Stat. §§ 6.86(1)(ac), (ar), and 6.87(1).

52. There are very limited exceptions to the requirement that an elector must provide photo identification with any application for an absentee ballot, including an exception if an elector certifies that he or she is “indefinitely confined because of age, physical illness or infirmity or is disabled for an indefinite period.” Wis. Stat. § 6.86(2)(a). In order to qualify for this exception, an elector must be “elderly, infirm or disabled *and* indefinitely confined.” *Frank v. Walker*, 17 F. Supp. 3d 837, 844 (E.D. Wis. Apr 29, 2014) (emphasis added), *rev’d on other grounds*, 768 F.3d 744 (7th Cir. 2014).

53. An elector who meets the strict definition of “indefinitely confined” in Wis. Stat. § 6.86(2)(a) must sign a statement to that effect, and then “the elector may, in lieu of providing proof of identification, submit with his or her absentee ballot a statement . . . which contains the name and address of the elector and verifies that the name and address are correct.” Wis. Stat. § 6.87(4)(b)2.

54. For the Election, the number of electors claiming “indefinitely confined” status and thereby obtaining an absentee ballot without the otherwise required photo identification increased massively in Milwaukee and Dane Counties.

55. In *Jefferson v. Dane*, No. 2020AP557-OA, this Court issued an

Order addressing certain concerns about the Indefinitely Confined status. In that Order the Court acknowledged that on March 25, 2020, the Dane County Clerk, and the Milwaukee County Clerk as well, publicly approved the use of Indefinitely Confined status by all voters due to the pandemic.³ See, e.g., App. 235-237, March 31, 2020 Order, *Jefferson v. Dane*, No. 2020AP557-OA at 2 (explaining that the Dane County and Milwaukee County Clerks indicated that “all Dane [and Milwaukee] County voters could declare themselves to be ‘indefinitely confined’ under Wis. Stat. § 6.86(2)” because of the Safer at Home Order, “thereby avoiding the legal requirement to present or upload a copy of the voter’s proof of identification when requesting an absentee ballot” and concluding that such “advice was legally incorrect.”). The total number of voters claiming that status after that date was 28,395 for those two counties. Milwaukee Cty. Trans. 11/27/20 at 19:23-22:3, App. 118-121; Aff. Jordan Moskowitz (dated 11/25/20) ¶4, Exs. 1-2, App. 240; Dane Cty. Trans. 11/28/20 at 7:2-12:6, App. 155-156; Aff. Jordan Moskowitz (dated 11/27/20) ¶¶ 2-6, Exs. 1-4, App. 224-233. Excluding all those with that status who otherwise had IDs on file, those that did not cast a ballot and those that voted in a manner consistent with legitimately claiming

³ It is also true that claiming to be indefinitely confined was not necessary for any elector who wished to participate in the election and avoid excess contact with others. Any elector could have applied for an absentee ballot, voted that ballot and mailed that ballot back to the clerk without leaving their home. Claiming to be indefinitely confined, however, did allow tens of thousands of electors to vote without providing the legally required photo identification.

the status, the remaining voters totaled 15,102. *Id.*

56. Though expressly required by statute to take appropriate measures to insure the legitimacy of the voting rolls, Wis. Stat. §§ 6.50 and 9.01(1)(b)1., and to examine suspect Indefinitely Confined Voters, Wis. Stat. § 6.86(2)(b) and 9.01(1)(b)2., no effort was made by the clerks to verify the legitimate status of the Indefinitely Confined Voters as evidenced by the cumulative numbers from March 25 through the election. Aff. Jordan Moskowitz (dated 11/27/20) ¶¶ 2-6, Exs. 1-4, App. 224-233; Aff. Kyle J. Hudson (dated 11/25/20) ¶2, Exs. A-G, App. 242-258.

57. All Indefinitely Confined Absentee Ballots issued to those claiming that status after March 25, 2020, without the required photo identification, were issued in violation of law and must be excluded from any certified results of the Election. Wis. Stat. § 6.86(2)(a); *Frank*, 17 F. Supp. 3d at 844), *rev'd on other grounds*, 768 F.3d 744 (7th Cir. 2014). The Boards of Canvassers for Dane and Milwaukee County improperly included those ballots in the Recount totals.

58. During the Recount, the Petitioners objected to the counting of ballots collected during the “Democracy in the Park” events. Dane Cty. Trans. 11/24/20 at 52:3 – 56:15, App. 148-149. 17,271 ballots were collected at those events. *Id.* at 56:13, App. 149.

59. As a matter of law, these absentee ballots cannot be counted.

Wisconsin’s careful regulation of absentee balloting requires that all absentee ballots must “be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” Wis. Stats. § 6.87(4)(b)1; *accord Olson v. Lindberg*, 2 Wis. 2d 229, 236, 85 N.W.2d 775, 780 (1957) (excluding absentee ballots delivered to a location other than the appropriate municipal clerk’s office under a prior version of the statute).

60. In the alternative, these “Democracy in Park” locations were not legally established alternate absentee ballot sites because they failed to meet many of Wis. Stat. 6.855(1) obligations. For example, the sites were not established by an act of the governing body—the City of Madison Common Council. Alternate absentee ballot sites may only be established by the “governing body of a municipality” and, if such a site is designated by the governing body of a municipality, “no function related to voting and return of absentee ballots that is to be conducted at the alternate site may be conducted in the office of the municipal clerk or board of election commissioners.” Wis. Stat. § 6.855(1)

61. The Milwaukee County and Dane County Boards of Canvassers’ decision to count In-Person Absentee Ballots without a corresponding written application, count Incomplete and Altered-Certification Absentee Ballots, count all Indefinitely Confined Absentee Ballots and count 17,271 Absentee Ballots received at “Democracy in the

Park” events caused harm to the Trump Campaign because no fewer than 17,271 votes were counted in contravention of the express language of the Wisconsin Statutes and those votes were included in the Recount, thereby directly impacting the outcome of the Election in Wisconsin.⁴

STATEMENT OF RELIEF SOUGHT

If this Court grants the Petition, Petitioners will ask this Court to issue a declaratory judgment, *see, e.g.*, Wis. Stat. § 806.04, which declares the Governor’s certification of the election and naming of the electors void *ab initio* and orders it withdrawn, and declares and orders that the Milwaukee County and the Dane County Boards of Canvassers, WEC and/or the Governor shall exclude as defective from the Recount totals and any certified Election results, or results used to issue a Certificate of Election, In-Person Absentee Ballots without an associated written application, Incomplete and Altered-Certification Absentee Ballots, Indefinitely Confined Absentee Ballots, as defined earlier, and “Democracy in the Park” Absentee Ballots.

Petitioners will also request that this Court provide other appropriate equitable relief, *see, e.g.*, Wis. Stat. § 806.04, including to prohibit and restrain WEC from preparing, and Governor Evers from signing, a Certificate of Election, pursuant to Wis. Stat. § 7.70(5), unless and until such

⁴ If voter rolls are reduced by the number of non-legal voters Petitioners request through drawdowns (Wis. Stat. § 9.01(b)2-4.), then Petitioners would necessarily win Wisconsin.

illegal absentee ballots are excluded from the results of the Election. The Court should take such action as is necessary to maintain the status quo, so that when the Court determines the outcome in this matter, the appropriate set of electors will be duly qualified to cast Wisconsin's electoral votes.

STATEMENT OF THE REASONS WHY THIS COURT SHOULD TAKE JURISDICTION

As discussed in more detail in the Memorandum In Support of Petition for Original Action, this Court should grant this Petition because the matters it raises satisfy the criteria for this Court's exercise of its original jurisdiction under Article VII, Section 3 of the Wisconsin Constitution. This is an "exceptional case[] in which a judgment by the court [would] significantly affect[] the community at large." *Wisconsin Professional Police Ass'n v. Lightbourn*, 2001 WI 59, ¶4, 243 Wis. 2d 512, 627 N.W.2d 807.

This case involves the election for the electors of the Office of President and Vice President of the United States and the outcome of the Recount and this matter will not only decide which candidates obtain Wisconsin's 10 Electoral College Electors, but may very well decide the outcome of the election nationwide. Prompt resolution of this legal dispute is of the essence to the public interest because, absent this Court's action, In-Person Absentee Ballots without a corresponding written application, Incomplete and Altered-Certification Absentee Ballots, all Indefinitely Confined Absentee Ballots, and "Democracy in the Park" Absentee Ballots,

will be included in the results of the Election despite clear and unambiguous law to the contrary.

It is also true that absent action by this Court these violations of Wisconsin's election laws will continue into future elections, casting doubt on the legitimacy of those future elections to accurately and legally give voice to the will of Wisconsin's electorate. This case provides a live, justiciable controversy that will allow this Court to clarify the law and its application to elections.

This case presents only purely legal issues of statutory interpretation, meaning that no fact finding by this Court would be needed.

CONCLUSION

This Court should grant the Petition and issue the requested relief and order strict compliance with clear and unambiguous statutory law requiring the exclusion of In-Person Absentee Ballots, Incomplete and Altered-Certification Absentee Ballots, certain Indefinitely Confined Absentee Ballots and "Democracy in the Park" Absentee Ballots from any certified results of the Election.

Dated this 1st day of December, 2020.

TROUPIS LAW OFFICE LLC

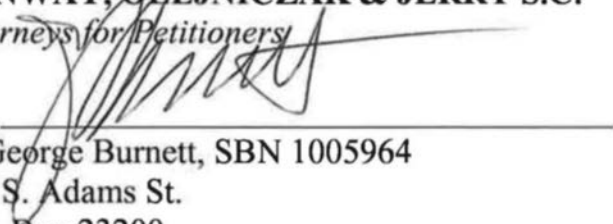
Attorneys for Petitioners

James R. Troupis, SBN 1005341
4126 Timber Ln.
Cross Plains, WI 53528-9786
Phone: 608.833.8037
Email: judgetroupis@gmail.com

CONWAY, OLEJNICZAK & JERRY S.C.

Attorneys for Petitioners

By: _____


R. George Burnett, SBN 1005964
231 S. Adams St.
P.O. Box 23200
Green Bay, WI 54305-3200
Phone: 920.437.0476
Facsimile: 920.437.2868
Email: rgb@lcojlaw.com

No. _____

In the Supreme Court of Wisconsin

DONALD J. TRUMP, MICHAEL R. PENCE, and DONALD J. TRUMP FOR PRESIDENT,
INC.,

PETITIONERS,

v.

ANTHONY S. EVERS, Governor of Wisconsin in his official capacity, THE WISCONSIN ELECTIONS COMMISSION, ANN S. JACOBS, Chair of the Wisconsin Elections Commission in her official capacity, SCOTT McDONELL, Dane County Clerk in his official capacity, ALAN A. ARNSTEN, Member of the Dane County Board of Canvassers in his official capacity, JOYCE WALDROP, Member of the Dane County Board of Canvassers in her official capacity, GEORGE L. CHRISTENSON, Milwaukee County Clerk in his official capacity, TIMOTHY H. POSNANSKI, Member of the Milwaukee County Board of Canvassers in his official capacity, RICHARD BASS, Member of the Milwaukee County Board of Canvassers in his official capacity, and DAWN MARTIN, Member of the Milwaukee County Board of Canvassers in her official capacity,

RESPONDENTS.

MEMORANDUM IN SUPPORT OF PETITION FOR ORIGINAL ACTION

James R. Troupis, SBN 1005341
Troupis Law Office LLC
4126 Timber Ln.
Cross Plains, WI 53528-9786
Phone: 608.833.8037
Email: judgetroupis@gmail.com

R. George Burnett, SBN 1005964
Conway, Olejniczak & Jerry S.C.
231 S. Adams St.
Green Bay, WI 54305-3200
Phone: 920.437.0476
Email: rgb@lcojlaw.com

Counsel for Petitioners

TABLE OF CONTENTS

TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
ISSUES PRESENTED BY THE CONTROVERSY	1
INTRODUCTION	2
STATEMENT ON ORAL ARGUMENT AND PUBLICATION ...	6
STATEMENT OF THE CASE	6
A. The Relevant Election Law Governing Absentee Balloting.....	6
B. Wisconsin Statutes Expressly Provide for Limited Methods of Delivery of Absentee Ballots Pursuant to Wis. Stat. § 6.87(4)(b)(providing for mail or in person delivery).	12
C. Accepting Incomplete Absentee Ballot Certifications and Altering Absentee Ballot Certifications in the 2020 Election.....	14
D. “Indefinitely Confined” Voters in the 2020 Election.	16
E. "Democracy in the Park."	19
STANDARD OF REVIEW.....	21
SUMMARY OF THE ARGUMENT	21
ARGUMENT	24
I. The Proper Exclusion of Illegal and Defective Absentee Ballots From the Recount Is An Issue Of Great Public Importance, Warranting This Court’s Assertion Of Its Original Action Authority.	24
II. Respondents’ Decisions to Count and Include in the Election Results In-Person Absentee Ballots Without The Required Application,	

Incomplete and Altered-Certification Absentee Ballots, Indefinitely Confined Absentee Ballots, and Democracy in the Park Absentee Ballots Are Legally Wrong.	29
A. Respondents’ Decision to Count In-Person Absentee Ballots Issued Without The Required Written Application Is Directly Contrary To Clear And Unambiguous Statutory Law.	30
B. Respondents’ Decision to Include and Count Incomplete and Altered- Certification Absentee Ballots is Contrary to Law.	36
C. Respondents’ Decision to Count and Include In The Results All Indefinitely Confined Absentee Ballots Issued Without The Required Photo Identification Is Improper.	38
D. Receipt of Ballots and Other Activities by the City of Madison at "Democracy in the Park" Events Violate Wisconsin Election Laws.	42
CONCLUSION.....	43
CERTIFICATION.....	45

TABLE OF AUTHORITIES

	Page(s)
 Cases	
<i>Bush v. Gore</i> , 531 U.S. 98, 121 S. Ct. 525 (2000).....	28
<i>Frank v. Walker</i> , 17 F. Supp. 3d 837 (E.D. Wis. Apr 29, 2014)	10
<i>Kalal v. Dane County</i> , 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110	29
<i>Lee v. Paulson (in re Ballot Recount)</i> , 2001 WI App 19.....	passim
<i>Moustakis v. State of Wis. Dep’t of Justice</i> , 2016 WI 42, 368 Wis. 2d 677, 880 N.W.2d 142	21
<i>Olson v. Lindberg</i> , 2 Wis. 2d 229, 85 N.W.2d 775 (1957).....	12, 19
<i>Petition of Heil</i> , 230 Wis. 428, 284 N.W. 42 (1939).....	25, 26
<i>State ex rel. Kleczka v. Conta</i> , 82 Wis. 2d 679, 264 N.W.2d 539 (1978).....	26, 28
<i>Town of Wilson v. City of Sheboygan</i> , 2020 WI 16, 390 Wis. 2d 266, 938 N.W.2d 493	30
<i>Underwood v. Karns</i> , 21 Wis. 2d 175, 124 N.W.2d 116 (1963).....	28
<i>Wisconsin Professional Police Ass’n v. Lightbourn</i> , 2001 WI 59, 243 Wis. 2d 512, 627 N.W.2d 807	26
 Statutes	
3 U.S.C. § 7	28
3 U.S.C. § 15	22
Wis. Const. art. VII, § 3.....	25
Wis. Stat. 6.80(2)(d).....	5
Wis. Stat. 6.855(1).....	passim
Wis. Stat. § 7.52(4)(i).....	32
Wis. Stat. Ch. 6.....	2
Wis. Stat. § 6.20	5, 31
Wis. Stat. § 6.84(2).....	passim
Wis. Stat. § 6.86(1)(a)	6, 7, 30, 31
Wis. Stat. § 6.86(1)(ar).....	passim
Wis. Stat. § 6.86(1)(b)	passim

Wis. Stat. § 6.86(2).....	5, 10, 17, 40
Wis. Stat. § 6.86(2)(a)	passim
Wis. Stat. § 6.86(2)(b)	11, 41
Wis. Stat. § 6.87(2).....	9, 23, 37
Wis. Stat. § 6.87(4)(b)	passim
Wis. Stat. § 6.87(4)(b)1.	34, 43
Wis. Stat. § 6.87(4)(b)2.	10, 39
Wis. Stat. § 6.87(6d).....	passim
Wis. Stat. § 6.87(9).....	passim
Wis. Stat. § 7.70(5)(a)	21, 5
Wis. Stat. § 7.70(5)(b)	22, 28
Wis. Stat. § 7.75(1).....	27, 28
Wis. Stat. § 9.01(1)(a)	4
Wis. Stat. § 9.01(1)(b)	passim
Wis. Stat. § 9.01(8).....	21
Wis. Stat. § 9.01(11).....	27
Wis. Stat. § 809.19(8)(b), (c).....	46
Wis. Stat. § 809.70	25
Wis. Stat. §§ 6.79(2)(a), 6.87(1).....	37
Wis. Stat. §§ 6.79(2)(a), (3), and 6.87(1)	10
Wis. Stat. §§ 6.84 to 6.89	5
Wis. Stat. §§ 6.84(1).....	39
Wis. Stat. §§ 6.84(1)-(2) & 6.86(1)(ar)	35
Wis. Stat. §§ 6.86(1)(a) and (1)(ar)	21
Wis. Stat. §§ 6.86(1)(ac), (ar) and 6.87(1)	10, 39
Wis. Stat. §§ 6.86, 6.87(3) to (7) and 9.01(1)(b)2. and 4.	passim
Wis. Stat. §§ 9.01(6)-(9).....	5, 27
§ 6.86(ar)	31

ISSUES PRESENTED BY THE CONTROVERSY

1. Whether absentee ballots issued in-person to voters by municipal clerks' offices in Milwaukee County and Dane County without the required written application, pursuant to Wis. Stat. § 6.86(1)(ar), are illegal and invalid.

2. Whether absentee ballots issued by municipal clerks' offices in Milwaukee County and Dane County without the required written application, pursuant to Wis. Stat. § 6.86(1)(ar), should be excluded from the Presidential Election results in Wisconsin as required by Wis. Stat. § 6.84(2).

3. Whether absentee ballots accompanied by incomplete certifications or on which municipal clerks added missing information in contravention of Wis. Stat. §§ 6.84(2) and 6.87(6d) are illegal and invalid.

4. Whether absentee ballots accompanied by incomplete certifications or on which municipal clerks added missing information in contravention of Wis. Stat. §§ 6.84(2) and 6.87(6d) should be excluded from the Presidential Election results in Wisconsin as required by Wis. Stat. § 6.84(2).

5. Whether absentee ballots cast by electors claiming Indefinite Confinement status, which status was claimed on or after March 25, 2020, for which there was no voter identification provided are illegal and invalid.

6. Whether absentee ballots cast by electors claiming Indefinite Confinement status, which status was claimed on or after March 25, 2020, for which there was no voter identification provided should be excluded from the Presidential Election results in Wisconsin.

7. Whether stationing poll workers, receiving ballots, witnessing ballot certifications and other clerk's office activities in Madison's "Democracy in the Park" events complied with Wisconsin Election laws.

8. Whether relief by drawdown is appropriate for legal violations committed at "Democracy in the Park" events.

INTRODUCTION¹

The 2020 Presidential Election (the "Election") is one of the closest contests in history with numerous states reporting results within a single percentage point, including Wisconsin. In addition to the just concluded Wisconsin Recount and these proceedings, recounts, election challenges, audits and other post-election actions have taken place or are ongoing in Georgia, Pennsylvania, Michigan, Arizona, and Nevada. The final determination of outcome of the Election hangs in the balance.

Here, in Wisconsin, Petitioners have identified systemic violations of Wis. Stat. Ch. 6 with regard to the issuance, acceptance, and, ultimately, the inclusion in the vote totals of certain absentee ballots. The remedy for these violations is expressly dictated by statute. Ballots issued, accepted, and/or counted in violation of the specific provisions at issue in this case *cannot* be "included in the certified results" of the 2020 Presidential Election. *See* Wis. Stat. § 6.84(2) ("Ballots cast in

¹ Citations to "App. ___" refer to the page(s) of the Appendix filed with Petitioners' Petition for Original Action; citations to the transcript of the Recount proceedings in Milwaukee County appear as "Milwaukee Cty. Trans. [date] at [page:line]" and citations to the transcript of the Recount proceedings in Dane County appear as "Dane Cty. Trans. [date] at [page:line]."

contravention of the procedures specified in [Wis. Stat. §§ 6.86, 6.87(3) to (7) and 9.01(1)(b)2. and 4.] 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.”); accord *Lee v. Paulson (in re Ballot Recount)*, 2001 WI App 19 (ordering the removal of improperly issued absentee ballots from the final vote totals and changing the outcome of an election.).

The unofficial results of the Election in Wisconsin reported by the Wisconsin Elections Commission (“WEC”) indicate that President Donald J. Trump and Vice President Michael R. Pence received 1,610,076 votes and Joseph R. Biden and Senator Kamala D. Harris received 1,630,503 votes, a difference of 20,427 votes or 0.620%. WEC, Unofficial Results for the November 3, 2020 General Election, available at <https://elections.wi.gov/node/7234>. The Recount totals certified by WEC indicate that President Donald J. Trump and Vice President Michael R. Pence received 1,610,184 votes and Joseph R. Biden and Senator Kamala D. Harris received 1,630,866 votes. WEC, Statement of Canvas for President, Vice President and Presidential Electors General Election, November 3, 2020, available at: https://elections.wi.gov/sites/elections.wi.gov/files/2020-11/Jacobs%20-%20Signed%20Canvass%20for%20President%20-%20Vice%20President_0.pdf; Milwaukee Cty. Trans. 11/27/20 at 27:11-28:7; Dane Cty. Trans. 11/29/20 at 12:15-25. App. 120:11-121:8, 261 at 12:15-25.

Petitioners, President Donald J. Trump and Vice President Michael R. Pence, requested a recount of the results in both Milwaukee County and Dane County pursuant to Wis. Stat. § 9.01(1)(a) (the “Recount”). The Verified Petition filed to request the Recount details mistakes, irregularities, and illegal behavior affecting more than enough votes to alter the outcome of the election. WEC, Unofficial Results for the November 3, 2020 General Election, *available at* <https://elections.wi.gov/node/7234>. The Recount verified those claims.

While there was a pattern of activities improperly undertaken that affected the Election, four stand out: (1) a total of at least 170,140 absentee ballots were improperly counted as they were issued without the elector having first submitted a written application as expressly required by Wis. Stat. § 6.86(1)(ar); (2) no less than 5,517 absentee ballots were improperly counted as the certifications were, when received by the clerks’ offices, incomplete and, as to a substantial proportion, the clerks’ offices subsequently altered the certifications by inserting missing information; (3) 28,395 absentee ballots were counted that were cast by individuals claiming Indefinite Confinement status even as there was “reliable information that [the]... elector no longer qualifies for the service....” Wis. Stat. § 6.86(2); and (4) 17,271 absentee ballots were cast or received at “Democracy in the Park” events.²

² Other improper actions occurred during the recount as in Milwaukee, ballots with no clerk’s initials were allowed to be recounted in contravention of Wis. Stat. 6.80(2)(d). Milwaukee Cty. Trans. 11/24/20 at 65:21-66:21. App. 114:21-115:21.

Despite clear law to the contrary and the express objections by the Trump Campaign to the inclusion in the Recount totals of the ballots identified above, the Milwaukee County and Dane County Boards of Canvassers improperly included those ballots in their Recount totals. The fact that the Milwaukee County and Dane County Boards of Canvassers rendered decisions that are in direct conflict with applicable Wisconsin Statutes and published case law implicates an urgent matter of state-wide and national importance and warrants the Court's exercise of its original jurisdiction.

Contrary to the express provision of Wisconsin Statutes, allowing for a five day period to appeal the results of the recount, Governor Evers appears to have begun to take steps to issue a certificate of election and name Wisconsin's electors. Wis. Stat. § 7.70(5)(a) ("When a valid petition for recount is filed ... the governor or commission may not issue a certificate of election until the recount has been completed and the time allowed for filing an appeal has passed ..."); Wis. Stat. § 9.01(6)(a) ("within 5 business days after completion of the recount determination by the commission chairperson ... any candidate ... aggrieved by the recount may appeal ..."). The Court must act in these proceedings to order the Governor to withdraw that certificate and to allow for the orderly recount process to continue.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

If this Court grants the Petition for Original Action, that will indicate that this case is appropriate for argument and publication.

STATEMENT OF THE CASE

A. The Relevant Election Law Governing Absentee Balloting

The voting process in Wisconsin elections is governed by Chapters 5-10 of the Wisconsin Statutes. Voting by absentee ballot is authorized by Wis. Stat. § 6.20 under the specific procedures set forth in Wis. Stat. §§ 6.84 to 6.89.

The Wisconsin Legislature has made it clear that voting in-person on Election Day is a constitutional right, but that voting by absentee ballot is a privilege that must be “carefully regulated.” Specifically, Wis. Stat. § 6.84 states as follows:

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 the 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 in a referendum; or other similar abuses.

Because of the need to “carefully regulate[]” absentee balloting, Wisconsin law requires that “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.*” Wis. Stat. § 6.84(2) (emphasis added). In an effort to leave no doubt, the Legislature prescribed the specific remedy for any failure to adhere to these provisions:

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*.

Wis. Stat. § 6.84(2) (emphasis added).

i. Written Application is Required for All Absentee Ballots, Including All In-Person Absentee Ballots.

Pursuant to Wis. Stat. § 6.86(1)(a) an eligible voter must apply to vote by absentee ballot by submitting a “written application to the municipal clerk” by one of six expressly prescribed methods, including by mail, email or facsimile, and in person at the municipal clerk’s office. Wis. Stat. § 6.86(1)(a). In order to facilitate that process, a Form EL-121 is provided to the voters. WEC, EL-121 Application for Absentee Ballot (rev. 2020-07), available at <https://elections.wi.gov/sites/elections.wi.gov/files/2020-06/EL-121%20Application%20for%20Absentee%20Ballot%20%28rev.%202020-06%29.pdf>; App. 161-162.

In-person absentee balloting is authorized by Wis. Stat. § 6.86(1)(b), which requires as follows:

If application [for an absentee ballot] is made in person, the application shall be made no earlier than 14 days preceding the election and no later than the Sunday preceding the election. No application may be received on a legal holiday. A municipality shall specify the hours in the notice under s. 10.01 (2) (e). The municipal clerk or an election official shall witness the certificate for any in-person absentee ballot cast.

Wis. Stat. § 6.86(1)(b).

While statutes allow for the absentee process to occur in person, the Wisconsin Statutes expressly and unequivocally make clear that the elector must submit a written application before a ballot can be issued and that a municipal clerk is prohibited from issuing an absentee ballot to an elector unless that elector first submits a written application for the ballot:

[T]he municipal clerk *shall not issue an absentee ballot unless the clerk receives a written application therefor* from a qualified elector of the municipality. The clerk shall retain each absentee ballot application . . . *if a qualified elector applies for an absentee ballot in person* at the clerk's office, the clerk shall not issue the elector an absentee ballot unless the elector presents proof of identification. *The clerk shall verify that the name on the proof of identification presented by the elector conforms to the name on the elector's application* . . .

Wis. Stat. § 6.86(1)(ar) (emphasis added). Indeed, Form EL-121 expressly provides for its use when submitting a ballot during the in person absentee voting period—a box to be checked by the clerk indicates it was completed for an “in-person voter.” WEC, EL-121 Application for Absentee Ballot (rev. 2020-07), *available at* <https://elections.wi.gov/sites/elections.wi.gov/files/2020-06/EL-121%20Application%20for%20Absentee%20Ballot%20%28rev.%202020-06%29.pdf>; App. 161-162. Clerks outside of Dane and Milwaukee County appropriately required a separate application for in person voting under Wis. Stat. § 6.86(1)(b). Aff. Lori Opitz (11/20/20) ¶¶ 2-4; App. 222-223.

Furthermore, *Wisconsin law requires strict compliance with absentee ballot procedures*, including those governing the in-person absentee balloting process:

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.**

Wis. Stat. § 6.84(2) (emphasis added); *accord Lee v. Paulson*, 2001 WI App 19, 241 Wis.2d 38, 623 N.W.2d 577 (excluding 5 absentee ballots from the certified election results because there was no corresponding written application. The removal of the 5 ballots changed the outcome of the election).

As a result, absentee ballots in Wisconsin may not be counted or included in the certified election results without a corresponding and prior written application.³

ii. Absentee Ballot Certifications Must be Complete and Cannot Be Altered by Municipal Clerks.

Absentee balloting must be witnessed, and the certification on the outside of the envelope provides a place where the witness must sign *and provide his or her address*. Wis. Stat. § 6.87(2). If the certification lacks the witness's address, it may not be counted: "*If a certificate is missing the address of a witness, the ballot may not be counted.*" Wis. Stat. § 6.87(6d) (emphasis added). Lest there be any doubt about whether this is directory or mandatory, this provision falls within the scope of provisions that § 6.84(2) declares mandatory. As recently as 2015 the Wisconsin

³ In Milwaukee, Petitioners requested to review all written applications for absentee ballots (Milwaukee Cty. Trans. 11/20/20 at 9:18 – 21), but after being told all written applications were or would be at the recount site (Milwaukee Cty. Trans. 11/20/20 at 35:9-17), Petitioners were denied the right to see or inspect the boxes purportedly containing written applications. Milwaukee Cty. Trans. 11/22/20 at 22:12 – 56:23). App. 3:18-21, 9:9-17, 69:12-103:23.

Legislature reaffirmed the essential requirement that the ballot envelope certificate must be fully and accurately completed by the voter and the witness. 2015 Wis. Act 261, § 78 (creating Wis. Stat. § 6.87(6d)).

The Legislature provided one, and only one, legal method for remedying an improperly completed absentee ballot certification (such as a certification lacking the witness's address), and that is to return it to the elector:

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 . . .

Wis. Stat. § 6.87(9).

iii. Unless an Elector is “Elderly, Infirm or Disabled and Indefinitely Confined” Absentee Ballots Cannot Be Issued Without the Elector Providing Photo Identification.

Wisconsin statutory law expressly requires that all eligible electors must provide proof of identification in order to register to vote, and each time they vote. Wis. Stat. §§ 6.79(2)(a), (3), and 6.87(1). Photo identification is also required when requesting to vote by absentee ballot. Wis. Stat. §§ 6.86(1)(ac), (ar) and 6.87(1).

There are very limited exceptions to the requirement that an elector must provide photo identification with any application for an absentee ballot, including an exception if an elector certifies that he or she is “indefinitely confined because of age, physical illness or infirmity or is disabled for an indefinite period . . .” Wis. Stat. § 6.86(2)(a). In fact, in order to qualify for the exception, an elector must be “elderly, infirm or disabled *and* indefinitely confined.” *Frank v. Walker*, 17 F. Supp.

3d 837, 844 (E.D. Wis. Apr 29, 2014) (emphasis added), *rev'd on other grounds*, 768 F.3d 744 (7th Cir. 2014). An elector who meets the strict definition of “indefinitely confined” in Wis. Stat. § 6.86(2)(a) must sign a statement to that effect, and then “the elector may, in lieu of providing proof of identification, submit with his or her absentee ballot a statement . . . which contains the name and address of the elector and verifies that the name and address are correct.” Wis. Stat. § 6.87(4)(b)2.

This exception is not limitless. Municipal clerks are expressly charged with the responsibility to review and expunge from the voter rolls those claiming “indefinitely confined” status when the Clerk has “reliable information that [the]... elector no longer qualifies for the service.” Wis. Stat. § 6.86(2)(b). Moreover, electors who claimed they were indefinitely confined, but are no longer indefinitely confined or physically ill, infirm, elderly, or disabled are obligated to take steps to be removed from such status. Wis. Stat. § 6.86(2)(a) (“If any elector is no longer indefinitely confined, the elector shall so notify the municipal clerk.”). *See* Aff. Kyle J. Hudson (Nov.25, 2020) ¶2, Exs. A-G. App. 242-258.

iv. Municipal Clerks Cannot Create Multiple Offices to Conduct Absentee Voting, Receive Ballots, Witness Envelopes And The Like at Times of Their Choosing.

Wisconsin does not allow advance voting; instead, it has created a system of carefully tailored statutes for absentee voting. Among the issues addressed in the statutes are matters related to how a municipal clerk must act in advance of the election. So, for example, a municipal clerk must have only one place where ballots

are received and if an alternate location is preferable, for in-person voting and the like, then the clerk must comply with very stringent rules described in Wis. Stat. 6.855(1), including authorization from the governing body and creation of only one such alternate office. That law comports with prior decisions of this Court, under a predecessor statute, excluded absentee ballots delivered to a location other than the appropriate municipal clerk's office. *Olson v. Lindberg*, 2 Wis. 2d 229, 236, 85 N.W.2d 775, 780 (1957)

B. Wisconsin Statutes Expressly Provide for Limited Methods of Delivery of Absentee Ballots Pursuant to Wis. Stat. § 6.87(4)(b)(Providing for Mail or In-Person Delivery).⁴

The 2020 Election involved unprecedented amounts of mail-in absentee balloting because of the COVID-19 Pandemic. Interestingly, substantially fewer absentee voters completed ballots in-person at clerks' offices in 2020 than in the 2016 November General Election. *Compare* WEC, Absentee Voting Statistics for the November 3, 2020 General Election, *available at* <https://elections.wi.gov/index.php/node/7236> *with* WEC, 2016 General Election Summary Statistics, *available at*

⁴ Although colloquially referred to as "early voting," Wisconsin law does not actually permit early voting. Instead, Wisconsin law authorizes a 14-day window preceding an election during which electors are authorized to request their absentee ballot in person at their clerk's office and during which the clerk is authorized to act as the witness on an elector's absentee ballot envelope. Wis. Stat. § 6.86(1)(b). Once the completed absentee ballot envelope is witnessed by the clerk, an elector's absentee ballot is added to any absentee ballots the clerk has received by mail and processed and counted in the same manner as all other absentee ballots in the elector's ward. *Id.* These in-person absentee ballots are, as a matter of law, no different than any other absentee ballot and are treated as such.

https://elections.wi.gov/sites/elections.wi.gov/files/publication/2016_general_election_summary_statistics_pdf_15354.pdf.

108,947 absentee ballots were issued by municipalities within Milwaukee County and an additional 61,193 absentee ballots were issued by municipalities in Dane County, during the “in-person absentee voting” period pursuant to Wis. Stat. § 6.86(1)(b) (the “In-Person Absentee Ballots”). Milwaukee Cty. Trans. 11/21/20 at 184:14-187:22; Dane Cty. Trans. 11/22/20 at 57:23-59:13; App. 61:14-64:22, 144 at 57:23 to 145 at 59:13.

None of the 170,140 in-person absentee ballots issued in Milwaukee and Dane Counties during the in-person period under Wis. Stat. § 6.86(1)(b) had an associated written application. Instead, in both Dane and Milwaukee County, the Canvassing Boards during the Recount found that the Clerk’s receipt of form EL-122 (the “Envelope” in which the absentee ballot is placed by the elector), was sufficient to satisfy the statutory written application requirement. *See e.g.*, Milwaukee Cty. Trans. 11/20/20 at 35:18-25; Dane Cty. Trans. 11/22/20 at 58:19-21; Aff. Claire Woodall-Vogg ¶ 16. App. 9:18-25, 145 at 58:19-21, 182-183, 259, 264-267. Other municipalities, outside of Dane and Milwaukee County, did comply with the statute by requiring a written application, in accordance with the Statutes. Dane Cty. Trans. 11/28/20 at 7:7-25; Aff. Lori Opitz ¶¶ 2-4; App. 115 at 6:7-25, 222-223.

During the Recount Petitioners objected to all In-Person Absentee Ballots issued without a corresponding written application and requested that the Board of

Canvassers reject those ballots. Milwaukee Cty. Trans. 11/22/20 at 4:20-24; Dane Cty. Trans. 11/20/20 at 15:9-18:14. App. App. 68:20-24, 126 at 15:9 to 127 at 18:14. Both the Milwaukee County and Dane County Boards of Canvassers overruled Petitioners' objections. Milwaukee Cty. Trans. 11/21/20 at 186:11-187:10; Dane Cty. Trans. 11/20/20 at 36:15-40:25. App. 63:11-64:10, 129 at 36:15 to 130 at 40:25. As a result, the absentee ballots cast during the in-person period, without an application, were included in the Recount totals.⁵ Petitioners have filed this original action to rectify the Milwaukee County and Dane County Boards of Canvassers' erroneous inclusion of In-Person Absentee Ballots issued without a corresponding written application in the Recount.

C. Accepting Incomplete Absentee Ballot Certifications and Altering Absentee Ballot Certifications in the 2020 Election.

The sole statutorily-authorized remedy for an incomplete absentee ballot certification is for the clerk to send it back to the elector (with a new certification envelope, if necessary) so that the missing address can be supplied by the proper person — a person that is obviously not the clerk. Wis. Stat. § 6.87(9) ("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,

⁵ To avoid administrative concerns arising from incorrect findings and conclusions by the Canvassing Boards, Petitioners argued to exclude the questionable ballots and then complete the process both with and without counting those ballots. Petitioners' request was denied. *See e.g.*, Dane Cty. Trans. 11/20/20 at 63:19-65:11 App. 135 at 63:19 to 65:11.

whenever time permits the elector to correct the defect and return the ballot . . .”).⁶

No municipal or county clerk is authorized to alter an elector’s certificate envelope. Yet for the 2020 Election, clerks in municipalities throughout Milwaukee and Dane Counties altered absentee ballot certifications rather than following the correct procedure under Wis. Stat. § 6.87(9). Milwaukee used red ink to signify an address had been added or altered by the clerk’s office. Milwaukee Cty. Trans. 11/20/20 at 115:11-128:17. App. 28:11-41:17. *See also* Youtube.com, *Milwaukee Central Count Training Video* (April 1, 2020), <https://www.youtube.com/watch?v=hbm-pPaYIqk> (last visited November 25, 2020)(City of Milwaukee training video indicating, from 10:40 to 11:15 of the video, that election officials may insert a missing witness address in “red ink,” which is contrary to law). In other municipalities, the clerks initialed the certification next to the addresses they added. The total of those incomplete and altered certifications was 5,517. Aff. Kyle Hudson (Nov. 30, 2020) ¶ 4; Aff. Joe Voiland (Nov. 30, 2020) ¶ 4; Aff. Joe Voiland ¶¶ 3-4 (Nov. 30, 2020). App. 268, 271-273.⁷ In other instances, certifications were incomplete or otherwise defective, but the Boards nonetheless counted them on the same basis. Milwaukee Cty. Trans. 11/20/20 at 68:1-74:8; 11/24/20 at 64:11-65:10;

⁶ It appears the Wisconsin Elections Commission has incorrectly instructed clerks to alter absentee ballot certifications in direct contravention of our statutes. When the elector's absentee ballot certification lacks the witness's address, WEC suggests clerks engage in original research to discover the address and then fill it in. *See* WEC, Spoiling Absentee Ballot Guidance dated October 19, 2020, available at <https://elections.wi.gov/sites/elections.wi.gov/files/2020-10/Spoiling%20Ballot%20Memo%2010.2020.pdf>.

⁷ The referenced affidavits summarize the total ballots objected to due to incomplete in a variety of ways and altered certifications as indicated in the Recount transcripts. At the time of this filing the actual exhibits were not in Petitioners’ possession, but Petitioners will supplement a complete tally when the final tally is obtained.

App. 21:1-27:8, 113:11-114:10. In total, the Boards, together, counted 5,517 certifications that were either altered by clerks or that were incomplete or otherwise defective. Aff. Kyle Hudson (Nov. 30, 2020) ¶ 4; Aff. Joe Voiland (Nov. 30, 2020) ¶ 4. App. 268, 271-273. The Milwaukee County Board of Canvassers segregated these altered absentee ballot certifications. Milwaukee Cty. Trans. 11/20/20 at 57:14-23, 58:8-67:7; App. 10:14-23, 11:8-20:7.

During the Recount Petitioners objected to the canvassers counting Incomplete and Altered-Certification Absentee Ballots and requested that such ballots be rejected. Dane Cty. Trans. 11/20/20 at 48:25 – 49:8; Milwaukee Cty. Trans. 11/23/20 at 25:19-27:21; App. 91 at 48:25-49:8, 69:19-71:21. Both the Milwaukee County and Dane County Boards of Canvassers overruled Petitioners’ objections to the counting of Incomplete and Altered-Certification Absentee Ballots and continued counting those ballots as part of the Recount. Dane Cty. Trans. 11/20/20 at 60:1-65:14; Milwaukee Cty. Trans. 11/20/20 at 115:11-128:17. App. 344 at 60:1-65:14, 28:11-41:17. As a result, both Boards of Canvassers, over Petitioners’ objections, counted ballots on which the witness certification was missing entirely or was otherwise incomplete.

Petitioners have filed this original action to rectify the Milwaukee County and Dane County Boards of Canvassers’ erroneous inclusion of Incomplete and Altered-Certification Absentee Ballots in the Recount.

D. “Indefinitely Confined” Voters in the 2020 Election.

The 2020 Election involved unprecedented numbers of electors claiming that they qualified for issuance of an absentee ballot without providing photo identification because they were “indefinitely confined” pursuant to Wis. Stat. § 6.86(2)(a). In fact, since 2019 the number of electors claiming “indefinitely confined” status and thereby obtaining an absentee ballot without the otherwise required photo identification increased to nearly 250,000 from 72,000. MACIVERNEWS, *A Quarter-Million Wisconsin Voters Claim to be “Indefinitely Confined” and Not Bound By Voter ID*, Oct. 29, 2020, available at <https://www.maciverinstitute.com/2020/10/a-quarter-million-wisconsin-voters-claim-to-be-indefinitely-confined/>.

The numbers for Milwaukee and Dane County alone are concerning. In total there were 15,102 electors in Dane County and 31,396 electors in Milwaukee County who claimed to be “indefinitely confined” for the November 3, 2020 election and then voted without supplying any identification. Milwaukee Cty. Trans. 11/27/20 at 19:23-22:3; Dane Cty. Trans. 11/28/20 at 7:2-12:6; Aff. Jordan Moskowitz (dated 11/27/20) ¶¶ 2-6, Exs. 1-4; Aff. Jordan Moskowitz (dated 11/25/20) ¶ 2-6. App. 118:23-121:3, 155 at 7:2 to 156 at 12:6, 224-233, 240-241. It is also clear that these numbers swelled after the March 25, 2020 public statements by the clerks of both Dane and Milwaukee County that any elector could claim this status in light of the Governor’s Safer at Home Order. *See, e.g.*, App. 235-237, March 31, 2020 Order, *Jefferson v. Dane*, No. 2020AP557-OA at 2 (explaining that the Dane County and Milwaukee County Clerks indicated that “all Dane [and

Milwaukee] County voters could declare themselves to be ‘indefinitely confined’ under Wis. Stat. § 6.86(2)” because of the Safer at Home Order, “thereby avoiding the legal requirement to present or upload a copy of the voter’s proof of identification when requesting an absentee ballot” and concluding that such “advice was legally incorrect.”). Of the electors claiming to be indefinitely confined in Milwaukee County, 19,488 of them claimed the status after March 25th. Milwaukee Cty. Trans. 11/27/20 at 19:23-22:3; App. 118:23-121:3. In Dane County the corresponding number is 8,907. Dane Cty. Trans. 11/28/20 at 7:2-12:6; Aff. Jordan Moskowitz (dated 11/27/20) ¶¶ 2-6, Exs. 1-4; App. 155 at 7:2 to 156 at 12:6, 224-233.

This Court enjoined the clerks from making certain statements and clarified that the existence of the Governor’s Order alone was not a sufficient basis to claim indefinitely confined status. *Id.* at 3. However, it is clear that municipal clerks took no steps to investigate or to correct the voter rolls. Aff. Jordon Moskowitz (dated 11/27/20) Exs. 3-4. App. 230-233

Petitioners objected to the inclusion of all absentee ballots issued to electors claiming to be indefinitely confined after March 25, 2020 who did not otherwise have photo identification on file with their clerk. Dane Cty. Trans. 11/20/20 at 53:22-55:20, Milwaukee Cty. Trans. 11/27/20 at 19:23-22:2; App. 132 at 53:22 to 133 at 55:20, 118:23-121:2. Both Boards of Canvassers rejected the objections and counted the ballots. Dane Cty. Trans. 11/28/20 at 28:3-6; Milwaukee Cty. Trans. 11/27/20 a 21:7-22:2t; App. 160 at 28:3-6, 120:7-121:2.

E. “Democracy in the Park.”

Apparently to avoid numerous restrictions imposed by the statutes, the City of Madison invented “Democracy in the Park.” By this scheme the City placed poll workers in 206 locations on September 26 and October 3 (Dane Cty. Trans. 11/24/20 at 52:16-56:15; Aff. Kyle J. Hudson (11/23/20) ¶¶3-6, Exs. B-E; App. 148 at 52:16 to 149 at 56:15, 163-175), mimicked polling places by putting up signs identical to those for elections (*Id.* at 57:11-58:16; App. 149 at 57:11 to 150 at 58:16, 163-164, 168-169, 175-183), and then acted in every way as if it were an election excepting only that they did not distribute ballots. *Id.* at 52:16-64:10; App. 148 at 52:16 to 151 at 64:10.

While the audacity of the scheme might be lauded by the Biden campaign—it was heavily promoted by them (*Id.* at 57:11-58:16; Aff. Kyle J. Hudson (11/23/20) ¶2, Ex. A; App. 149 at 57:11 to 110 at 58:16, 163-166)—it flagrantly violates a host of election laws. If, for example, these locations are “extensions” of the Clerk’s Offices, they are barred by prior rulings of this Court *Olson v. Lindberg*, 2 Wis. 2d 229, 236, 85 N.W.2d 775, 780 (1957) (excluding absentee ballots delivered to a location other than the appropriate municipal clerk’s office under a prior version of the statute).

These “Democracy in Park” locations were not legally established alternate absentee ballot sites because they were not established by the City of Madison Common Council; instead they were “created by, planned by, staffed by, and paid for by the City Clerk’s Office.” City of Madison, Statement of Madison City Clerk

Maribeth Witzel Behl Regarding Democracy in the Park (Sept. 25, 2020), *available at* <https://www.cityofmadison.com/clerk/news/statement-of-madison-city-clerk-maribeth-witzel-behl-regarding-democracy-in-the-park>. *See also* App. 176-184 (City of Madison post regarding “Democracy in the Park”).

Alternate absentee ballot sites, however, may only be established by the “governing body of a municipality” and, if such a site is designated by the governing body of a municipality, then “no function related to voting and return of absentee ballots that is to be conducted at the alternate site may be conducted in the office of the municipal clerk or board of election commissioners.” Wis. Stat. § 6.855(1). There can be only one such site, but here there were 206, and the single site must be “as near as practicable” to the original office—something all 206 could not have been. *Id.*

Moreover, Wisconsin Statutes contemplate only limited ways in which an absentee ballot may be returned. It is either mailed or it is delivered in person to the clerk’s office. Wis. Stat. § 6.87(4)(b). So, the dilemma for Madison was that these sites were either considered additional clerk’s offices, in which case they were barred by Wis. Stat. § 6.855(1), or they were not clerk’s offices, in which case they run afoul of the allowable methods for delivery of such ballots and run afoul of rules barring ballot delivery at places other than the clerk’s office. Wis. Stat. § 6.87(4)(b); *Olsen*. Either way, the ballots received at “Democracy in the Park” violate the law and must not be counted.

STANDARD OF REVIEW

Although there is no decision below for this Court to review, statutory interpretation presents a pure question of law. *Moustakis v. State of Wis. Dep't of Justice*, 2016 WI 42, ¶ 16, 368 Wis. 2d 677, 880 N.W.2d 142.

This Court has *de novo* review over Respondents' erroneous interpretation of law. Specifically, this "[C]ourt *shall* set aside or modify the determination if it finds that the board of canvassers or chairperson has erroneously interpreted a provision of law and a correct interpretation compels a particular action." Wis. Stat. § 9.01(8); *see also Lee*, 2001 WI App 19, ¶ 4.

SUMMARY OF THE ARGUMENT

This Court should grant the Petition for Original Action, under well-established standards for deciding issues of great, statewide (and national) importance, where prompt, purely legal resolution is in the public interest. The Milwaukee County and Dane County Boards of Canvassers failed to correctly apply clear and unambiguous statutory law by including unauthorized and otherwise unlawful absentee ballots in the Recount. Prompt resolution of this legal dispute is of the essence to the public interest because, absent this Court's action, the Election will be certified and/or a Certificate of the Election prepared and signed by the Governor using results that improperly include unauthorized and otherwise unlawful absentee ballots that, by law, shall not be counted. *See* Wis. Stat. § 7.70(5)(a) (prohibiting the governor or chair of WEC from issuing "a certificate of

election until the recount has been completed and the time allowed for filing an appeal has passed, or if appealed until the appeal is decided”).⁸ 170,140 In-Person Absentee Ballots issued without the required written application, 5,517 Incomplete and Altered-Certification Absentee Ballots, 28,395 Indefinitely Confined Absentee Ballots, and 17,271 Absentee Ballots received at Democracy in the Park must, by statutory procedures, be withdrawn from the total ballots before any certificate is issued for the Election.

Specifically, Respondents’ decision to count and include in the Election results In-Person Absentee Ballots issued without the required written application is directly contrary to clear and unambiguous statutory law. The privilege of casting an absentee ballot requires the elector to “make *written application* to the municipal clerk,” and even if the absentee balloting procedures take place in person at the clerk’s office, “the municipal clerk *shall not issue an absentee ballot unless the clerk receives a written application therefor* from a qualified elector of the municipality.” Wis. Stat. §§ 6.86(1)(a) and (1)(ar).

Because the In-Person Absentee Ballots at issue in this matter were issued in direct contravention of Wis. Stat. § 6.86, they “*may not be counted*” and “*may not be included in the certified result of any election.*” Wis. Stat. § 6.84(2) (emphasis added).

⁸ In the event more time is required to reach a complete tabulation, the Court can Order the appointment of both Trump and Biden electors prior to December 14, 2020. Once the result is known, the correct slate may be counted when the Electoral College votes are opened on January 6, 2020. 3 U.S.C. § 15.

Likewise, Respondents' decision to count and include in the Election results Incomplete and Altered-Certification Absentee Ballots is directly contrary to statutory law.

Again, because absentee balloting is a privilege, its requirements and procedures (as contained in Wis. Stat. §6.86 and § 6.87(3)-(7)) are mandatory and strictly construed. A witness is necessary for an elector to vote an absentee ballot, and such witness must sign ***and provide his or her address on a certification***. Wis. Stat. § 6.87(2) (emphasis added). An absentee ballot received by a municipal or county clerk without the witness's address is defective and can only be cured by returning the ballot to the elector so the elector may have the witness supply the address. Wis. Stat. § 6.87(9). There is no authority in the Wisconsin Statutes for clerks to alter absentee ballot envelopes and Wis. Stat. § 6.87(6d) expressly states that "[i]f a certificate is missing the address of a witness, ***the ballot may not be counted***." (emphasis added). Those same rules apply if the ballot envelope is incomplete or corrected by a clerk.

Respondents' decision to count and include in the Election results ***all*** Indefinitely Confined Absentee Ballots issued without the required photo identification is also contrary to clear and unambiguous statutory law. In order to qualify for the exceptions, an elector must be "elderly, infirm or disabled ***and*** indefinitely confined." *Frank*, 17 F. Supp. 3d 837, 844 (E.D. Wis. Apr 29, 2014) (emphasis added), *rev'd on other grounds*, 768 F.3d 744 (7th Cir. 2014). Voters who claimed they were "indefinitely confined," but were not themselves physically, ill, infirm, elderly, or disabled, provided a false

certification on their absentee ballot application and such ballots “*may not be counted*” and “*may not be included in the certified result of any election.*” Wis. Stat. § 6.84(2) (emphasis added).

The inclusion of absentee ballots received at “Democracy in the Park” events violates many of the essential principals underlying Wisconsin’s choice to allow only absentee voting in advance of Election Day. The City of Madison’s scheme either violates laws barring the creation of more than one location to receive ballots (Wis. Stat. § 6.855(1)) or violates laws authorizing only two methods for the voter to deliver an absentee ballot. Wis. Stat. § 6.87(4)(b). Just as it did in *Olson*, this Court must exclude absentee ballots collected at locations other than the clerk’s office.

The questions raised in the Petition will impact whether clear statutory law is followed in every future election in this State. The Petition presents these questions in the context of a live, justiciable action that will allow this Court to clarify the law not only in this election, but in the process provide guidance for future elections, as well. This case presents substantial legal issues, and, in several instances, matters of first impression. These are legal issues of statutory interpretation, meaning that no fact finding by this Court is necessary.

ARGUMENT

I. The Proper Exclusion of Illegal and Defective Absentee Ballots From the Recount Is An Issue Of Great Public Importance, Warranting This Court’s Assertion Of Its Original Action Authority.

Of the several considerations governing the decision to grant a petition for original action pursuant to Wis. Const. art. VII, § 3 and Wis. Stat. § 809.70, the most

important factor is whether “the questions presented are of [great, statewide] importance,” such as issues that are “*publici juris*.” *Petition of Heil*, 230 Wis. 428, 443–46, 284 N.W. 42 (1939). Cases raising issues of the proper application of election law and election integrity have often met this standard. *See, e.g.*, *Am. Order, Wis. Legislature v. Evers*, No. 2020AP608-OA, at 4 (granting an original action “in light of the extraordinary circumstances and importance of the issues” raised with regard to the April 2020 Primary Election); *see also* March 31, 2020 Order, *Jefferson v. Dane*, No. 2020AP557-OA (at App. 235-237).

This Court also considers whether the issue presented by the petition is a matter of some “exigency.” *Heil*, 230 Wis. at 447. Moreover, this Court is more likely to grant a petition where a “speedy and authoritative resolution” is possible due to limited material factual disputes, *id.* at 446, such that “no fact-finding procedure is necessary,” *State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 683, 264 N.W.2d 539 (1978).

The purely legal questions presented by this Petition qualify for this Court’s original action jurisdiction. Most importantly, “the questions presented are of [great, statewide (and even national)] importance,” such that these issues are unquestionably “*publici juris*.” *Heil*, 230 Wis. at 446–48.

The unofficial results of the Presidential Election in Wisconsin indicate that a fraction of a single percentage point and only approximately 20,000 votes statewide separate the candidates. WEC, Unofficial Results for the November 3,

2020 General Election, available at <https://elections.wi.gov/node/7234>. The Recount counted more than one hundred thousand unauthorized and otherwise unlawful absentee ballots, and these unlawful absentee ballots will determine the outcome of the Election, unless this Court exercises its original jurisdiction to ensure they are excluded. This Court's immediate intervention is necessary to preserve the integrity of, and confidence in, this and future Elections. This is an “exceptional case[] in which a judgment by the court [would] significantly affect[] the community at large.” *Wisconsin Professional Police Ass’n v. Lightbourn*, 2001 WI 59, ¶4, 243 Wis. 2d 512, 627 N.W.2d 807.

Granting this Petition is also important because the people of this state and the nation will benefit from a “speedy and authoritative determination” of the correct Election results. *Heil*, 230 Wis. at 446. Absent this Court’s speedy holding and final declaration that Respondents acted contrary to clear statutory law, the Petitioners, as well as the people of Wisconsin, will suffer irreversible harm by allowing the Election to be decided by the inclusion of unauthorized or otherwise unlawful absentee ballots.

The recount procedures set forth in Chapter 9 are the exclusive remedy for “an alleged irregularity, defect or mistake committed during the voting or canvassing process.” Wis. Stat. § 9.01(11). That exclusive remedy includes judicial review and, ultimately, review by this Court. *See* Wis. Stat. §§ 9.01(6)-(9). The normal judicial process is not possible in this case, with both Petitioners and the State of Wisconsin under significant time constraints. The Electoral College will

meet and cast their votes for President and Vice President on December 14, 2020. Wis. Stat. § 7.75(1). If this Court does not immediately take this case, Wisconsin is at serious risk of having no representation at the Electoral College or of having the wrong slate of electors cast Wisconsin's votes. Moreover, Petitioners will have their legitimate concerns decided long after the decision could have any impact on their rights. In this case, there is not enough time to follow the normal judicial procedure without this Court asserting its original jurisdiction authority immediately.

If this were a more typical situation, involving a state or local office, perhaps there would be adequate time to complete a recount and for all three levels of judicial review to play out. But here, there are hard deadlines which are incompatible with the normal time for judicial review. Therefore, immediate relief is necessary, both to ensure Petitioners are treated fairly and are given adequate time to pursue all available judicial remedies, and to ensure that the public interest in fair and orderly process in an election of national importance is satisfied. The deadline for the Governor to sign a certificate of election for the Election and deliver to the state's presidential electors is Monday, December 14, 2020, Wis. Stat. § 7.70(5)(b), and Wisconsin's presidential electors are required to then meet and give their votes at the State Capitol on Monday, December 14, 2020. Wis. Stat. § 7.75(1); *see also* 3 U.S.C. § 7. These deadlines make it impossible to follow appeal procedures in lower courts. *See, e.g. Underwood v. Karns*, 21 Wis. 2d 175, 179-80, 124 N.W.2d 116, 118-19 (1963) (holding that if "a statute relating to an administrative agency provides a direct method of judicial review of agency action, such method of review

is generally regarded as exclusive,” but adding that such exclusivity must take into account whether “the statutory remedy is plain, speedy, and adequate”). If this Court does not assert its original jurisdiction and decide these issues of great statewide and national importance, Petitioners will have no remedy and the people of this State will have little faith in the integrity of the Election. This is precisely the type of case that gave rise to the maxim that justice delayed is justice denied.

Finally, the questions that are presented here are issues of purely legal, statutory interpretation, where “no fact-finding procedure is necessary.” *Kleczka*, 82 Wis. 2d at 683. The statutory remedies, such as a “drawdown” under Wis. Stat. § 9.01(1)(b), are explicit and can be completed expeditiously. Importantly, the parties do not dispute that In-Person Absentee Ballots were cast without the corresponding application, that clerks altered the witness certification for absentee ballots and other certifications were incomplete. The Indefinitely Confined Absentee Ballots at issue have been explicitly named and the exact number of ballots received at “Democracy in the Park” events was recorded.⁹

⁹ Apparently recognizing the questionable character of “Democracy in the Park,” the City of Madison chose to commingle ballots witnessed and ballots received at the event. In addition, though completely separated prior to delivery to the City Clerk, that Clerk chose to then further commingle those absentee ballots with other absentee ballots. Dane Cty. Trans. 11/24/20 at 52:16-56:15. App. 148 at 52:16 to 149 at 56:15. Such a willful attempt to preclude further identification ought not be condoned.

II. Respondents’ Decisions to Count and Include in the Election Results In-Person Absentee Ballots Without The Required Application, Incomplete and Altered-Certification Absentee Ballots, Indefinitely Confined Absentee Ballots, and “Democracy in the Park” Absentee Ballots Are Legally Wrong.

“[S]tatutory interpretation begins with the language of the statute.” If the meaning of that language is plain, that ends the inquiry. *Kalal v. Dane County*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110 (citations omitted). “Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” *Id.* In this case the applicable statutory law is plain on its face and unambiguous given the common ordinary and accepted meaning of its terms. As a result, Respondents are plainly wrong, as a matter of law, in their failure to exclude defective In-Person Absentee Ballots, Incomplete and Altered-Certification Absentee Ballots, Certain Indefinitely Confined Absentee Ballots and Democracy in the Park Absentee Ballots. These are not decisions to be made at the whim of a municipal or county clerk, or for that matter by WEC. Such decision making, not premised in the statutes themselves, invites disparate treatment of voters and, if followed, would call into question the entire election. *Bush v. Gore*, 531 U.S. 98, 104-110, 121 S. Ct. 525 (2000). The goal of attempting to cure defective ballots, however laudable, does not permit Respondents, municipal clerks or courts to “make stuff up.” *See Town of Wilson v. City of Sheboygan*, 2020 WI 16, ¶77, 390 Wis. 2d 266, 938 N.W.2d 493 (“It reminds me of the two rules Justice Neil Gorsuch tells his law clerks. The first rule is, "Don't make stuff up." The second

rule is, "When people beg, and say, 'Oh the consequences are so important,' and when they say, 'You're a terrible, terrible person if you don't,' just refer back to Rule No. 1.") (Hagedorn, J., concurring).

A. Respondents' Decision to Count In-Person Absentee Ballots Issued Without The Required Written Application Is Directly Contrary To Clear And Unambiguous Statutory Law.

Section 6.86(1)(a) of the Wisconsin Statutes directs that an eligible voter seeking to vote by absentee ballot "may make *written application* to the municipal clerk of that municipality for an official ballot," including by mail and in person at the municipal clerk's office. (emphasis added). In-person absentee balloting is often mischaracterized as "early voting," but this procedure is simply a method by which an elector may conveniently obtain and vote an absentee ballot in person, rather than waiting to receive the ballot in the mail. As especially relevant here, all of the absentee balloting requirements apply to this process just as they apply to all other methods for requesting and issuing absentee ballots.

Neither Dane nor Milwaukee Counties obtained an application prior to delivering a ballot to in-person absentee voters. *See e.g.*, Milwaukee Cty. Trans. 11/20/20 at 35:18-25; Dane Cty. Trans. 11/22/20 at 58:19-21. App. 9:18-25, 145 at 58:19-21. This practice is plainly contrary to Wis. Stat. § 6.86(1)(a) ("Any elector of a municipality who is registered to vote whenever required and who qualifies under §§ 6.20 and 6.85 as an absent elector may make written application to the municipal clerk of that municipality for an official ballot by one of the following methods...."). This principle is confirmed in § 6.86(1)(b), that confirms for the period

of the in-person absentee voting, “the application shall be made.” Finally, § 6.86(ar) leaves no doubt whatsoever that a written application is required to obtain an absentee ballot. “[T]he municipal clerk shall not issue an absentee ballot unless the clerk receives a written application therefor from a qualified elector of the municipality” and the clerk is required to “retain each absentee ballot application.” Wis. Stat. § 6.86(1)(ar).¹⁰

In an attempt to explain their behavior, Dane and Milwaukee County take the position that Form EL-122 (the certificate envelope into which an absentee elector places the ballot) constitutes the application described in the Statute. App. 259. This is plainly wrong as it requires reading language out of the Statute and requires one to ignore the structure imposed by the statutes. It is even contradicted by WEC’s own guidance.

Consider, for example, the statutory language expressly addressing in person voting. It begins by noting that “If the application is made in person, the application shall be made no earlier than 14 days preceding the election and no later than the Sunday preceding the election.” § 6.86(1)(b). The statute then describes, as a separate matter, that “The municipal clerk or an election official shall witness the certificate for an in-person absentee ballot cast.” The “certificate” (*i.e.* ballot envelope) and the “application” are distinctly different documents treated differently in the statute.

This reading of § 6.86 is confirmed even more emphatically if one considers the requirements related to the certificate envelope (EL-122) and the application. The

¹⁰ Form EL-121 can satisfy this requirement. App. 161. It contains a specific box to be checked when it is submitted during the in person voting period. *Id.*

municipal clerk is, by law, required to “retain each absentee ballot application.” Wis. Stat. § 6.86(1)(ar). Yet, the certificate envelopes are expressly not retained by the municipal clerk, but must, instead, be delivered to the County. Wis. Stat. § 7.52(4)(i)(“...the municipal clerk shall transmit the used envelopes to the county clerk”). WEC even provides a form for the delivery of those the EL-122 to the County, and sets out post-election procedures describing that same process. WEC, Used Certificate Envelopes of Absentee Electors, *available at: https://elections.wi.gov/sites/elections.wi.gov/files/gab_forms/4/el_103_used_certificate_envelope_pdf_13716.pdf*. WEC emphasizes the statutory requirement to forward the absentee ballot envelopes to the County in its explicit advice to municipal clerks on how to conclude election reporting. WEC, Election Day Manual for Wisconsin Election Officials (Sept 2020), p. 140, *available at: <https://elections.wi.gov/sites/elections.wi.gov/files/2020-11/Election%20Day%20Manual%20%282020-09%29.pdf>*. One cannot square those two statutory provisions, or WEC’s own forms and instructions, with the suggestions now made by the Dane and Milwaukee County Canvassing Boards. However, if the application is a distinct, separate document, then the two provisions, and WEC’s forms and instructions, are entirely consistent.

Interestingly, WEC’s Recount Manual also confirms that the EL-122 is not the application required by the statute. First, it, like the statutory language, recognizes that “the absentee ballot certificate envelopes” are a distinct document to be reviewed in order

to determine the number of voters. WEC, Recount Manual November 2020,¹¹ at pp. 7-8 *available at* <https://elections.wi.gov/sites/elections.wi.gov/files/2020-11/Recount%20Manual%20Final%20%2811-2020%29%20highlight.pdf>. App. 194-195. Indeed, in the immediately following section it separately deals with the Applications.

Moreover, in attempting to justify the situation where the “separate application” is missing, WEC makes no mention whatsoever of the Certificate Envelope (Form EL-122), but instead simply explains other reasons to ignore the absence of the required Application. If, as the Canvassing Boards suggest, the EL-122 is the Application, then there would never be a need to look for a separate Application, because, by law, every absentee ballot must be delivered in a sealed, ballot certificate envelope. Wis. Stat. § 6.87(4)(b)1.

Indeed, the actual Application form, EL-121, contains a specific box to be checked for in person absentee voters. App. 161. Again, there would be no need for that box on the form if, as is now suggested, the certificate envelope was the application. Necessarily that same voter will be completing the certificate envelope whether they vote in person at the clerk’s office or vote through the mail.

Certain practical aspects of the process also confirm the need for a separate application. The law expressly requires that “the clerk shall not issue the elector an

¹¹ A prior version of the Recount Manual, published in August 2018, contained identical information. WEC, Recount Manual August 2018, *available at* <https://elections.wi.gov/sites/elections.wi.gov/files/2019-02/Recount%20Manual%20Final%20%288-2018%29.pdf>.

absentee ballot unless the elector presents proof of identification. The clerk shall verify that the name on the proof of identification presented by the elector conforms to the name on the elector's application ...” Wis. Stat. § 6.86(1)(ar). If the application and the certificate are one document, there would be no point making the comparison. Moreover, the application must be received before the ballot is provided. Recall the language of the statute, “[T]he municipal clerk shall not issue an absentee ballot unless the clerk receives a written application therefor from a qualified elector of the municipality”. *Id.* If the EL-122 is the application, then it would need to be completed and returned to the clerk before the ballot is provided. But, the EL-122 is not given to the clerk until after the elector has voted, the ballot is placed in the sealed certificate envelope and only then is the certificate envelope handed back to the clerk. The clerk has not received it in the time frame expressly required by the statute.

Pursuant to Wis. Stat. § 6.84(2), the requirements of § 6.86 are expressly mandatory. “Ballots cast in contravention of [§ 6.86] ***may not be counted***” and “***may not be included in the certified result of any election.***” Wis. Stat. § 6.84(2) (emphasis added); *Accord Lee v. Paulson*, 2001 WI App 19, 241 Wis. 2d 38, 623 N.W.2d 577..

The Court of Appeals has already ruled that, based on the statutes cited above, absentee ballots cast without an associated written application must be excluded. In *Lee v. Paulson (in re Ballot Recount)*, a local county supervisor’s race during the November 2000 general election went to a recount. 2001 WI App 19, ¶¶ 1-3. During the recount, the Polk County Board of Canvassers concluded that Walter Lee received 159 votes and that David Paulson received 161 votes, but during the recount the board found that five

absentee ballots did not have the required application. *Id.* ¶ 2. Nevertheless, the Board of Canvassers decided to include the absentee ballots without applications. *Id.* ¶ 3.

On review of the Board of Canvassers' results, the Wisconsin Court of Appeals held that any and all absentee ballots issued without a written application cannot be counted pursuant to Wis. Stat. §§ 6.84(1)-(2) & 6.86(1)(ar) and since all of the defective absentee ballots were cast for Mr. Paulson five votes were deducted from his totals and Mr. Lee prevailed with 159 votes to Mr. Paulson's 156 votes. *Id.* ¶ 11.

This is not news to WEC. In a remarkably disingenuous section of its Recount Manual (discussed earlier in the context of the separate character of the application and certificate envelope), WEC suggests that the Board of Canvassers should ignore both the statutes and *Lee v. Paulson*, and instead follow the informal opinion of WEC's staff attorney. WEC, Recount Manual November 2020, at pp. 7-8, n. 5, *available at* <https://elections.wi.gov/sites/elections.wi.gov/files/2019-02/Recount%20Manual%20Final%20%288-2018%29.pdf> (stating that “[t]here should be a written application for each absentee ballot envelope except those issued in-person in the clerk's office,” instructing canvassers to “not reject an absentee ballot if there is no separate written application,” and noting as contrary authority for these instructions both Wis. Stat. § 6.84(2) and the *Lee v. Paulson*); App. 194-195. Of course, WEC avoids any responsibility for this patently incorrect advice by explaining that the Boards of Canvassers must make their own legal decisions. *Id.* at Appx. 14-15; App. 217-218.

During the Recount, Petitioners identified 170,140 In-Person Absentee Ballots that were issued and cast without the required written application in Milwaukee County

and Dane County. Milwaukee Cty. Trans. 11/21/20 at 184:14-187:22; Dane Cty. Trans. 11/22/20 at 57:23-59:13; App. 61:14-64:22, 144 at 57:23 to 145 at 59:13. Petitioners objected to counting any of these ballots and requested that they be excluded from the results. Milwaukee Cty. Trans. 11/22/20 at 4:20-24; Dane Cty. Trans. 11/20/20 at 15:9-18:14. App. 68:20-24, 126 at 15:9 to 127 at 18:14. However, despite the clear law requiring that those In-Person Ballots must not be counted, Respondents overruled Petitioners' objections and continued illegally counting such ballots as part of the Recount. Milwaukee Cty. Trans. 11/21/20 at 186:11-187:10; Dane Cty. Trans. 11/20/20 at 36:15-40:25. App. 63:11-64:10, 129 at 36:15 to 130 at 40:25.

This Court should exercise its original jurisdiction, declare that absentee ballots lacking a corresponding application may not be counted, and enjoin the inclusion of any such ballot in the results and certification of the Election.

B. Respondents' Decision to Include and Count Incomplete and Altered-Certification Absentee Ballots is Contrary to Law.

Because absentee balloting is a privilege and not a right, an elector voting absentee must strictly comply with all mandatory procedures contained in the Wisconsin Statutes or the ballot cannot be counted. Wis. Stat. § 6.84(2).

When casting an absentee ballot, the elector places his or her ballot inside the ballot certification envelope and seals it. The process must be witnessed, and the certification on the outside of the envelope provides a place where the witness must sign and provide his address. Wis. Stat. § 6.87(2). If the certification lacks the witness's address, it may not be counted: *"If a certificate is missing the address of*

a witness, the ballot may not be counted.” Wis. Stat. § 6.87(6d) (emphasis added). Lest there be any doubt about whether this is directory or mandatory, this provision falls within the scope of those provisions that § 6.84(2) says is mandatory.

The Wisconsin Statutes provide that the only method of correcting an incomplete absentee ballot certification is for the clerk to return it to the elector so the elector, not the clerk, can remedy the problem. Wis. Stat. § 6.87(9) (“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 . . .”).

In this case, the Recounts have identified 5,517 Incomplete and Altered-Certification Absentee Ballots. Aff. Kyle Hudson (Nov. 30, 2020) ¶ 4; Aff. Joe Voiland (Nov. 30, 2020) ¶ 4. App. 268, 271-273. Petitioners objected to the counting of those ballots and requested that such ballots be rejected. Dane Cty. Trans. 11/20/20 at 48:25–49:8; Milwaukee Cty. Trans. 11/23/20 at 25:19-27:21; App. 131 at 48:25 to 49:8, 106:19-108:21. However, despite the clear law requiring that these Incomplete and Altered-Certification Absentee Ballots not be counted, Respondents overruled Petitioners’ objections and those ballots are a part of the Recount totals. Dane Cty. Trans. 11/20/20 at 60:1-65:14; Milwaukee Cty. Trans. 11/20/20 at 115:17-128:17; App. 134 at 60:1 to 135 at 65:14, 28:17-41:17.

This Court should exercise its original jurisdiction to declare that Incomplete and Altered-Certification Absentee Ballots may not be counted and enjoin the inclusion of any such ballot in the results and certification of the Election.

C. Respondents’ Decision to Count and Include In The Results All Indefinitely Confined Absentee Ballots Issued Without The Required Photo Identification Is Improper.

Wisconsin statutory law expressly requires that all eligible electors must provide proof of identification in order to register to vote, and each time they vote. Wis. Stat. §§ 6.79(2)(a), 6.87(1). Photo identification is also required when requesting to vote by absentee ballot. Wis. Stat. §§ 6.86(1)(ac), (ar), 6.87(1).

Because voting by absentee ballot, rather than in person, is a “privilege,” the statutory requirements for absentee balloting are strictly applied. Wis. Stat. §§ 6.84(1) (requiring that “the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud and abuse . . .”), and (2) (requiring that “matters relating to the absentee ballot process,” including Wis. Stat. §§ 6.86 and 6.87(3) to (7) “shall be strictly construed as mandatory.”).

There are very limited exceptions to the requirement that an elector must provide photo identification with any application for an absentee ballot, including an exception if an elector certifies that he or she is “indefinitely confined because of age, physical illness or infirmity or is disabled for an indefinite period.” Wis. Stat. § 6.86(2)(a). In fact, in order to qualify for the exceptions, an elector must be “elderly, infirm or disabled *and* indefinitely confined.” *Frank*, 17 F. Supp. 3d at 844 (emphasis added), *rev’d on other grounds*, 768 F.3d 744 (7th Cir. 2014).

An elector who meets the strict definition of “indefinitely confined” in Wis. Stat. § 6.86(2)(a) must sign a statement to that effect, and then “the elector may, in lieu of providing proof of identification, submit with his or her absentee ballot a statement . . . which contains the name and address of the elector and verifies that the name and address are correct.” Wis. Stat. § 6.87(4)(b)2.

For the Election, the number of electors claiming “indefinitely confined” status and thereby obtaining an absentee ballot without the otherwise required photo identification increased massively. In Milwaukee and Dane Counties alone 46,498 absentee ballots were issued to electors claiming such status without identification and who returned an absentee ballot. Dane Cty. Trans. 11/28/20 at 7:2-12:8 (Dane County had 15,102 voters in this category and 8,907 claimed such status after March 25th); Milwaukee Cty. Trans 11/27/20 at 19:23-22:2 (Milwaukee County had 31,296 voters in this category and 19,488 claimed such status after March 25th); App. 155 at 7:2 to 166 at 12:8, 188:23-221:2. As noted earlier, the number of those claiming to be indefinitely confined in Dane and Milwaukee Counties ballooned after the clerks of both counties issued public statements that all electors could claim this status based solely on the Governor’s Safer at Home Order. This Court conclusively declared that such advice was incorrect. *See*, March 31, 2020 Order, *Jefferson v. Dane County*, No. 2020AP557-OA at 2 at App. 235-237 (explaining that the Dane County and Milwaukee County Clerks indicated that “all Dane [and Milwaukee] County voters could declare themselves to be ‘indefinitely confined’ under Wis. Stat. § 6.86(2)” because of the Safer at Home Order “thereby avoiding the legal

requirement to present or upload a copy of the voter’s proof of identification when requesting an absentee ballot” and concluding that such “advice was legally incorrect.”).

As the Recount demonstrated, the damage was already done. This Court could have taken solace that so long as the clerks did their job under the statutes, the voter rolls would be cleared of those who were not qualified for the status. The clerks and the electors each had an obligation to act. Municipal clerks are expressly charged with the responsibility to review and expunge from the voter rolls those claiming to be Indefinitely Confined Voters when the Clerk has “reliable information that [the]... elector no longer qualifies for the service.” Wis. Stat. § 6.86(2)(b). Moreover, electors who claimed they were Indefinitely Confined, but were not physically ill, infirm, elderly, or disabled were obligated to take steps to remove themselves from that status prior to the November 3, 2020 election. Wis. Stat. § 6.86(2)(a) (“If any elector is no longer indefinitely confined, the elector shall so notify the municipal clerk.”) The Dane County Clerk acknowledged this obligation. *Aff. Jordan Moskowitz* (11/27/20) ¶8, Ex. 6. App. 224-225, 238-239. Unfortunately, no action was taken. *See id.* ¶ 6, Ex. 4. App. 224, 223.

Indefinitely Confined Absentee Ballots issued without the required photo identification to electors that were not “elderly, infirm or disabled and indefinitely confined” were issued in violation of clear and unambiguous law and must be excluded from any certified results of the Election. Wis. Stat. § 6.86(2)(a); *Frank*, 17 F. Supp. 3d at 844. During the Recount, Petitioners identified with

specificity Indefinitely Confined Absentee Ballots that were issued after the improper March 25, 2020 statements by the Dane County and Milwaukee County Clerks. Dane Cty. Trans. 11/28/20 at 7:2-12:8; Milwaukee Cty. Trans 11/27/20 at 19:23-22:2. App. 155 at 7:2 to 156 at 12:8, 117:23-221:2. Petitioners isolated only those claiming the status after March 25 (the date of the offending Facebook post discussed by this Court in *Jefferson v. Dane County*, No. No. 2020AP557-OA) who had no identification on file and who did not vote in specific locations where their identity would have been noted. Petitioners objected to counting any of these ballots and requested that they be excluded from the results. Dane Cty. Trans. 11/20/20 at 53:22-55:20, Milwaukee Cty. Trans 11/27/20 at 19:23-22:2. App. 132 at 53:22 to 133 at 55:20, 118:23-221:2. However, despite the statutes requiring photo identification, the Boards overruled Petitioners’ objections and continued improperly counting those ballots as part of the Recount. Milwaukee Cty. Trans. 11/27/20 at 20:5-22:2; Dane Cty. Trans. 11/20/20 at 53:22-66:9; App. 119:5-221:2, 132 at 53:22 to 96 at 66:9.

This Court should exercise its original jurisdiction, declare that absentee ballots issued without photo identification to any elector that was not “elderly, infirm or disabled *and* indefinitely confined” are invalid, and enjoin the inclusion of at least the narrowest subset of that group, 28,395, in the results and certification of the Election.

D. Receipt of Ballots and Other Activities by the City of Madison at “Democracy in the Park” Events Violate Wisconsin Election Laws.

Wisconsin laws are designed to prohibit the very activities the City of Madison engaged in during “Democracy in the Park” events. Wisconsin is not an early voting state, yet the City of Madison did everything it could to treat Madison voters as if it were just that.

By creating 206 polling locations—that is locations manned by poll workers, with signage for polling places, providing witnesses for absentee ballots and otherwise acting in virtually every way like a place an elector could cast a ballot prior to election day and even prior to the limited 14 day period authorized by statute for in-person absentee balloting—the City of Madison ignored the prohibition on receiving ballots anywhere other than the clerk’s office. Wis. Stat. § 6.87(4)(b)1; *Olson*, 2 Wis. 2d at 236; Dane Cty. Trans. 11/24/20 at 52:16-56:15; Aff. Kyle J. Hudson ¶¶3-6, Exs. B-E; App. 148 at 52:16 to 149 at 56:15, 163-175. It failed to comply with virtually every substantive provision of Wis. Stat. § 6.855(1) (*e.g.* no Governing authority approval, multiple offices when only one is allowed) to establish an alternative clerk’s office. If, in the alternative, the City of Madison believes it can simply receive ballots anywhere it chooses, at any times it chooses, through anyone it chooses, then it is wrong. This Court (*Olson*, 2 Wis. 2d at 236) and the Statutes (Wis. Stat. § 6.87(4)(b)) plainly do not authorize such actions.

The City's attempt to evade the direct prescriptions of Wisconsin absentee voting requirements must be rejected and the total of the ballots received 17,271, as a result of those actions should be drawn down.

CONCLUSION

This Court should grant the Petition and provide the requested relief by ordering that the results and certification of the Election may not include any In-Person Absentee Ballots without an associated written application, Incomplete and Altered-Certification Absentee Ballots, any absentee ballots issued to persons who claimed to be Indefinitely Confined after March 25, 2020 and who failed to provide photo identification and those ballots received at "Democracy in the Park" events.

Moreover, Court should enter such orders as necessary to enjoin, or otherwise direct, Governor Anthony Evers to rescind and withdraw any prior certification he may have attempted to enter related to the selection of electors.

Dated this 1st day of December, 2020.

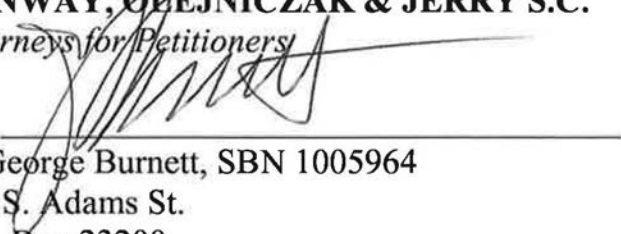
TROUPIS LAW OFFICE LLC

Attorneys for Petitioners

James R. Troupis, SBN 1005341
4126 Timber Ln.
Cross Plains, WI 53528-9786
Phone: 608.833.8037
Email: judgetroupis@gmail.com

CONWAY, OLEJNICZAK & JERRY S.C.

Attorneys for Petitioners

By: 

R. George Burnett, SBN 1005964
231 S. Adams St.
P.O. Box 23200
Green Bay, WI 54305-3200
Phone: 920.437.0476
Facsimile: 920.437.2868
Email: rgb@lcojlaw.com

CERTIFICATION

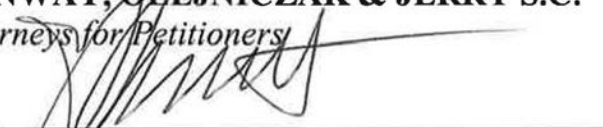
I hereby certify that this memorandum conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (c) for a brief produced with a proportional serif font. The length of this memorandum is 10,784 words, exclusive of the caption, Table of Contents and Authorities, Statement of Issues, signature page, and the Certification.

Dated this 1st day of December, 2020.

TROUPIS LAW OFFICE LLC
Attorneys for Petitioners

James R. Troupis, SBN 1005341
4126 Timber Ln.
Cross Plains, WI 53528-9786
Phone: 608.833.8037
Email: judgetroupis@gmail.com

CONWAY, OLEJNICZAK & JERRY S.C.
Attorneys for Petitioners

By: 
R. George Burnett, SBN 1005964
231 S. Adams St.
P.O. Box 23200
Green Bay, WI 54305-3200
Phone: 920.437.0476
Facsimile: 920.437.2868
Email: rgb@lcojlaw.com

No. _____

In the Supreme Court of Wisconsin

DONALD J. TRUMP, MICHAEL R. PENCE, and DONALD J. TRUMP FOR
PRESIDENT, INC.,

PETITIONERS,

v.

ANTHONY S. EVERS, Governor of Wisconsin in his official capacity, THE WISCONSIN ELECTIONS COMMISSION, ANN S. JACOBS, Chair of the Wisconsin Elections Commission in her official capacity, SCOTT MCDONELL, Dane County Clerk in his official capacity, ALAN A. ARNSTEN, Member of the Dane County Board of Canvassers in his official capacity, JOYCE WALDROP, Member of the Dane County Board of Canvassers in her official capacity, GEORGE L. CHRISTENSON, Milwaukee County Clerk in his official capacity, TIMOTHY H. POSNANSKI, Member of the Milwaukee County Board of Canvassers in his official capacity, RICHARD BASS, Member of the Milwaukee County Board of Canvassers in his official capacity, and DAWN MARTIN, Member of the Milwaukee County Board of Canvassers in her official capacity,

RESPONDENTS.

PETITIONERS' APPENDIX

James R. Troupis, SBN 1005341
Troupis Law Office LLC
4126 Timber Ln.
Cross Plains, WI 53528-9786
Phone: 608.833.8037
Email: judgetroupis@gmail.com

R. George Burnett, SBN 1005964
Conway, Olejniczak & Jerry S.C.
231 S. Adams St.
Green Bay, WI 54305-3200
Phone: 920.437.0476
Email: rgb@lcojlaw.com

Counsel for Petitioners

INDEX TO APPENDIX

<u>Document</u>	<u>Page(s)</u>
Select pages from Transcript of Milwaukee County Recount 11/20/2020	App. 1 – App. 41
Select pages from Transcript of Milwaukee County Recount 11/21/2020	App. 42 – App. 65
Select pages from Transcript of Milwaukee County Recount 11/22/2020	App. 66 – App. 103
Select pages from Transcript of Milwaukee County Recount 11/23/2020	App. 104 – App. 108
Select pages from Transcript of Milwaukee County Recount 11/24/2020	App. 109 – App. 115
Select pages from Transcript of Milwaukee County Recount 11/27/2020	App. 116 – App. 123
Select pages from Transcript of Dane County Recount 11/20/2020	App. 124 – App. 136
Select pages from Transcript of Dane County Recount 11/21/2020	App. 137 – App. 140
Select pages from Transcript of Dane County Recount 11/22/2020	App. 141 – App. 145
Select pages from Transcript of Dane County Recount 11/24/2020	App. 146 – App. 152
Select pages from Transcript of Dane County Recount 11/28/2020	App. 153 – App. 160
Form EL-121 – Wisconsin Application for Absentee Ballot	App. 161 – App. 162
Affidavit of Kyle J. Hudson dated 11/23/2020	App. 163 – App. 184

WEC Election Recount Procedures Nov. 2020 (Recount Manual)	App. 185 – App. 221
Affidavit of Lori Opitz	App. 222 – App. 223
Affidavit of Jordan Moskowitz dated 11/27/2020	App. 224 – App. 239
Affidavit of Jordan Moskowitz dated 11/25/2020	App. 240 – App. 241
Affidavit of Kyle J. Hudson dated 11/25/2020	App. 242 – App. 258
Form EL-122 Absentee Certificate Envelope (rev. 2020-08)	App. 259
Select pages from Transcript of Dane County Recount 11/29/2020	App. 260 – App. 263
Affidavit of Claire Woodall-Vogg	App. 264 – App. 267
Affidavit of Kyle Hudson dated 11/30/2020	App. 268 – App. 269
Affidavit of Charles Cook dated 11/27/20	App. 270
Affidavit of Joseph Voiland dated 11/30/2020	App. 271 – App. 272
Affidavit of Joseph Voiland dated 11/30/20	App. 273 – App. 282

2020 PRESIDENTIAL RECOUNT

Location: The Wisconsin Center
400 West Wisconsin Avenue
Milwaukee, Wisconsin 53203

Date: November 20, 2020

Time: 9:00 a.m. to 5:30 p.m.

Proceedings Reported By:
Alicia Pabich, CSR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE MILWAUKEE ELECTION COMMISSION:
Mr. Tim Posnanski, Chairman
Ms. Dawn Martin, Election Commissioner
Mr. Rick Baas, Election Commissioner
Mr. George Christenson, Milwaukee County Clerk
Ms. Julietta Henry, Milwaukee County Elections
Director
Ms. Michelle Hawley, Milwaukee County Elections
Director
Ms. Margaret Daun, Milwaukee County Corporation
Counsel
Ms. Kathryn M. West, Assistant Milwaukee County
Corporation Counsel

FOR THE TRUMP CAMPAIGN:
Attorney Stewart Karge,
Attorney Joseph Voiland

FOR THE BIDEN CAMPAIGN:
Attorney Christopher Meuler
Attorney Chris Trebatoski
Attorney Stacie Rosenzweig

MUNICIPALITIES:
City of Cudahy, Deputy Clerk Kelly Sobieski
Village of Greendale, Clerk Melanie Pietruszka
City of Milwaukee, Executive Director Claire
Woodall-Vogg

1 that this procedure does not allow them to see
2 and observe the ballots, and I object to that
3 as an inadequate opportunity for us to observe
4 the ballots in this recount. And I ask that
5 we, the Trump observers, be given an
6 opportunity to properly and carefully observe
7 the recount.

8 Given the state of COVID-19 and
9 additional security requirements that are being
10 undertaken, I understand that general viewing
11 is difficult. And it makes it difficult for us
12 to properly observe, therefore, I would like to
13 make certain requests of the Board prior to the
14 start of the recount counting.

15 We first want -- we would like to
16 make sure that we have an observer at each
17 table while counting is ongoing.

18 Two: We want to ensure that all
19 written applications for absentee ballots are
20 present and set aside for observation by the
21 Trump observers.

22 Three: We ask to have all absentee
23 ballot envelopes that do not have a written
24 application set aside for observation by the
25 Trump observers.

1 Four: We ask to have all absentee
2 ballot envelopes with red ink or any color ink
3 different in any way from the witness's name
4 set aside for observation by the Trump
5 observers.

6 Five: We ask that all absentee
7 ballot logs are present and set aside for
8 observation including, but not limited to, any
9 online absentee registration logs.

10 Six: We ask that all absentee
11 envelopes identify indefinitely confined
12 absentee ballot voters are set aside for
13 observation by the Trump observers.

14 Seven: We ask for copies of all IDs
15 relating to any absentee ballot application set
16 aside for observation by the Trump voters.

17 Eight: We ask for data of all the
18 tabulating machines today as well as images of
19 the ballots in a computer code audit trail and
20 error trail from November 2 to November 5,
21 including any and all software updates and
22 changes entered into the software from
23 November 2 through November 5. We ask also in
24 relation to that request for the names of any
25 technicians who performed any of the software

1 back in session, you can bring it before us.

2 OBSERVER RENEE GRAXIRENA: Perfect.

3 So if they continue that behavior, I should
4 just come back? Okay. Got you. Thank you.

5 (Inaudible discussion.)

6 OBSERVER RENEE GRAXIRENA: Renee,
7 R-e-n-e-e, Graxirena, G-r-a-x- like x-ray,
8 i-r-e-n-a. And I'm an observer for Biden
9 Campaign.

10 (General announcement.)

11 (Recess.)

12 MR. BAAS: We are about to reconvene,
13 so I just want to notify those that are
14 interested that we are going to reconvene.

15 Are the Trump representative ready to
16 proceed and the Biden representative,
17 Mr. Meuler, are you prepared, too?

18 MR. MEULER: Yes. Thank you.

19 MR. POSNANSKI: All right. We will
20 reconvene. Thank you for your patience. We, I
21 believe, have now completed the process of
22 going through and hopefully documenting the
23 requests.

24 I think, Ms. Daun, you will go over
25 those requests to make sure that we understand

1 the Trump requests specifically and accurately.

2 MS. DAUN: Mr. Chairman,
3 Commissioners, thank you very much. And thank
4 you to the representatives of both campaigns.

5 I'm going to go slowly. And then I
6 am happy to e-mail this to both of you, and we
7 may, you know, to get as right as rain as we
8 proceed here.

9 So the first request that I have
10 down -- and, again, I conferred with our court
11 reporter to get this quite right -- is that
12 you've been informed by some of your observers
13 that they are unable to see through the
14 Plexiglass, and are concerned about their
15 ability to observe the ballots being recounted,
16 as well as envelopes and any other materials.
17 And you've asked for an observer to be present
18 from your campaign at all moments at all tables
19 when the recount is proceeding.

20 Any corrections thereto, sir?

21 MR. KARGE: The information that I
22 received about the observers was that they --
23 either in a sitting position or in a standing
24 position, they were unable to see the
25 information that was on the table that the

1 election workers were reviewing, thus making
2 that difficult, unless these other requests
3 that I had were granted, that the set-asides be
4 made to observe and determine whether or not
5 objections could be made.

6 MS. DAUN: Again, to summarize, your
7 observers cannot see through the Plexiglass --
8 the Plexiglass adequately to observe the
9 materials being reviewed.

10 MR. KARGE: Correct.

11 MS. DAUN: Thank you.

12 Secondly, you have requested that all
13 written applications for absentee ballots are
14 present and set aside.

15 MR. KARGE: For observation, yes.

16 MS. DAUN: That is correct. So,
17 again, written applications for absentee
18 ballots are present and set aside for
19 observation; is that correct, sir?

20 MR. KARGE: Yes.

21 MS. DAUN: Thank you.

22 Thirdly, all absentee envelopes
23 without a written application shall be set
24 aside for observation; is that correct?

25 MR. KARGE: Yes.

1 MS. DAUN: Fourth, all absentee
2 ballots envelopes with red or any ink that is
3 different from the witness's original ink be
4 set aside for observation; is that correct?

5 MR. KARGE: Yes.

6 MS. DAUN: Thank you.

7 Fifth, that all absentee ballot logs
8 be available for observation, including any
9 online or MyVote.gov [sic] absentee ballot
10 application requests; is that correct?

11 MR. KARGE: Yes.

12 MS. DAUN: Thank you.

13 Seven, make copies of all
14 identification for any absentee ballot requests
15 to be set aside for observation; is that
16 correct?

17 MR. KARGE: If you are going down my
18 list, my sixth one relating specifically to
19 indefinitely confined absentee.

20 MS. DAUN: I did miss one. Thank you
21 so much. We are going to go back to the actual
22 number six.

23 All absentee -- number six then, all
24 absentee ballot envelopes that identified
25 indefinitely confined voters be set aside for

1 With respect to the request made, I'm
2 going to save the issue of the challenge to how
3 the observations are currently being done,
4 presenting the first issue being raised. We
5 will save that for the end, because I want to
6 see if some of what we have or will be making
7 available sufficiently addresses your concerns
8 in this regard.

9 The first request with respect to all
10 written applications for absentee ballots, that
11 they be present during the recount and set
12 aside for observation, all requests are either
13 on site or being brought on site. More to the
14 point, we will be providing a report -- I will
15 get into that in a second -- that will show
16 this data for every single absentee voter in
17 Milwaukee County.

18 With respect to the second requests
19 dealing with all absentee ballot envelopes
20 without a written application, if those can be
21 set aside for observation. Based upon our
22 review and deliberations, there are no
23 documents that are responsive to this request,
24 so there are no documents to be set aside in
25 response to this request.

1 MR. KARGE: I need to clarify
2 something in your discussion about what we are
3 and are not going to be receiving. If it is
4 the position that the envelope is the
5 application for the absentee ballot, which I
6 gather is at least in part with what you are
7 saying, I would request then that the envelope
8 be set aside and segregated. That is the
9 position that we would take.

10 MR. MEULER: The envelopes are all
11 here.

12 MR. POSNANSKI: It's what we will
13 inspected.

14 MS. DAUN: If I may, Mr. Chairman.
15 In other words, they are segregated and you are
16 going to see each one of them. The specific
17 requests for envelopes with different colored
18 inks -- ink, excuse me, will be set aside
19 subject to final determination by the
20 Commission. And, secondly, absentee envelopes
21 that indicate indefinite confinement for your
22 request will also be set aside pending the
23 Commission's final decision.

24 And I just -- for just a procedural
25 clarification. I would suggest after this

1 robust discussion has concluded, that the
2 Commissioners make clear on their votes on
3 exactly how each of these procedures will move
4 forward as Mr. Posnanski, Chairman Posnanski
5 summarized at the outset just to be clear so
6 that vote is preserved on the record.

7 Thank you, Mr. Chairman.

8 MR. POSNANSKI: Thank you. With
9 respect to the, I think, mechanical notion of
10 how these ballots will be set aside and then
11 for observation -- envelopes. Sorry. How
12 these envelopes are going to be set aside for
13 observation and potential objection.
14 Commissioner Baas, I guess I'm open to your
15 thoughts on this.

16 But I think the thing that makes most
17 sense is to set those aside when they are
18 identified, an objection can be raised. I do
19 think that it makes sense to make a standing
20 objection if the issue is exactly the same for
21 those envelopes. They can be brought. The
22 record can be made with respect to each of
23 those ballots that's identified after they have
24 been set aside by the -- after they have been
25 set aside.

1 We can then rule on those objections,
2 and it can be -- if it's not a standing
3 objection, you can reiterate your objection to
4 that ballot, and we can then provide it. If
5 it's not a new or novel issue raised by that
6 specific ballot, address those in time so that
7 we have a consistent position with respect to
8 each of these issues as they arise.

9 MR. BAAS: So I agree that we are
10 talking about having them being segregated in
11 ink or indefinitely confined. And we will deal
12 with them en masse. I think that's an
13 appropriate way to go.

14 MR. POSNANSKI: And I would just note
15 that what we are talking about and why we can't
16 just set aside each and every ballot across the
17 county, is that we are doing this ward by ward
18 and municipality by municipality. And so each
19 of those ballots -- or each of those envelopes
20 or whatever the issue is involved in the one
21 particular category or objection can be set
22 aside. And we can hear each objection for that
23 particular ward or that municipality after all
24 of those envelopes, ballots issued are set
25 aside.

1 MR. BAAS: I would agree.

2 MR. MEULER: And I'm not sure that's
3 entirely necessary going through each one. You
4 have a standing objection to a category. So,
5 you know, it -- I am not sure what you mean.
6 The statute doesn't really apply --

7 MR. POSNANSKI: Well, I don't think
8 those objections are going to take much time
9 after we get through the first one.

10 MR. KARGE: I would just like to
11 clarify that the envelopes that the Board is
12 saying are the applications themselves, those
13 will be segregated from other ballots -- or
14 envelopes; correct?

15 MR. POSNANSKI: Right?

16 MR. BAAS: Yeah, that's what we are
17 saying.

18 MS. DAUN: If I may, Mr. Chairman. I
19 guess I'm confused. A ballot is not an
20 envelope, so I'm not following the question.

21 MR. KARGE: But if the envelope is
22 the application --

23 MS. DAUN: Yes, sir.

24 MR. KARGE: -- those absentee
25 envelopes will be set aside?

1 MS. DAUN: There are envelopes and
2 there are ballots.

3 MR. KARGE: Okay.

4 MS. DAUN: Envelopes are being
5 reviewed. We are setting aside envelopes with
6 differently colored ink and envelopes that
7 indicate indefinite confinement. I'm -- I'm
8 not trying to be obtuse. I generally do not
9 understand the question.

10 And if anybody up here can help me
11 out, please do.

12 MR. KARGE: So every envelope is
13 going to have some sort of certification,
14 supposedly, but there's no other application
15 necessarily for that envelope.

16 MR. CHRISTENSON: We are chasing our
17 tails on this.

18 MS. HENRY: Mr. Chair, that is not
19 correct. Can we show them an envelope, if that
20 would be permissible at this time?

21 MS. DAUN: Yes, that's in order.

22 MS. HENRY: Thank you. I'm going to
23 cover up the voter's name. So on the screen --

24 I don't know if you can all see it.
25 We have the official absentee --

1 Before you, you can see it on the
2 screen. It has the official absentee ballot
3 application certification. Then it has the
4 individual label, the type of voter -- in this
5 case it's a regular voter -- then it lists the
6 certification of voter with the signature of
7 the elector.

8 We will turn on the screen so the
9 Commissioners can view it as well. Everyone
10 else can view it on the screens there.

11 So it states again, official absentee
12 ballot application certification. Then the
13 label that is issued that is placed on the
14 envelope by the clerk was the request had come
15 in -- came in, either in person or by mail.
16 Then you have the certification of the voter.
17 Once they have received the absentee ballot,
18 and then they certify with their name their
19 signature.

20 MR. MEULER: If I could, just a
21 point. We do have a submission on this very
22 issue if we are getting into the substantive
23 area. And then another procedural point.

24 MR. POSNANSKI: I think you can
25 proceed with the procedural point. I think

1 we've addressed this issue, and I think we
2 resolved this issues. I think we've talked all
3 around this issue.

4 MR. MEULER: Fair enough.

5 Procedurally, if we are talking about
6 this standing objection and how to, I think,
7 implement this. And I would just note, in Dane
8 County the -- my understanding is the Trump
9 Campaign, you know, acknowledged the way --
10 they way they are proceeding -- I don't -- I
11 shouldn't say that the Trump Campaign
12 acknowledged it, but the way they are
13 proceeding is that there's a standing
14 objection.

15 They are not separating ballots.
16 They are just, you know, proceeding according
17 to the statute with an acknowledgement that
18 there is a standing objection to these
19 different categories, which I understand we are
20 going to get to. I just wanted to raise that
21 point so that you understand what's going on in
22 both counties.

23 MR. KARGE: Well, what I would like
24 to say that what I understand you to be saying
25 is reaching, in evidence, a substantive

1 decision on what is an application. And,
2 therefore, what I would ask you to do is in
3 addition to segregate ballots that have these
4 other -- or I'm sorry, these envelopes that
5 have these other characteristics we'll also put
6 a separate pile for all other envelopes that
7 are determined by you to be the application.

8 MR. POSNANSKI: I believe that's
9 every envelope.

10 MR. BAAS: By default, that's going
11 to be the other category?

12 MR. KARGE: Yes.

13 MR. POSNANSKI: Well, I mean, I think
14 if you have -- during the observation, if
15 there's a particular objection you wish to make
16 on those grounds, please make it.

17 For purposes of the record, as Ms.
18 Daun advised, I think it is advisable to make a
19 record with respect to the Committee's
20 deliberations and decisions with respect to the
21 requests advanced by the Trump Campaign.

22 Is there a motion or discussion on
23 that point?

24 MS. DAUN: Mr. Chairman, if I could,
25 at the pleasure of the Commissioners, to

1 simplify matters, may I suggest in some
2 phraseology for the motion given that it had
3 multiple parts?

4 The motion would be from Commissioner
5 Baas, if I may, that the eight points in the
6 determinations earlier articulated by Chairman
7 Posnanski be adopted by this Commission, and
8 that the election proceed in accordance with
9 those directives.

10 MR. BAAS: So moved.

11 MS. MARTIN: Second.

12 MR. POSNANSKI: Any further
13 discussion?

14 MR. BAAS: No.

15 MR. POSNANSKI: Mr. Clerk, can we
16 have a roll call? Call the vote on the matter?

17 MR. CHRISTENSON: On the motion that
18 the eight points articulated by
19 Chairman Posnanski be adopted.

20 Commissioner Baas?

21 MR. BAAS: Aye.

22 MR. CHRISTENSON: Martin?

23 MS. MARTIN: Aye.

24 MR. CHRISTEN: Chairman Posnanski?

25 MR. POSNANSKI: Aye.

1 MR. CHRISTENSON: Three ayes, zero
2 nos.

3 MR. POSNANSKI: Ms. Henry, are you
4 now in a position where we can proceed with the
5 count?

6 MS. HENRY: Okay. Election
7 inspectors, you will proceed with your recount.
8 We will start with the reviewing once you
9 reconcile your poll list. We will start by the
10 reviewing of your absentee ballots and
11 materials. You should determine the number of
12 absentee voters by reviewing the poll list, the
13 absentee ballot certificate envelopes, and your
14 inspector statement, along with the absentee
15 ballot log.

16 Once you've determined that, you can
17 go through the next process on reviewing the
18 written applications for absentee ballots,
19 which is the absentee ballot envelope against
20 the poll list. We ask that you set aside any
21 absentee ballot that has a different color on
22 the address versus the actual witness
23 signature, just set it to the side.

24 MS. DAUN: Again, we are all going to
25 have T-shirts made. It's the envelope.

1 MS. HENRY: Yes, the envelope. I'm
2 sorry. Let me restate. The absentee envelope,
3 if it has another color on the witness
4 signature and/or address, we should set that to
5 the side. You should also set to the side if
6 it's identified that it is an indefinite
7 confined ballot envelope. Okay?

8 Once you are done with that process,
9 you will then review your rejected absentee
10 envelopes, and you will examine for any
11 defective absentee envelopes. We are going to
12 stop there before we examine the ballot bags.

13 So we have about another hour of work
14 before we start, and then let us know how you
15 progress. It may take you longer if you are in
16 other parts of the county. So that's what we
17 are going to do.

18 Are there any questions?

19 Mr. Chairman, the City of Milwaukee
20 does have a question that they would like to
21 pose at this point because they do know that is
22 going to be an issue raised throughout the
23 process.

24 Claire, would you like to come
25 forward now?

1 MS. WOODALL-VOGG: Mr. Chair, in
2 Ward 1, we have reviewed our rejected absentee
3 envelopes. We have two envelopes from
4 in-person absentee voting where our staff at
5 the Election Commission failed to witness the
6 envelope. We would like the Board's direction
7 on whether these shouldn't be rejected since it
8 was the clerk's error, not the voter's. We
9 believe there to be 73 total across all of our
10 Boards, but there are two in Ward 1.

11 MR. POSNANSKI: Do you have the
12 envelope?

13 MS. WOODALL-VOGG: And so we do know
14 that these are in-person absentee voting,
15 because our in-person voting absentee envelopes
16 are different. And as you can see, the City of
17 Milwaukee City Hall has our address for the
18 witness, which is further confirmation that
19 these both came from in-person absentee voting,
20 in addition to our absentee box telling us
21 that.

22 MR. BAAS: Excuse me, exactly how are
23 they different?

24 MS. WOODALL-VOGG: When we mail
25 ballots to voters, we pay an additional cost to

1 have our envelopes printed with the
2 highlighting for the signatures, for the
3 signature of the voter, and the signature of
4 the witness. And no witness address would be
5 preprinted for a voter for mailing in the
6 ballot.

7 MR. BAAS: Thank you.

8 MR. POSNANSKI: Any further
9 questions, Mr. Baas?

10 MS. DAUN: Mr. Chairman, again, just
11 for the purposes of making sure that the record
12 is sufficiently clear, Commissioner Baas
13 inquired how is it that you are able to discern
14 an in-person absentee envelope from a mailed-in
15 absentee envelope, and the answer was that for
16 in-person absentee envelopes, the address
17 listed for the witness is the location of the
18 in-person absentee voter. In this case, the
19 address of City Hall in Milwaukee. Thank you,
20 Mr. Chairman.

21 MR. POSNANSKI: Thank you.

22 Either campaigns wish to be heard on
23 these two ballots -- on these two envelopes?
24 My apologies. At least I'm catching myself.

25 MR. MEULER: No, thank you.

1 MR. KARGE: It appears that there is
2 no witness on either of these. So in
3 accordance with the statute both of them should
4 be disqualified.

5 MR. MEULER: Well, we would certainly
6 say, obviously, with the testimony here, that
7 this has happened at City Hall. It was
8 addressed at City Hall. This was an in-person
9 vote with the clerk. So it should be counted.

10 MR. BAAS: Which particular statute
11 states that it shouldn't be counted?

12 MR. KARGE: I believe -- I don't have
13 a specific one. But I believe every absentee
14 witness --

15 MR. BAAS: No, no. I'm asking you
16 for a statute.

17 MR. KARGE: The absentee ballot is
18 defective if it is not witnessed, the witness
19 did not provide the address, it is not signed
20 by the voter or the certificate envelope or the
21 certification language is missing. Wisconsin
22 Statute Section 9 -- Section 9.01(1)(b)2.

23 MR. BAAS: Thank you.

24 MS. DAUN: Mr. Chairman, for the
25 Commission's consideration during the 2016

1 recount, the Wisconsin Election Commission
2 didn't rule that these ballots -- that our past
3 absentee in-person ballots should be counted.
4 That was a ruling from the Wisconsin Election
5 Commission in 2016. Thank you, Mr. Chairman.

6 MR. POSNANSKI: Thank you, Ms. Daun.
7 I -- having served on this Board in the 2016
8 recount, I am quite familiar with that
9 guidance.

10 MR. BAAS: Having served on this
11 Board in 2016, I am familiar with it as well,
12 and I disagree. So --

13 MS. DAUN: I think a motion at this
14 time would be appropriate. But I do believe
15 that Commissioner Martin may have a fact
16 question germane to this issue.

17 MS. MARTIN: What happened to our
18 City of Milwaukee person?

19 You had mentioned there are 73
20 ballots total. Are they all City Hall in
21 person?

22 MS. WOODALL-VOGG: So counter to what
23 Counsel had said, all in-person absentee
24 envelopes listed all at the address, that's our
25 employees' address. We do not have records

1 without using WisVote to tell you which
2 in-person absentee location they came from.

3 MS. DAUN: But, again, I just want to
4 make that clear for the record, because this is
5 a correction. And I am going to thank the city
6 clerk for that.

7 To be clear, the address that's
8 listed on any in-person absentee ballot
9 envelopes for the City of Milwaukee is the City
10 Hall address for all, regardless of the
11 in-person absentee voting location. Did I get
12 that right now?

13 MS. WOODALL-VOGG: Correct.

14 MS. DAUN: Yes, you did. Thank you.

15 And I think the Commissioner's
16 question was, do all 73 indicate the City Hall
17 address?

18 MS. WOODALL-VOGG: Yes. All 73 do.

19 MS. MARTIN: I move that all 73
20 ballots be accepted -- envelopes.

21 MS. DAUN: Ballot and envelope.

22 MS. MARTIN: Ballots and envelopes.

23 MR. POSNANSKI: I second that motion.

24 Any further discussion, Mr. Baas?

25 MR. BAAS: Yes. We've had challenges

1 in this state when WEC has decided that they
2 are going to supersede what the statute is, and
3 the statute as read is pretty clear. Given the
4 fact that this was cast in a building with
5 professionals, the fact that the signature was
6 overlooked, is even more egregious. And so I
7 would urge my fellow Commissioners to reject
8 these ballots, all 73.

9 MR. POSNANSKI: Given the guidance
10 we've received in the past on this exact issue,
11 given our own ruling on this exact issue in the
12 past, including during the 2016 recount, and
13 the guidance that provides that an in-person
14 vote should not be set aside due to the clerk's
15 error. I believe it's appropriate to count and
16 accept all 73 of these ballots and envelopes
17 that present this issue.

18 And with that, unless there's any
19 further discussion, I would call a vote.

20 MR. CHRISTENSON: On the question.
21 Commissioner Baas?

22 MR. BAAS: Restate question the
23 question, please.

24 MR. CHRISTENSON: Should all 73
25 envelopes and ballots of in-person absentee

1 voting at Milwaukee City Hall be counted?

2 MR. BAAS: No.

3 MR. CHRISTENSON: Commission Martin?

4 MS. MARTIN: Yes.

5 MR. CHRISTENSON: Chairman Posnanski?

6 MR. POSNANSKI: Yes.

7 MR. CHRISTENSON: Two ayes, one no.

8 Motion carries.

9 MR. POSNANSKI: Until further issues
10 are brought before the Commission, we stand in
11 recess.

12 MR. KARGE: Excuse me, can I ask for
13 one clarification? I am just trying to --

14 MR. POSNANSKI: If it deals with
15 envelopes and ballots, I don't know.

16 MR. KARGE: It actually does deal
17 with the application forms. I am still trying
18 to get an understanding of whether or not what
19 would be produced here will be the actual form
20 application -- application forms of absentee
21 ballots.

22 MR. BAAS: I am going to try this.
23 The actual documents that were up there, the
24 last two examples, are both the envelope that
25 processes and is the application. I believe

1 point, there's no reason not to include those.
2 And we will reserve any ruling on the validity
3 of those ballots upon further information they
4 need to report back to us.

5 MR. KARGE: And just so my objection
6 is still noted.

7 MR. POSNANSKI: Yes. Your objection
8 was noted twice.

9 MR. KARGE: Thank you.

10 MS. SOBIESKI: Thank you.

11 MS. WOODALL-VOGG: Good afternoon.
12 I'm back from the City of Milwaukee. We have
13 numerous tables that are done sorting through
14 their envelopes and now have our set-asides.
15 So we are seeking guidance on the next step
16 once we have set aside the envelopes.

17 MR. POSNANSKI: Can you -- Claire,
18 can you present to Board an example of the
19 envelopes that you set aside?

20 All right. And can you --

21 MS. WOODALL-VOGG: So this is --

22 MR. POSNANSKI: -- just tell us where
23 we are looking?

24 MS. WOODALL-VOGG: -- an example
25 where the ink and the witness address is of a

1 different color. As you can see, the voter
2 filled -- or the witness filled in their street
3 address, but they didn't put the municipality
4 and state, as the state statute requires. The
5 City of Milwaukee staff will dump the address
6 and fill in that information in red ink,
7 including the zip code.

8 MR. POSNANSKI: Claire, can you
9 please just define, is there any guidance that
10 the Election Commission provides through the
11 city and other similarly situated clerks in
12 this situation?

13 MS. WOODALL-VOGG: Yes. So in
14 October 2016, it was the first -- the
15 Presidential Election of November 2016, it was
16 the first election where witness address was
17 required under State law. In October of 2016,
18 the Wisconsin Election Commission issued
19 guidance to all city clerks. They directed us
20 to complete the witness address information
21 either by contacting the voter, contacting the
22 witness or using any means within our offices
23 to -- if we are able to read the witness's
24 signature, provide their address.

25 So if the City of Milwaukee were able

1 to read the witness signature and they didn't
2 provide an address, if there is only one voter,
3 then the city or the state registered with that
4 name, then we provide the address. If there
5 are multiple, we don't make guesses. We
6 contact the voter, or we mail the ballot back
7 to them.

8 In cases like this, which is very
9 common, the voter will put their street
10 address, but not fill it in completely, which
11 is also really common. In our office, due to
12 our volume, we always do this in red ink. Any
13 time it isn't in red ink, it would be
14 initialled.

15 MR. POSNANSKI: And in 2016, that's
16 consistent with the guidance provided by the
17 WEC, the recount certifying Donald Trump the
18 winner of that election counted several of
19 these ballots that were completed in exactly
20 this fashion; is that right?

21 MS. WOODALL-VOGG: Yes. In 2016, we
22 had thousands of ballots that were completed in
23 this manner because of the newness of the
24 requirement, and there were no objections
25 raised.

1 MR. KARGE: Yes. The statute is
2 clear with respect to this. Section 8 -- or,
3 I'm sorry, Section 6.87(6)(d) states, "If a
4 certificate is missing the address of the
5 witness, the ballot may not be counted." There
6 is further provision that says -- Subsection 9,
7 if a municipal clerk proceeds with an absentee
8 ballot with an improperly completed certificate
9 or with no certificate, the clerk may return
10 the ballot to the elector inside the sealed
11 envelope. When an envelope is received
12 together with a new envelope, if necessary,
13 whenever time permits the elector to correct
14 the defect and return the ballot for the period
15 authorized under the subsection.

16 There is no authorization for the
17 clerk to complete a ballot envelope, a
18 certificate that is missing the address. It's
19 -- the statute specifically states that if a
20 certificate is missing the address of the
21 witness, a ballot may not be counted. That's a
22 mandatory. May not be counted.

23 This process violates the statute.
24 It is in violation of the exception, which
25 allows the ballot to be returned to the

1 elector. And that by testimony we just heard,
2 by the statements we just heard, there is no
3 intent to do so in contravention to the
4 specific statutory provisions which addressed
5 this very issue.

6 The correct process should have been
7 once the missing address was noted, to return
8 the ballot to the elector for the correction.
9 There is no authority in the statute for a
10 clerk to on their own for whatever reason fill
11 in misinformation. And the fact that the
12 Election Commission provided guidance does not
13 contraband or override the statute.

14 MR. MEULER: I would certainly like
15 the be heard.

16 First of all, I do have a submission
17 I would like to make part of the record on this
18 issue, a brief. And if I can come up and hand
19 it over to everybody.

20 MR. POSNANSKI: That would be great.

21 MR. MEULER: And I don't know it's
22 the pleasure of the Commission to look at that
23 for a minute, or if you would like for me to
24 proceed with argument and statements?

25 MR. POSNANSKI: Proceed.

1 MR. MEULER: And just for the record,
2 this can be made part of the record, part of
3 this submission that I just handed in?

4 MR. POSNANSKI: We will make this
5 submission as part of the record.

6 MR. MEULER: Thank you.

7 Let me be clear about what's being
8 argued here. Trump Campaign is trying to
9 rewrite the rules of -- rewrite the rules of
10 the game after it has been played. What
11 happened -- here's what happened here. They
12 are saying that it's illegal for the clerks to
13 have added the witness addresses.

14 Section 6.87(6)(d), which is the
15 statute at issue was enacted in -- by 2015, Act
16 261, which was effective in March of 2016.
17 There's no dispute that the witness's address
18 is required by statute. The question is
19 whether there is discretion for the clerks to
20 enter the information. Now, the Wisconsin
21 Election Commission, which by law is charged by
22 administering these statutes took a look at it,
23 and it's noted in our brief. But after the WEC
24 staff issued some initial guidance telling
25 clerks that voters needed to -- that the voters

1 needed to fix deficiencies. The clerks didn't
2 make any changes.

3 The clerks raised concerns. And the
4 WEC staff met with the staff of then Attorney
5 General Brad Schimmel and advised that the
6 voters -- that office advised that the voters
7 consent wasn't necessary for the clerk if the
8 clerks could obtain the missing witness address
9 information from other reliable sources.

10 Now, the Bipartisan Elections
11 Commission unanimously voted to change the
12 guidance to direct, as Milwaukee -- City of
13 Milwaukee Election Commissioner -- or Deputy
14 Director just noted that clerks must fix the
15 witness address information if they can.

16 So then there is this guidance memo
17 from October 18th of 2018. It's been applied
18 since that time in 11 statewide elections.
19 Everyone has relied on it. Clerks, voters.
20 And even you will see attached to the brief,
21 the Wisconsin Election Commission confirmed
22 this guidance again after the election to
23 respond to issues that have been raised.

24 This hasn't been challenged until
25 now. And what they are basically trying to do

1 is disenfranchise, ultimately statewide,
2 hundreds and thousands of people -- or maybe a
3 hundred -- I don't know the exact number. I
4 shouldn't say hundreds and thousands. But they
5 are trying to disenfranchise, based on the
6 clerk's doing, exactly what they have been told
7 to do.

8 So if you want to change the rules of
9 the game, you can change it for the next -- the
10 next game, but this election has already
11 happened. People relied on this. If the
12 clerks weren't so instructed, maybe they -- you
13 know, chances are they would have tried to
14 contact the voters or find other ways to
15 correct the information prior to election day.
16 But that hasn't happened because of the
17 instructions that they had. So you don't
18 change the rules of the game after it's already
19 been played.

20 MR. KARGE: The rules of the game are
21 the statutes, not what the Election Commissions
22 dictate. That simply gives the Election
23 Commission carte blanche authority to overrule
24 a specific statute enacted by the legislature.
25 The language that I read of the statute cannot

1 be clearer as to what the intent of the
2 legislature is with respect to this specific
3 question.

4 It says that an absentee ballot
5 envelope with a missing witness or incomplete
6 certification may not be counted. It then
7 gives the potential remedy and fix for that,
8 which was not followed here.

9 The rules of the game are set forth
10 by the legislature, and the Election Commission
11 has no right or authority to change that.
12 Regardless of when they did it, the statute is
13 the same. It has not been amended or modified
14 and it cannot be clearer on this point. It's
15 in black and white.

16 MR. MEULER: They are asking for
17 retroactive application of something that has
18 been in place for years. If they want the --
19 if they want, you know, the rules to change, go
20 ahead and try and change it for the next
21 election. But everyone relied on this and
22 behaved to the -- you know, according this --
23 according to these rules in this memo.

24 MR. BAAS: So am I to understand that
25 just following orders is somehow going to be

1 sufficient? Because if last century everybody
2 said they were following orders, that wouldn't
3 have really got it done.

4 MR. MEULER: Well, I don't -- I
5 somewhat disagree. I don't think that's an act
6 of comparison, respectfully. But --

7 MR. BAAS: I just want to get your
8 attention. Obviously I'm not comparing anybody
9 to that group. But what you are saying is we
10 were -- somebody issued defective instructions,
11 but because if they didn't need to be
12 defective, we should just go with it.

13 MR. MEULER: I don't think they are
14 defective. I would disagree with that. I
15 understand your argument. I disagree that they
16 are defective. I think that it, you know --

17 MR. BAAS: How are they not defective
18 if they contradict the statute?

19 MR. MEULER: I don't think that they
20 do contradict the statute.

21 MR. POSNANSKI: I don't think they do
22 contradict the statute. And the guidance of
23 the WEC, which, again, this very body ruled
24 upon consistent with accepting these very
25 ballots under that guidance provided by the WEC

1 in last recount provides what is an address,
2 what is a street address. And in this case in
3 particular, we saw the examples of the exhibit
4 in front of us where the street address is
5 provided. It's there. The address is there.

6 So I don't see there's grounds for
7 invalidating or not accepting this ballot based
8 on the envelope containing the witness, which
9 includes the witness's signature, it includes
10 the witness's street address. The clerk, as
11 instructed by the WEC, was readily able to
12 determine the complete address for this witness
13 and consistent with the guidance of the WEC
14 issues to the clerk, consistent with state law.

15 Again, I do not think that Wisconsin
16 Statute 6.87 Subsection D refutes the guidance
17 or somehow contradicts the guidance given by
18 the WEC. In fact, the guidance from the WEC
19 explains and further elaborates upon the
20 requirements of the statute.

21 So I believe that these ballots in
22 this nature should be accepted, and the
23 objection should be overruled. As to any
24 further objection at the Committee level, I
25 would think it would be fair to have a motion.

1 MR. BAAS: I would just also like to
2 have on the record that at some point some
3 things are law, and after a decision is made,
4 they are no longer law. So the fact that just
5 because perhaps the application has not been
6 accurate doesn't mean that you need keep going.
7 But I understand and respect your opinion.

8 I say that we move to a vote. I'm
9 going to make a motion that we reject the
10 ballots that have been completed by any third
11 person, including the clerk, and -- which is
12 not --

13 Which out of compliance with 6.87?

14 MR. KARGE: Yes.

15 MR. BAAS: You got a subsection for
16 me?

17 MR. MEULER: 6(d).

18 MR. KARGE: 6(d).

19 MR. BAAS: Thank you.

20 MR. POSNANSKI: I think before I call
21 for a second, I think it would actually be
22 easier to make the vote in the affirmative
23 rather than in the negative. Meaning that I
24 would move that we accept these ballots that
25 are completed not just by any third person, but

1 completed by the clerks consistent with
2 specific guidance in the WEC, which I view as
3 consistent with Wisconsin Statute 6.87(6)(d).
4 And if these envelopes, these ballots be
5 counted and included in the recount.

6 MS. WEST: So just a point of
7 clarification. Just to make sure. It's the
8 certification on the envelope and it is the
9 address specifically?

10 MR. POSNANSKI: That is correct.

11 MR. KARGE: May I just --

12 MR. POSNANSKI: With that
13 modification.

14 MR. KARGE: May I make one point
15 before you vote?

16 MR. POSNANSKI: Counsel, I think
17 you've been heard on this subject.

18 MS. MARTIN: I would like to second
19 the motion, please.

20 MR. CHRISTENSON: So the motion -- on
21 the motion to accept -- if can you repeat it
22 for me, I would appreciate it. What was it
23 again?

24 MS. WEST: So to accept the -- and
25 count the ballots that have included in

1 envelopes, forwarded absentee ballots that have
2 been sent in envelopes where the certification
3 on the envelope originally lacked complete
4 address, but then subsequently filled in by the
5 clerk. Accurate?

6 MR. BAAS: The witness.

7 MS. WEST: The witness.

8 MR. CHRISTENSON: Okay. On the
9 motion by Chairman Posnanski.

10 Commissioner Baas?

11 MR. BAAS: No.

12 MR. CHRISTENSON: Commissioner
13 Martin?

14 MS. MARTIN: Yes.

15 MR. CHRISTENSON: Chairman Posnanski?

16 MR. POSNANSKI: Yes.

17 MR. POSNANSKI: Two ayes, one no.

18 MR. KARGE: Mr. Chairman, I've been
19 advised that there are numerous tables with
20 observers hands up raising objections that,
21 obviously as I've been sitting here, I don't
22 know the substance of --

23 MS. WEST: Can we just finish up on
24 this one, please, a directive as to how to
25 handle these?

2020 PRESIDENTIAL RECOUNT

Location: The Wisconsin Center
400 West Wisconsin Avenue
Milwaukee, Wisconsin 53203

Date: November 21, 2020

Time: 9:00 a.m. to 8:02 p.m.

Proceedings Reported By:
Alicia Pabich, CSR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE MILWAUKEE ELECTION COMMISSION:

Mr. Tim Posnanski, Chairman
Ms. Dawn Martin, Election Commissioner
Mr. Rick Baas, Election Commissioner
Mr. George Christenson, Milwaukee County Clerk
Ms. Julietta Henry, Milwaukee County Elections
Director
Ms. Michelle Hawley, Milwaukee County Elections
Director
Ms. Margaret Daun, Milwaukee County Corporation
Counsel
Mr. Stefan Dostanic, Milwaukee County Deputy Clerk

FOR THE TRUMP CAMPAIGN:

Attorney Stewart Karge
Attorney Joseph Voiland
Mr. Kenneth Dragotta

FOR THE BIDEN CAMPAIGN:

Attorney Christopher Meuler
Attorney Chris Trebatoski
Attorney Stacie Rosenzweig

MUNICIPALITIES:

Village of Bayside, Clerk Lynn Galyardt
Village of Brown Deer, Clerk Jill Kenda-Lubetski
City of Cudahy, Deputy Clerk Kelly Sobieski
Village of Greendale, Clerk Melanie Pietruszka
Village of Hales Corners, Clerk Sandra Kulik
City of Wauwatosa, Clerk Melanie Kollmansberger
City of Franklin, Clerk Sandi Wesolowski
City of Milwaukee, Executive Director Claire
Woodall-Vogg
City of Oak Creek, Clerk Catherine Roeske
Village of Shorewood, Clerk Sara Bruckman

02:15:37 1 MR. KARGE: I'm sorry. Yes, we are
02:15:38 2 objecting to that. If you want to receive the
02:15:42 3 basis for the objection?

02:15:43 4 MR. POSNANSKI: We should proceed
02:15:46 5 with that objection, if that objection has not
02:15:49 6 yet been heard on your side.

02:15:53 7 MR. KARGE: Yes. The statute that
02:15:56 8 creates the category of indefinitely confined
02:16:01 9 electors creates an impermissible
02:16:03 10 classification of electors in violation of the
02:16:06 11 Equal Protection and Due Processes Clauses of
02:16:08 12 the U.S. Constitution. Unlike electors who
02:16:13 13 request an absentee ballot, those who assert
02:16:15 14 they are indefinitely confined are not inclined
02:16:16 15 to present photo ID or proof of legal
02:16:19 16 residence, nor is there any uniform
02:16:24 17 justification of basis required for such
02:16:26 18 clarification, as the Wisconsin absentee ballot
02:16:27 19 application simply allows the purported voter
02:16:32 20 to individually certify that they are
02:16:34 21 indefinitely confined with no discernable
02:16:37 22 objection standing.

02:16:39 23 The statute is also a void for
02:16:43 24 vagueness for those reasons. There is no
02:16:45 25 requirement to determine the valid status of

02:16:45 1 the voter, which is, in essence, an open
02:16:50 2 indication for fraud and abuse.

02:16:52 3 The numbers of those claiming to be
02:16:54 4 indefinitely confined has risen exponentially
02:16:59 5 since the clerk for Milwaukee County put a post
02:16:59 6 on its website encouraging electors to vote
02:17:03 7 indefinitely confined, regardless of their
02:17:07 8 actual status.

02:17:07 9 I am prepared to put into evidence a
02:17:12 10 spreadsheet of the sample of voters who have
02:17:15 11 declined to be indefinitely confined throughout
02:17:19 12 the state of Wisconsin, and have, through a
02:17:23 13 Facebook posting or other social media
02:17:26 14 postings, which are listed as a -- in their
02:17:29 15 minds are clearly not indefinitely confined.
02:17:35 16 And I would be prepared to submit that in
02:17:38 17 writing at the appropriate time.

02:17:39 18 MR. POSNANSKI: So this spreadsheet
02:17:44 19 included indefinitely confined voters
02:17:46 20 throughout the state of Wisconsin?

02:17:50 21 MR. KARGE: Yes. As an example of
02:17:53 22 the type of abuse that this constitutes. It is
02:17:56 23 not directed to show that the number of people
02:17:58 24 on there is the universe of those which fall
02:18:00 25 into this category. We are objecting to this

02:18:03 1 as a classification, which is in violation of
02:18:07 2 the due process equal protection order for
02:18:13 3 vagueness provisions.

02:18:17 4 May I --

02:18:18 5 MR. POSNANSKI: Set the spreadsheet
02:18:21 6 aside for the moment. Do you have any other
02:18:24 7 comments that you would make on this point?

02:18:29 8 MR. KARGE: Well, for each such
02:18:32 9 improperly completed absentee ballot
02:18:33 10 certification for indefinitely confined, and we
02:18:37 11 ask that the poll list reduced by the number of
02:18:39 12 ballot envelopes be set aside. Even if the
02:18:41 13 Board of Canvassers rejects our challenges, we
02:18:46 14 request that the Board determine the total
02:18:47 15 number of eligible voters on the poll list as
02:18:49 16 if the challenge was granted and conducted in
02:18:52 17 an appropriate drawn-down condition.

02:18:55 18 This would prevent the need to
02:18:56 19 conduct an additional, not necessary, recount.
02:18:56 20 But the objection is ultimately made by the
02:19:02 21 Board, as we agreed, nevertheless.

02:19:04 22 MS. DAUN: Mr. Chairman, can I ask a
02:19:04 23 couple follow-up questions?

02:19:07 24 Counsel, so you are proposing to have
02:19:10 25 the Board consider to accept as evidence in the

02:19:12 1 recount a spreadsheet; is that correct?

02:19:17 2 MR. KARGE: I am asking them to take
02:19:19 3 into consideration the spreadsheet which
02:19:22 4 shows --

02:19:23 5 MS. DAUN: But we are talking about a
02:19:25 6 spreadsheet, not the Facebook posts themselves
02:19:27 7 is my question.

02:19:31 8 MR. KARGE: Well, the spreadsheet is
02:19:31 9 an Excel spreadsheet that lists the names of
02:19:34 10 individuals, and at the far end, has a Facebook
02:19:37 11 reference or social media reference, which
02:19:40 12 would open up and identify the reason why we
02:19:45 13 believe this person who claimed to be
02:19:50 14 indefinitely confined is not.

02:19:52 15 MS. DAUN: But this spreadsheet, you
02:19:53 16 are not submitting the actual Facebook posts
02:19:55 17 themselves; is that correct?

02:19:56 18 MR. KARGE: If you wish, I could have
02:19:59 19 that done for purposes of administering these.
02:20:02 20 I have -- you can open up the references
02:20:05 21 themselves, but I have a spreadsheet which has
02:20:08 22 the information and a link to the Facebook
02:20:11 23 page.

02:20:11 24 MS. DAUN: So the reference that you
02:20:13 25 mean is like an HTML hyperlink to a Facebook

02:20:19 1 page to a particular user?

02:20:20 2 MR. KARGE: Yes.

02:20:21 3 MS. DAUN: So my second -- or my next
02:20:23 4 follow-up question is, you have no evidence
02:20:25 5 that goes to whether or not when a witness
02:20:27 6 signed or attested to their indefinite
02:20:30 7 confinement, that they at that time did not
02:20:34 8 hold a general and reasonable good-faith belief
02:20:35 9 that they were indefinitely confined? These
02:20:38 10 are live links today?

02:20:40 11 MR. KARGE: They were at the time of
02:20:42 12 the election --

02:20:42 13 MS. DAUN: Well --

02:20:45 14 MR. KARGE: -- or shortly thereafter.

02:20:45 15 MR. POSNANSKI: So there's --

02:20:47 16 MR. KARGE: Hold on. In close
02:20:48 17 proximity to the time of the election
02:20:51 18 demonstrating that they were not indefinitely
02:20:54 19 confined at that time.

02:20:55 20 MS. DAUN: Is there date-stamped
02:20:57 21 evidence we can see?

02:21:00 22 MR. BAAS: I was going to say, are
02:21:02 23 you talking about posts that they made?

02:21:03 24 MR. KARGE: Yes.

02:21:05 25 MR. BAAS: So those would be time and

02:21:06 1 date stamped?

02:21:06 2 MR. KARGE: Yes.

02:21:06 3 MR. POSNANSKI: At or on the date of
02:21:08 4 the election?

02:21:09 5 MR. KARGE: Yes. Shortly after.

02:21:11 6 MS. DAUN: And have you personally
02:21:13 7 viewed each of these Facebook pages?

02:21:19 8 MR. KARGE: Yes. So if I may present
02:21:21 9 the spreadsheet as an exhibit?

02:21:24 10 MR. POSNANSKI: How many individuals
02:21:25 11 identified in the spreadsheet are residents of
02:21:29 12 Milwaukee County?

02:21:31 13 MR. KARGE: I don't believe any of
02:21:33 14 them are. But they are representative of the
02:21:37 15 type of abuse that is subject to this
02:21:42 16 individual provision.

02:21:43 17 MS. ROSENZWEIG: Members of the
02:21:44 18 Commission, Stacie Rosenzweig, Counsel for
02:21:45 19 Biden for President. I would just like to
02:21:47 20 object to the introduction that that's
02:21:50 21 evidence, as it's hearsay and it's irrelevant
02:21:52 22 to Milwaukee County at that particular time.

02:21:59 23 MR. KARGE: If the objection is
02:22:00 24 sustained, I would like to make an offer of
02:22:03 25 proof by submitting the spreadsheet,

02:22:06 1 nevertheless, as part of the record.

02:22:07 2 MR. POSNANSKI: I think that would be
02:22:09 3 more appropriate to make the offer of proof and
02:22:10 4 allow it to be at least be part of the record.
02:22:12 5 But I would agree that I don't believe it's
02:22:14 6 relevant. I believe it is hearsay. And I
02:22:17 7 don't believe it has any probative value for
02:22:20 8 our purposes here to recertify the recount in
02:22:22 9 Milwaukee County. And by Counsel's own
02:22:24 10 admission the spreadsheet does not include any
02:22:27 11 voters from Milwaukee County who allegedly ran
02:22:31 12 afoul of the statutory requirements as alleged
02:22:34 13 by Counsel.

02:22:36 14 And I would be inclined, and so move,
02:22:38 15 that we do not admit the spreadsheet into
02:22:42 16 evidence, but allow Counsel to make an offer of
02:22:45 17 proof so that this spreadsheet is at least a
02:22:48 18 part of the record.

02:22:49 19 MR. BAAS: Second.

02:22:53 20 MR. CHRISTENSON: On the motion.

02:22:58 21 Commissioner Baas?

02:22:59 22 MR. BAAS: Aye.

02:22:59 23 MR. CHRISTENSON: Commissioner

02:23:03 24 Martin?

02:23:03 25 MS. MARTIN: Aye.

02:23:06 1 MR. CHRISTENSON: Chairman Posnanski?

02:23:08 2 MR. POSNANSKI: Aye.

02:23:09 3 MR. CHRISTENSON: Three ayes, zero

02:23:09 4 noes.

02:23:09 5 MR. KARGE: Can I submit the

02:23:11 6 spreadsheet, Chairman?

02:23:11 7 MR. POSNANSKI: You can submit it to

02:23:13 8 the court reporter, and have her mark it as

02:23:16 9 County Exhibit, whatever the next number is in

02:23:19 10 order.

02:23:19 11 MS. ROSENZWEIG: Counsel, do you have

02:23:21 12 a copy for the Biden Campaign?

02:23:27 13 MR. KARGE: Yes, I do.

02:23:39 14 MR. POSNANSKI: And then,

02:23:40 15 Ms. Rosenzweig, do you wish to be heard on the

02:23:40 16 arguments advanced by Counsel with respect to

02:23:44 17 the indefinitely confined voter?

02:23:44 18 MS. DAUN: I just have one quick

02:23:46 19 question before the representative from either

02:23:49 20 Campaign addresses the Commission as well. Do

02:23:51 21 you have any direct evidence that you would

02:23:53 22 offer today, sir, that any one of those people

02:23:56 23 on the spreadsheet that you just provided

02:24:00 24 relied upon the statement of the Milwaukee

02:24:03 25 County Clerk George Christenson that was out, I

02:24:07 1 believe, for two days before it was retracted
02:24:09 2 and pulled down relating to what "indefinite
02:24:12 3 confinement" means?

02:24:14 4 MR. KARGE: I do not have specific
02:24:16 5 evidence as to those people on the spreadsheet.

02:24:20 6 MS. DAUN: Presuming they are not
02:24:22 7 Milwaukee County residents, none of them would
02:24:22 8 have relied on the statement by Milwaukee
02:24:24 9 County Clerk George Christenson with respect to
02:24:27 10 their absentee voting.

02:24:28 11 MR. KARGE: I would note for the
02:24:30 12 record that a similar statement was put out by
02:24:34 13 the Dane County Clerk's Office at about the
02:24:37 14 same time for the same thing. I would also
02:24:39 15 like to note for the record that the number of
02:24:42 16 people claiming to be indefinitely confined has
02:24:46 17 risen from around 60,000 to over 200,000 only
02:24:51 18 for this election.

02:24:53 19 MS. DAUN: But then no one on that
02:24:56 20 list -- you are not arguing that anyone on the
02:24:58 21 list be provided relied upon Mr. Christenson's
02:25:01 22 statement back in March of 2020.

02:25:03 23 MR. KARGE: I am not saying that they
02:25:05 24 did not. You are asking if I had any proof.
02:25:08 25 It is my belief that that's what he did.

02:25:11 1 MS. DAUN: But you have no evidence
02:25:13 2 that there was any reliance at all?

02:25:15 3 MR. KARGE: I do not have any
02:25:16 4 evidence of those people, but it is my belief
02:25:20 5 and my contention is that notice was a material
02:25:22 6 impact on increasing the number of indefinitely
02:25:26 7 confined electors from approximately 60,000 to
02:25:30 8 over 240,000.

02:25:33 9 MS. DAUN: I understand your
02:25:34 10 contention, but just to be sure the record is
02:25:36 11 clear, you are presenting zero evidence of that
02:25:38 12 contention; correct?

02:25:40 13 MR. KARGE: I am presenting evidence
02:25:42 14 through the spreadsheet, which has not been
02:25:46 15 allowed to be even put into evidence, of people
02:25:48 16 who have claimed to be indefinitely confined,
02:25:52 17 and clearly were not at the time of the
02:25:54 18 election.

02:25:55 19 MS. DAUN: Mr. Chairman, may I let
02:25:57 20 the record reflect that the witness has, in
02:25:59 21 various ways and forms, stated on the record
02:26:03 22 that there is no evidence showing that any of
02:26:04 23 the people on the spreadsheet relied
02:26:07 24 specifically on Mr. Christenson's statements as
02:26:09 25 they are not Milwaukee County residents.

02:26:11 1 MR. POSNANSKI: And I think we
02:26:11 2 understand the record at this point. And I
02:26:13 3 would like to hear briefly from Ms. Rosenzweig
02:26:18 4 before we move forward with this issue.

02:26:19 5 MS. ROSENZWEIG: Thank you,
02:26:20 6 Mr. Chairman.

02:26:21 7 We do have an issue brief on this
02:26:23 8 issue, that I would like introduce into the
02:26:25 9 record and pass around, if that's all right.

02:26:29 10 MR. POSNANSKI: Thank you. Yes.

02:27:02 11 MS. ROSENZWEIG: Would the
02:27:03 12 Commissioners like a few minutes to just
02:27:05 13 briefly review before I give some remarks?
02:27:14 14 Thank you.

02:31:54 15 MR. POSNANSKI: Commissioner Martin,
02:31:56 16 do you need a moment to read the document?

02:32:01 17 You can proceed, Ms. Rosenzweig.

02:32:01 18 MS. ROSENZWEIG: Thank you.

02:32:02 19 The Trump Campaign's objection to
02:32:04 20 these large swathes of ballots is nothing more
02:32:08 21 than bald attempt to disenfranchise tens and
02:32:10 22 thousands of primarily elderly and disabled
02:32:14 23 voters. This was a duly enacted statute. This
02:32:16 24 is not the appropriate time or place for a
02:32:19 25 factual challenge to a statute that was in

02:32:22 1 effect at the time of the election and remains
02:32:24 2 in effect now. This is simply an attempt to
02:32:27 3 knock those voters off the rolls for absolutely
02:32:32 4 no fault of their own.

02:32:34 5 The statute allows electors to
02:32:34 6 determine for themselves whether they meet the
02:32:37 7 criteria of "indefinitely confined." It does
02:32:40 8 not require that they cannot leave their house.
02:32:43 9 It does not require that they are permanently
02:32:46 10 confined and will never be able to leave their
02:32:48 11 house again. This is a determination they make
02:32:51 12 themselves.

02:32:51 13 And the Campaign's objection to these
02:32:55 14 ballots is simply meritless, if these
02:32:58 15 individual electors did decide for themselves
02:32:58 16 that they were indefinitely confined. The
02:33:01 17 Campaign put forth no evidence whatsoever that
02:33:04 18 a single voter did not meet this criteria. And
02:33:08 19 even if they did, that does not justify
02:33:12 20 disqualifying potentially tens of thousands of
02:33:15 21 ballots of elderly, disabled and ill
02:33:17 22 individuals.

02:33:18 23 And I do believe the statistic of --
02:33:19 24 was incorrectly cited due to the other side.
02:33:22 25 Our position is that there were 160,000,

02:33:23 1 approximately, indefinitely confined voters as
02:33:27 2 of April, and that did grow up to 215,000
02:33:32 3 around this time. But that makes sense. We
02:33:34 4 are in the middle of a pandemic.

02:33:37 5 And although the statute does not
02:33:37 6 allow people to declare themselves indefinitely
02:33:41 7 confined for the purpose of people avoiding the
02:33:41 8 photo ID requirement, it makes logical sense
02:33:45 9 that many, many more people will quarantine
02:33:49 10 themselves and be largely unable to leave their
02:33:52 11 house unless it's to get medical attention and
02:33:54 12 groceries.

02:33:56 13 And, again, at this time, with a
02:33:58 14 pandemic raging, it makes sense that people
02:34:03 15 would declare themselves indefinitely confined.
02:34:07 16 That is up to the voters to decide. That is
02:34:09 17 not up to the Trump Campaign to make that
02:34:11 18 decision. They can't substitute their judgment
02:34:14 19 for that of the voter.

02:34:15 20 So we request that this challenge be
02:34:18 21 denied. I will be happy to take other
02:34:20 22 questions, but otherwise I rest on our
02:34:23 23 submission to the Trump Campaign. Thank you.

02:34:24 24 MR. POSNANSKI: Thank you.

02:34:24 25 MR. KARGE: If I may? If I may

02:34:27 1 briefly?

02:34:27 2 MR. POSNANSKI: Briefly. I would
02:34:28 3 like to avoid the colloquy going back and
02:34:33 4 forth.

02:34:33 5 MR. KARGE: I will point out that in
02:34:36 6 Section 6.84 on absentee voters, it states that
02:34:40 7 voting is a Constitutional right, but absentee
02:34:44 8 voting is a privilege. A privilege which
02:34:46 9 should not be abused. Counsel just spoke that
02:34:50 10 it is up to the individuals to determine
02:34:52 11 whether or not they are indefinitely confined.
02:34:54 12 They don't have to meet the regular standards
02:34:58 13 of a government absentee voter. They are
02:35:01 14 created in a separate class of voters without
02:35:05 15 the same safeguards that every other absentee
02:35:08 16 voter is required to meet in this country.

02:35:11 17 And one does not need -- well, it's
02:35:17 18 appropriate at this time to raise that, because
02:35:19 19 these are the votes that are being counted.
02:35:21 20 And that should be more appropriate than a
02:35:24 21 recount to address the issue of this type of
02:35:27 22 provision. For purposes of brevity, I will
02:35:32 23 just stand on my other objections.

02:35:34 24 MR. POSNANSKI: Thank you.

02:35:39 25 So I would note that, as I pointed

02:35:39 1 out with the submission of the brief and
02:35:46 2 Ms. Rosenzweig's comments, I identified a
02:35:47 3 guidance provided by the Milwaukee County
02:35:51 4 Election Commission, which was reviewed and
02:35:53 5 approved by the *Supreme Court in Jefferson*
02:35:57 6 *County versus Dane County*, where it clearly
02:35:57 7 states that a designation of an indefinitely
02:35:58 8 confined status is for each individual voter to
02:36:01 9 make based upon their current circumstances.

02:36:04 10 We've heard from the voters why it is
02:36:07 11 for voters to decide that is consistent with
02:36:09 12 the guidance we were provided, which was
02:36:12 13 particularly reviewed by the Supreme Court.
02:36:14 14 But -- and it is not for the Trump Campaign to
02:36:19 15 decide whether or not that voter was in fact
02:36:22 16 indefinitely confined at the time of that
02:36:24 17 request, nor is it for us to.

02:36:26 18 More importantly, there has been no
02:36:29 19 evidence of any voter in Milwaukee County
02:36:31 20 offered that has abused this process and voted
02:36:34 21 through this status, whether it was -- it's not
02:36:38 22 even an allegation that there was a single
02:36:43 23 voter who abused this process to vote without
02:36:45 24 providing proof of their ID, but eliminating
02:36:49 25 proof that anyone did so. So there's no

02:36:53 1 allegation. There's no proof. There's no
02:36:54 2 evidence.

02:36:54 3 Even in the offer of proof offered by
02:36:57 4 the Counsel for the Trump Campaign did not
02:36:58 5 include any Milwaukee County voters who
02:37:01 6 allegedly abused this process through the proof
02:37:05 7 by Facebook at or near the time of the
02:37:09 8 election.

02:37:09 9 So based upon that, I would vote to
02:37:13 10 overrule any such objections to -- sorry. Yes.
02:37:20 11 I would move to overrule any such objections
02:37:23 12 based upon voter status as "indefinitely
02:37:27 13 confined." And we will allow this motion -- we
02:37:31 14 will certainly allow the Trump Campaign to
02:37:34 15 continue to make a record. But I would vote to
02:37:37 16 overrule the objection, and move that these
02:37:42 17 envelopes be included in the count.

02:37:46 18 MS. MARTIN: I second.

02:37:48 19 MR. BAAS: First of all, I understand
02:37:52 20 and, like a lot of people think like I do,
02:37:57 21 question the huge increase. I understand the
02:38:01 22 pandemic. And I still find the numbers to be
02:38:04 23 kind of impressively large. I would also, from
02:38:08 24 my humble position as commissioner, express my
02:38:11 25 frustration with the state legislature in their

02:38:16 1 inability to make clear election laws, because
02:38:19 2 after all, this is not something you want a lot
02:38:22 3 of ambiguity in.

02:38:24 4 Having said that, the fact that
02:38:26 5 Milwaukee County is not referenced in your
02:38:29 6 materials, sir, I don't believe this to be an
02:38:35 7 appropriate body either.

02:38:36 8 MR. CHRISTENSON: On the motion.
02:38:39 9 Commissioner Baas?

02:38:40 10 MR. BAAS: Present.

02:38:43 11 MS. DAUN: It's an aye or nay.

02:38:54 12 MR. BAAS: It is "present."

02:38:54 13 MR. CHRISTENSON: Commissioner
02:38:54 14 Martin?

02:38:58 15 MS. MARTIN: Aye.

02:38:58 16 MR. CHRISTENSON: Chairman Posnanski?

02:38:59 17 MR. POSNANSKI: Aye.

02:39:00 18 MR. CHRISTENSON: Two ayes, zero
02:39:02 19 noes, one "present."

02:39:03 20 MR. POSNANSKI: And consistent with
02:39:04 21 the motion that just carried, we should set
02:39:04 22 aside those ten envelopes as the City of
02:39:11 23 Milwaukee -- the next City of Milwaukee
02:39:13 24 exhibits going forward. So there were two
02:39:19 25 envelopes present here that have different

03:24:30 1 represented yesterday.

03:24:31 2 They are initially in the log that is
03:24:33 3 contained by the clerk's office. The clerk
03:24:37 4 then goes through the process of entering their
03:24:39 5 information directly into the WisVote system.
03:24:43 6 They are then provided an envelope, which
03:24:44 7 includes at the very top that that is also an
03:24:46 8 application. So they go through that process
03:24:48 9 in detail. Indeed, the declarations that have
03:24:53 10 been submitted by the Biden Campaign are very
03:24:55 11 helpful in this regard in supplementing the
03:24:58 12 record of what those individuals do when they
03:25:00 13 are presented to the clerk's office.

03:25:02 14 Moreover, our Deputy Director was
03:25:03 15 kind enough to give me the total number of
03:25:05 16 absentee voters who voted in person in
03:25:08 17 Milwaukee County, and that's 108,947, which can
03:25:13 18 be determined through the spreadsheet that was
03:25:15 19 provided to both of you. Thanks.

03:25:18 20 So with that, I don't believe we need
03:25:22 21 to further belabor this point. I do accept the
03:25:25 22 submission from the Biden Campaign as evidence.
03:25:26 23 I think at this point we can move to deny the
03:25:30 24 request that absentee voter envelopes of those
03:25:33 25 who voted in person be separately segregated.

03:25:36 1 And I further believe at this point, we can
03:25:39 2 rule on the substance of the objection, and
03:25:42 3 overrule the objection that any such envelopes
03:25:45 4 and ballots contained therein would be
03:25:49 5 rejected.

03:25:49 6 And I so modify my motion.

03:25:54 7 MR. KARGE: Mr. Chairman, page two of
03:25:57 8 the Biden submission says, "The absentee
03:26:01 9 ballots certification envelopes served as a
03:26:02 10 written application for voters who choose to
03:26:05 11 vote early through the absentee process."

03:26:07 12 MR. POSNANSKI: And -- that is not
03:26:09 13 the position. I just reiterated the position
03:26:12 14 of the Board in making my motion, so no.

03:26:14 15 MR. KARGE: Now you are rejecting the
03:26:17 16 Biden submission?

03:26:18 17 MR. POSNANSKI: We have received
03:26:20 18 their submission, but that -- I have not
03:26:22 19 adopted their arguments. I have received their
03:26:26 20 submission, and I have reviewed the
03:26:28 21 declarations that are contained therein that
03:26:31 22 correspond with what we determined yesterday,
03:26:35 23 so that the record is clear. And, again, if
03:26:37 24 there's any doubt, I incorporated my reference
03:26:42 25 to a discussion on this point yesterday.

03:26:44 1 But at this point, I made the motion.

03:26:46 2 And I am waiting to get a second.

03:26:48 3 MR. BAAS: Motion to be called.

03:26:51 4 MR. CHRISTENSON: Commissioner Baas?

03:26:53 5 MR. POSNANSKI: Hold on. I modified

03:26:59 6 the motion. Can I get a second?

03:26:59 7 MS. MARTIN: Second the motion.

03:27:01 8 MR. CHRISTENSON: On the motion.

03:27:02 9 Commissioner Baas?

03:27:05 10 MR. BAAS: The motion, please?

03:27:12 11 MR. POSNANSKI: Hold on. Let me try

03:27:13 12 to state it as clearly as I can. On the motion

03:27:16 13 to reject the Trump Campaign request that all

03:27:21 14 absentee envelopes in-person votes be

03:27:28 15 separately segregated in the recount, that that

03:27:32 16 request be rejected, and that any objection to

03:27:37 17 in-person absentee votes being removed.

03:27:46 18 MR. BAAS: Thank you.

03:27:47 19 MS. DAUN: Just, again, to clarify.

03:27:51 20 It would be an objection that is on the basis

03:27:54 21 that the application is insufficient in some

03:27:58 22 way, that that objection to in-person absentee

03:28:02 23 ballots as evidenced by envelopes be overruled.

03:28:07 24 Is that the Chair's motion?

03:28:09 25 MR. POSNANSKI: Yes. Thank you.

03:28:10 1 MS. DAUN: Thank you.

03:28:12 2 MR. CHRISTENSON: On the motion.

03:28:13 3 Commissioner Baas?

03:28:14 4 MR. BAAS: No.

03:28:16 5 MR. CHRISTENSON: Commissioner

03:28:17 6 Martin?

03:28:17 7 MS. MARTIN: Yes.

03:28:19 8 MR. CHRISTENSON: Chairman Posnanski?

03:28:20 9 MR. POSNANSKI: Yes.

03:28:22 10 MR. CHRISTENSON: Two ayes, one no.

03:28:37 11 MR. KARGE: Point of order.

03:28:39 12 MR. POSNANSKI: We need to move

03:28:41 13 forward with Bayside.

03:28:42 14 MR. KARGE: I just would like to ask

03:28:45 15 one question. How would I have a record as to

03:28:50 16 what the number of -- other than the Board is

03:28:51 17 saying that 108,947 in-person absentee ballots;

03:28:57 18 is that correct?

03:28:58 19 MR. POSNANSKI: That's correct. That

03:29:00 20 spreadsheet is in evidence. The spreadsheet is

03:29:03 21 in the record. We marked it as an exhibit.

03:29:09 22 MR. KARGE: Okay.

03:29:09 23 MS. GALYARDT: Lynn Galyardt from the

03:29:10 24 Village of Bayside. As we were sorting our

03:29:15 25 Wards 2 and 4 ballots, the observer objected to

04:18:15 1 MR. POSNANSKI: Okay. Understood.

04:18:16 2 MS. WOODALL-VOGG: I now have ballots
04:18:30 3 for Ward 10. They appear to be 15 from Ward 10
04:18:36 4 without the clerk's initials that are being
04:18:42 5 challenged.

04:18:43 6 MR. POSNANSKI: Based upon the
04:18:46 7 Court's -- the Board's previous determinations
04:18:48 8 on these specific issues, these will be
04:18:52 9 accepted, but should be separately marked and
04:18:59 10 sequentially numbered as exhibits.

04:19:14 11 MS. DAUN: Mr. Chairman, would it be
04:19:16 12 possible to have our staff assist our court
04:19:18 13 reporter, and simply sit with a stack of
04:19:22 14 Post-it notes, and give her the name of each
04:19:25 15 exhibit, how it should be labeled.

04:19:30 16 MR. POSNANSKI: Well, if either party
04:19:34 17 doesn't has an objection with that, we would
04:19:36 18 have the staff assist with the separate,
04:19:38 19 segregated in marking, so the court reporter
04:19:41 20 can maintain a record as we proceed.

04:19:46 21 MR. VOILAND: We agree.

04:19:46 22 MR. TREBATOSKI: I have no problem
04:19:51 23 with that.

04:19:51 24 MS. WOODALL-VOGG: And additional
04:19:52 25 request with guidance, these are ballots, not

I N RE: 2020 PRESIDENTIAL ELECTION RECOUNT

Locati on: The Wi sconsi n Center
400 West Wi sconsi n Avenue
Mi lwaukee, Wi sconsi n

Date: November 22, 2020

Ti me: 9: 49 a. m. to 6: 14 p. m.

Reported by: Dawn M. Lahti, RPR/CRR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE ELECTION COMMISSION:

Mr. Tim Posnanski, Chairman
Ms. Dawn Martin, Election Commissioner
Mr. Rick Baas, Election Commissioner

Mr. George Christenson, Milwaukee County Clerk
Mr. Stefan Dostanic, Milwaukee County Clerk

Ms. Julietta Henry, Milwaukee County Elections Director

Ms. Michelle Hawley, Milwaukee County Elections Deputy Director

Ms. Margaret Daun, Milwaukee County Corporation Counsel

Ms. Kathryn M. West, Assistant Milwaukee County Corporation Counsel

FOR THE TRUMP CAMPAIGN:

Attorney Stewart Karge
Attorney Joseph Voiland

FOR THE BIDEN CAMPAIGN:

Attorney Christopher Meuler
Attorney Chris Trebatoski
Attorney Stacie Rosenzweig

1 TRANSCRIPT OF PROCEEDINGS

2 CHAIRMAN POSNANSKI: Good morning.

3 We are reconvening at 9:49. Before we get
4 started and before I allow Ms. Henry to turn
5 some instructions over to the inspectors and
6 the observers, I want to make a few
7 announcements.

8 Based upon decisions that have been
9 made by the Board through the course of this
10 recount, I want to make sure that the observers
11 in particular are paying attention so that we
12 can avoid unnecessary objections and
13 unnecessary delay.

14 So I -- as in the past couple days
15 absentee envelopes with different colored ink
16 where the municipal clerk has completed a
17 witness's address should be set aside.
18 Absentee envelopes which identify indefinitely
19 confined voters should be set aside.

20 Any objection on the grounds that
21 there is no separate written application for
22 the absentee envelope should be disregarded
23 based upon the ruling of the Board of
24 Canvassers and the count should continue.

25 Any objection on the grounds that a

1 appropriate time for us to go to that vicinity
2 as well.

3 MR. KARGE: Can we do that now, Mr.
4 Chair?

5 CHAIRMAN POSNANSKI: Yes.

6 MR. KARGE: Okay.

7 (Recess taken from 10:11 a.m. to
8 11:06 a.m.)

9 CHAIRMAN POSNANSKI: I believe Mr.
10 Karge has a matter he'd like to bring to the
11 attention of the Board of Canvassers.

12 MR. KARGE: Thank you, Mr. Chairman.
13 I'd like to make two motions and provide the
14 basis for each.

15 First, I move that the Board
16 review -- or I request that the Board move to
17 review all written applications for absentee
18 ballots and certify that the number of
19 applications corresponds to the number of
20 absentee ballots cast.

21 Second, I ask that you grant the
22 request that I now make to copy the boxes of
23 written applications that have been brought to
24 this recount. No evidence of written
25 applications has yet been produced for

1 in-person absentee applications other than the
2 absentee envelopes.

3 Yesterday there was a long session
4 regarding absentee in-person ballots. A
5 spreadsheet was produced yesterday that the
6 Chair showed 108,947 in-person absentees cast
7 in Milwaukee County.

8 As part of our discussion yesterday
9 as to what the written application was for the
10 in-person absentee ballots, the Chair referred
11 to a discussion from Friday which referenced
12 the absentee ballot envelope and other possible
13 options including actual written applications.

14 We now understand that there are
15 multiple boxes of the absentee ballot
16 applications which have been brought to this
17 recount but which we have not yet been able to
18 see, identify, or inspect.

19 According to the November 2020
20 Election Recount Procedures Manual following
21 the section entitled Review Absentee Ballots,
22 the bottom of page 7 states, Examine Written
23 Absentee Applications.

24 "The Board of Canvassers then reviews
25 the written applications for absentee ballots

1 and the list of absentee voters maintained by
2 the municipal clerk. There should be a written
3 application for each absentee envelope except
4 those issued in person in the clerk's office."

5 I am not aware that the Board
6 has reviewed all written applications for
7 absentee ballots and set forth in the election
8 recount procedure quoted above.

9 But moreover, Wisconsin Statute
10 9.01(1)(b)(11) states "All materials and
11 ballots may be viewed and identified by the
12 candidates, the person demanding the recount,
13 and their authorized representatives."

14 We again state that this right
15 includes the written applications which the
16 Board itself is required to review. The
17 identification of the materials, in this case
18 the written applications, cannot be done
19 practicably without being allowed to match
20 those up to the in-person absentee votes.

21 That could not happen prior to
22 today as we only yesterday received the
23 information as -- on the spreadsheet as to the
24 in-person absentee voters.

25 The items requested are the

1 materials because they are materials referred
2 to throughout the Wisconsin Election Code,
3 Chapters 6 through 11.

4 Given the two prior days'
5 rulings, in order to match up the written
6 applications contained in the box -- in the
7 boxes we have not yet seen to the in-person
8 absentee ballots from the spreadsheet and not
9 to delay or create any undue burden on the
10 Board, we request that we be allowed to make
11 copies of the written applications in those
12 boxes en masse and do so -- and to do so we are
13 prepared to bring in a high-speed copier at our
14 cost and either do the work ourselves under
15 board supervision or that we be allowed to
16 observe staff make the copies and provide
17 whatever assistance would be required or
18 requested to make the process as swift and
19 transparent as possible.

20 This request for transparency is
21 necessary in order to perfect our record as to
22 the number of written applications that can be
23 matched to the in-person absentee ballots.

24 As you know and we previously
25 discussed this morning, we have a standing

1 objection to all in-person absentee ballots.

2 Yesterday I requested a
3 statement from the Board that all in-person
4 absentee applications be created through the
5 checking of the box on the absentee ballot
6 envelope.

7 The Chair rejected that request
8 and referred to the discussion on Friday even
9 though the Biden Campaign submitted a brief
10 stating "The absentee ballot certification
11 envelope serves as the written application for
12 voters who choose to vote early through the
13 absentee process."

14 In order to transparently
15 determine which, if any, of the in-person
16 absentee ballot voters we can now identify from
17 the spreadsheet provided by the Board submitted
18 an application other than by checking a box on
19 the ballot envelope, we must have the
20 information purporting to be the written
21 applications contained in the boxes which have
22 been brought here but which we have not
23 reviewed or inspected.

24 The most efficient and
25 transparent way in which we can verify how many

1 in-person absentee ballots were cast where the
2 application purports to be from the ballot
3 envelope is to review the written applications
4 and boxes present here and match them up to the
5 list of in-person absentee ballots.

6 Finally, for the record, we have
7 made today an open records request to the
8 Milwaukee City Clerk for these records, that
9 that is considered to be a prerequisite for the
10 production. I, therefore, ask that you grant
11 our two requests.

12 CHAIRMAN POSNANSKI: All right.
13 Before I turn it over to the representatives
14 from the Biden Campaign, can I get a
15 clarification on that last point?

16 You have made an open records request
17 to the City of Milwaukee for these materials?

18 MR. KARGE: Yes, Mr. Chairman. There
19 was discussion earlier today. And subsequent
20 to that earlier discussion, an open cities
21 request was made. Mr. Voiland made it. If
22 necessary, he can address the particulars.

23 CHAIRMAN POSNANSKI: I don't need to
24 understand the particulars. I just wanted to
25 confirm the request had been made. I'll accept

1 that representation.

2 MR. KARGE: Thank you, sir.

3 CHAIRMAN POSNANSKI: Mr. Meuler.

4 MR. MUELER: A couple of points.

5 Number one, I guess since we're reiterating
6 things, I also wanted to reiterate that the
7 Trump Campaign is asking to throw out every
8 single absentee vote in Milwaukee County.

9 That aside, we've already ruled and
10 discussed the applications issue. I would also
11 note that in the manual, the manual is also
12 clear that this Board does not reject any
13 absentee envelopes in the absence of an
14 application.

15 It is very specific. It says
16 "Because of the" -- "Do not reject an absentee
17 ballot if there is no separate written
18 application. Because of the variety of reasons
19 that The Board of Canvassers may not be able to
20 locate a specific written application and the
21 likelihood that a voter may be improperly
22 disenfranchised, The Board of Canvassers should
23 not reject an absentee ballot due to the lack
24 of a written application."

25 "The Board of Canvassers records in

1 the minutes the number of written absentee
2 ballot applications on file as well as an
3 explanation of any discrepancy, but any request
4 to reject a ballot on this basis should be
5 determined by a reviewing court rather than The
6 Board of Canvassers."

7 I understand he's making his record,
8 but this Board does not reject any absentee
9 envelopes or ballots on the basis of the lack
10 of an application.

11 I will also just make a comment about
12 my experience in recounts. I've done a few of
13 them and never has this request been made. I'm
14 not saying, you know, they can't make it. I've
15 never seen this request to match up
16 applications with absentee ballot envelopes.

17 It's certainly -- recounts can
18 proceed and be completed in ordinary course,
19 and I think it should do so. This should
20 not -- I would object to this request and,
21 again, I think a lot of this was dealt with
22 yesterday, but I'm making that record as well.

23 MR. KARGE: I'm simply -- I
24 understand your objection. My objection has
25 been overruled. I don't think that precludes

1 me from creating a record.

2 And in fact, counsel just spoke to
3 the fact that even in your own manual, it says
4 a county -- a court is the one to determine
5 whether an in-person ballot and any other
6 application gets counted.

7 I'm not trying to revisit the Board's
8 ruling that you have ruled those -- those
9 ballots -- those ballot applications or those
10 ballots will be struck. I'm simply making a
11 request to copy those boxes of documents.

12 My request to the Board -- my first
13 request to the Board that you review, and you
14 may decide you do not need to do that, but that
15 doesn't affect my request to have access to
16 reasonable and transparent access to those
17 documents, those written applications which are
18 physically present to my knowledge.

19 And just -- we talked about this
20 before but just for the record, the state
21 statute is inconsistent with the
22 recommendations of the Election Commission.

23 CHAIRMAN POSNANSKI: I think --
24 unless there's any request for clarification, I
25 think the Board understands the two requests

1 that have been made.

2 Is that fair, Commissioner Baas and
3 Commissioner Martin?

4 COMMISSIONER BAAS: I do. I still
5 have a clarifying question because --

6 CHAIRMAN POSNANSKI: Let's get
7 clarifying questions out of the way. Then I
8 would open it up for discussion. I think we've
9 heard from both parties. And then I think for
10 our purposes, we can deliberate and come to how
11 the Board wishes to resolve these requests.

12 COMMISSIONER BAAS: This question is
13 to the elections director. I understand we use
14 the envelopes that are typically out there. I
15 understand the ruling of the Commission that
16 that is the application and the certification.
17 I've got all that.

18 Do we do anything to review the
19 applications that are, for example, back there
20 in that corner? Do we marry those up in any
21 way?

22 MS. HENRY: Absolutely -- Mr. Chair,
23 absolutely not, to answer your question,
24 Commissioner Baas.

25 COMMISSIONER BAAS: Interesting.

1 Thank you.

2 CHAIRMAN POSNANSKI: All right. I
3 have one point of clarification before I'd like
4 to make a record based on my review of the
5 governing statutes and my review of the
6 materials that have been cited, and that's a
7 pretty simple one.

8 I think, Mr. Karge, in your
9 recitation, you indicated that the Chair had
10 rejected your request. The Chair has not
11 rejected anything. The Board has acted just
12 for the record.

13 MR. KARGE: I apologize, Mr.
14 Chairman, if I mischaracterized. It's my
15 understanding that that request was denied.

16 CHAIRMAN POSNANSKI: So let's, I
17 guess, deal with the first request.

18 I think we've gone around and around
19 on the written application issue. There's a
20 standing objection to all absentee in-person
21 ballots in the County of Milwaukee, so I don't
22 know that we need to revisit this.

23 But with respect to that -- and I
24 think we can take these in turn. I am not
25 inclined to grant that request for the reasons

1 stated in the election guide, where even if we
2 were to review them all and could not reconcile
3 them, we are not to reject any absentee ballot
4 due to the lack of a written application.

5 So I'm not inclined to grant the
6 request. But, more importantly, I'm not
7 inclined to grant the request -- not just
8 because of the guidance in the election manual;
9 but, more importantly, because of the specific
10 language of the statute upon which the manual
11 relies and that is Wisconsin Statute
12 9.01(1)(b)(2) which reads "The Board of
13 Canvassers shall then examine the absentee
14 ballot envelopes. Any defective absentee
15 ballot envelope shall be laid aside, properly
16 marked, and carefully preserved." The numbers
17 set aside under this --

18 "The number of voters shall be
19 reduced by the number of ballot envelopes set
20 aside under this subdivision. An absentee
21 ballot envelope is defective only if it is not
22 witnessed or if it is not signed by the voter
23 or if the certificate accompanying the absentee
24 ballot that the voter received by facsimile
25 transmission or electronic mail is missing."

1 So the governing statute says nothing
2 about our review of written absentee
3 applications. The guidance that we were
4 provided further instructs that we should not
5 be rejecting any absentee ballot due to lack of
6 a written application.

7 Your record has been made. You've
8 requested these. But for these reasons, it
9 would be my recommendation, and I so move, that
10 the first request be denied.

11 COMMISSIONER MARTIN: Second.

12 COMMISSIONER BAAS: Discussion.
13 okay. I just want to put it on the record that
14 if we're going to treat the envelopes as the
15 application, then the application by any other
16 person's plain understanding would be the
17 application.

18 And the fact that we haven't looked
19 at them doesn't make it good or bad. It's just
20 something we haven't normally done. And if the
21 campaign is willing to pay for it and staff it,
22 I think that's a reasonable --

23 CHAIRMAN POSNANSKI: Commissioner
24 Bass, that's the second request which has not
25 yet --

1 COMMISSIONER BAAS: I apologize.

2 Then I'm done with the first.

3 CHAIRMAN POSNANSKI: And I would
4 point out to the extent Mr. Bass has raised it,
5 that in some instances where the certificate is
6 the envelope itself, we have seen plenty of
7 envelopes that have been brought before us as
8 part of our review of the materials here today,
9 and have in fact reconciled many objections to
10 those.

11 So I don't think it would be accurate
12 to say that we have not reviewed any of them as
13 part of our process.

14 COMMISSIONER BAAS: No.

15 CHAIRMAN POSNANSKI: So in that sense
16 I think we have -- we have complied with the
17 guidance -- hold on. Hold on.

18 (Inaudible crosstalk.)

19 CHAIRMAN POSNANSKI: To that extent,
20 I think we have complied with the guidance
21 issued by the Wisconsin Election Commission.

22 So unless there's any further
23 discussion --

24 COMMISSIONER BAAS: Well, now I'll
25 clarify. I said we hadn't reviewed the written

1 application in the standard format. I'm not
2 saying you haven't reviewed envelopes because
3 we clearly have. Thank you.

4 CHAIRMAN POSNANSKI: If there's no
5 further discussion, I would ask deputy clerk to
6 call the vote.

7 MR. DOSTANIC: Mr. Chairman, on the
8 motion that the request be denied.

9 Commissioner Baas.

10 COMMISSIONER BAAS: No.

11 MR. DOSTANIC: Commissioner Martin.

12 COMMISSIONER MARTIN: Aye.

13 MR. DOSTANIC: Chairman Posnanski.

14 CHAIRMAN POSNANSKI: Aye.

15 MR. DOSTANIC: Two ayes. One no.

16 The motion passes.

17 CHAIRMAN POSNANSKI: The next group
18 request we have is for the ability to review,
19 inspect, and make copies of the materials that
20 are being -- in the boxes of written
21 applications.

22 Based upon the Trump Campaign's own
23 admission, an open records request has been
24 made to the City of Milwaukee for the
25 materials. Those materials do belong to the

1 City of Milwaukee and the open records request
2 issued to the City is the appropriate mechanism
3 to obtain those records.

4 More importantly, I think an issue
5 that has been overlooked, there's a request or
6 recitation that the campaign be allowed to
7 review materials and ballots.

8 And then there is some suggestion
9 that the campaign be allowed to review
10 materials and ballots, and then there is some
11 suggestion that the campaign nonetheless be
12 allowed to facilitate copying, which I think
13 would clearly run afoul of the exact same
14 statutory subsection that was cited by counsel
15 which mandates the materials cannot be handled
16 by any -- either of the campaigns. So for that
17 reason that request should be rejected out of
18 hand.

19 But I would note that I think what
20 has gone overlooked is that these written
21 applications may well contain applications that
22 identify information that falls within
23 Wisconsin Statute 6.47 which deals with the
24 confidentiality of information relating to
25 victims with domestic abuse, sexual assault, or

1 stalking.

2 And so individuals can request that
3 their information remain confidential. Sitting
4 here today, we have absolutely no way of
5 understanding whether any of the individuals
6 identified in those documents fall in that
7 reference, and that underscores the reason why
8 the open records request is the appropriate
9 mechanism to obtain these records and inspect
10 these records.

11 The City of Milwaukee can handle the
12 open records request in due course, can
13 properly redact information that does fall
14 within that statutory subsection and then can
15 then provide materials that have been
16 requested.

17 And, therefore, I think it's an
18 inappropriate request to this Board of
19 Canvassers to ask us that we turn over for
20 inspection or copying the records of the City
21 of Milwaukee. That has been requested through
22 the proper channels.

23 So it's not as though the campaign
24 does not have a remedy to obtain those
25 documents. And as we have put forth on the

1 record before, we have already produced the
2 spreadsheet which identifies all voters in the
3 county of Milwaukee that requested an absentee
4 ballot.

5 And for that reason, it is my
6 recommendation, and I so move, that the
7 requests -- the second request from the Trump
8 Campaign similarly be denied.

9 COMMISSIONER MARTIN: Second.

10 MR. KARGE: May I speak?

11 CHAIRMAN POSNANSKI: No. You made
12 your record, Mr. Karge.

13 COMMISSIONER BAAS: This is -- I
14 understand that we provided a spreadsheet. I
15 do not, frankly, know what their strategy is or
16 why they made the request.

17 So accordingly, I think that the open
18 records request, while fine in and of itself at
19 any other time, is probably not going to be
20 timely for this particular event, and I have
21 reviewed those documents.

22 I believe fellow commissioners looked
23 at them as well. And they are substantially,
24 to my recollection, the same as the envelopes
25 that we're carrying around here all day. They

1 do have a section that says something about
2 photo ID, but there is no photo attached.

3 So, again, if it's the same
4 application, I think that it's reasonable. I
5 couldn't agree with you more that no one
6 outside authorized staff is going to touch
7 anything that we're doing, and I'll fight
8 everybody tooth and nail on that.

9 I appreciate the offer, and I
10 appreciate that you're trying to bring a remedy
11 to the situation, but I would completely agree
12 with my fellow commissioner that no one can
13 touch our stuff outside of election officials.

14 CHAIRMAN POSNANSKI: Further
15 discussion, Commissioner Baas?

16 COMMISSIONER BAAS: No.

17 MR. DOSTANIC: Mr. Chairman, on the
18 motion for the request to be denied.

19 Commissioner Baas.

20 COMMISSIONER BAAS: No.

21 MR. DOSTANIC: Commissioner Martin.

22 COMMISSIONER MARTIN: Aye.

23 MR. DOSTANIC: Commissioner
24 Posnanski.

25 CHAIRMAN POSNANSKI: Aye.

1 MR. DOSTANIC: Two ayes. One no.

2 The motion carries.

3 MR. KARGE: Mr. Chairman, in light of
4 the fact that the records are physically
5 present, if the City of Milwaukee permits us to
6 make those copies, may we make those copies?

7 CHAIRMAN POSNANSKI: If the City of
8 Milwaukee is willing to allow you to make those
9 copies based upon your open records request,
10 that is an issue, frankly, between you and the
11 City of Milwaukee.

12 MR. KARGE: I just want to make sure
13 that if we start that process of copying, if
14 we're allowed to do so, you won't object on the
15 basis that it's your materials and no one can
16 touch your materials because it seems to be
17 inconsistent to say they're your materials and
18 no one can touch them, but we have to go to the
19 City in order to get permission to do so. I
20 would consider this part of the written
21 materials -- part of the --

22 CHAIRMAN POSNANSKI: Why don't we do
23 this first. It sounds like we're arguing over
24 something that may or may not happen.

25 MS. HENRY: So all of the

1 applications, they are the custodian for them,
2 each municipality.

3 CHAIRMAN POSNANSKI: I understood,
4 Ms. Henry, and that's part of the issue I
5 addressed. And I think solely for the reason
6 of section 6.47, it's unlikely the City is
7 going to be in a position where they simply
8 allow the photocopying of these materials and
9 the requesting without review of the materials.

10 So if my understanding is wrong and
11 the City is willing to allow you to immediately
12 begin photocopying these materials, we can
13 address this issue at that time. I don't think
14 there's anything to discuss at present. The
15 request has been made, and it's been noted for
16 the record.

17 MR. KARGE: Let me ask a clarifying
18 question. We've also made an open records
19 request for the absentee ballot in-person
20 envelopes of the City, and I don't believe
21 there's any sensitive or proprietary
22 information on those. And as you've indicated,
23 they've been floating around here for the last
24 three days.

25 Understand, again, you are saying

1 those are your materials, but I don't think we
2 have the same issue, so --

3 COMMISSIONER BAAS: Let me clarify.
4 when I say they're our materials -- I'm not an
5 attorney. Let me clarify.

6 what I meant was those materials are
7 here for the purpose of the recount. And in
8 order to maintain the integrity of the recount,
9 I and I believe my fellow Commissioners, are
10 not comfortable with people who are not
11 normally custodial personnel of those records
12 touching them. Just for clarification.

13 And for further clarification, I get
14 casual because I'm not an attorney. They're
15 not floating around. They're being handled
16 appropriately.

17 CHAIRMAN POSNANSKI: Thank you for
18 that clarification, Mr. Bass.

19 COMMISSIONER MARTIN: I'd just like
20 to add that we agreed they're not floating
21 around, but this is in a secure setting. It's
22 not like these envelopes are going out the
23 doors anywhere.

24 We are maintaining them in a secured
25 setting, and we want to continue to maintain it

1 in a secured setting. And we cannot -- we
2 cannot suggest what may or may not be on those
3 envelopes that, again, could be sensitive in
4 some manner.

5 CHAIRMAN POSNANSKI: And for the same
6 reason, it's an open records request directed
7 to the City. That should be resolved with the
8 City.

9 I don't -- to the extent we need to
10 make a motion for the reasons already stated, I
11 would move that that request similarly be
12 denied for the reasons stated, and I so move.

13 COMMISSIONER MARTIN: Second.

14 MR. DOSTANIC: Mr. Chairman, on the
15 motion?

16 COMMISSIONER BAAS: Discussion. I
17 thought it was an interesting way to cloud up
18 an issue. I'm done with discussion.

19 MR. DOSTANIC: Call the roll?
20 On the motion to deny the request.

21 Commissioner Baas.

22 COMMISSIONER BAAS: Nay.

23 MR. DOSTANIC: Commissioner Martin.

24 COMMISSIONER MARTIN: Aye.

25 MR. DOSTANIC: Chairman Posnanski.

1 CHAIRMAN POSNANSKI: Aye.

2 MR. DOSTANIC: Two ayes. One no.

3 Motion carries.

4 CHAIRMAN POSNANSKI: Are you prepared
5 to come before us?

6 MS. ROESKE: Good morning. Catherine
7 Roeske, City Clerk, City of Oak Creek.

8 In processing wards 7, 8, 9, District
9 3, we have a ballot that will not be read in
10 the machine. The machine won't read it, so we
11 need to be able to confirm voter intent.

12 (Document reviewed.)

13 CHAIRMAN POSNANSKI: Based upon my
14 review, unless there's any further discussion,
15 I believe this ballot should be reconstructed
16 to reflect a vote for Brian Carroll and Amar
17 Patel.

18 MS. ROESKE: Thank you.

19 MS. WOODALL-VOGG: Good morning.
20 Claire Woodall-Vogg, City of Milwaukee Election
21 Commission.

22 I have for ward 41 a military voter
23 whose ballot was rejected on election day. We
24 believe it is because our military voters have
25 a different color envelope as prescribed by

1 statute and federal law and that our election
2 workers weren't familiar with it. It meets all
3 of the requirements, and this voter did not
4 receive a voter number, so we'd like permission
5 to count it.

6 MR. KARGE: We have no objection.

7 MR. TREBATOSKI: We have no
8 objection.

9 CHAIRMAN POSNANSKI: Ms. Woodall,
10 this voter should be given a voter number, and
11 this should be processed.

12 MS. WOODALL-VOGG: Our next one is
13 being challenged from the Trump Campaign from
14 ward 45 due to what looks like I'm imagining a
15 toddler getting ahold of the voter's ballot.
16 That's based on my presumptions with a
17 three-year-old.

18 (Document reviewed.)

19 CHAIRMAN POSNANSKI: Mr. Karge, does
20 the Trump Campaign wish to maintain this
21 objection?

22 MR. KARGE: I would like to see the
23 three-year-old.

24 No, sir.

25 MS. WOODALL-VOGG: We have one ballot

1 from ward 3, one ballot from ward 18, and two
2 ballots from ward 47 which have been counted,
3 but with objections due to the lack of witness
4 signature from in-person absentee voting.

5 I believe the Commission has already
6 made a decision on this, but it's still being
7 objected to in order to commit to the record.

8 CHAIRMAN POSNANSKI: On the ballot
9 itself, the Board has already ruled on this
10 issue. Those should be counted. The objection
11 is noted.

12 MR. KARGE: And those should be
13 segregated?

14 CHAIRMAN POSNANSKI: They should be
15 segregated. You segregate those as part of the
16 process, right, Ms. Woodall, without a
17 signature?

18 So there is a standing objection for
19 the record to any such ballots. You don't need
20 to bring them all before us.

21 MS. WOODALL-VOGG: Okay. For ward 6
22 we have a similar issue but where the witness
23 signed in the wrong spot. I'm assuming we'll
24 just continue to segregate those for the
25 record.

1 MR. KARGE: Subject to our standing
2 objection.

3 CHAIRMAN POSNANSKI: Subject to the
4 standing objection, those should be accepted.

5 MS. WOODALL-VOGG: For Ward 3, I will
6 let the campaign explain the objections. I'm
7 not sure I understand it.

8 MR. KARGE: Yes. We'll maintain the
9 objection. It appears that the signature can't
10 be determined whether it's a signature or an
11 attempt to cross out the name. So we do
12 maintain our objection.

13 MR. TREBATOSKI: Our position is it's
14 quite clear that there's a signature and that's
15 all that's required, and this is not a
16 signature review state, and people's penmanship
17 are not subject for the basis for a rejection
18 of an absentee ballot.

19 COMMISSIONER BAAS: Just on its face,
20 I wouldn't have a problem comparing signatures,
21 period. Having said that, I've seen signatures
22 of some of our former governors and they look
23 like Star Trek symbols so...

24 CHAIRMAN POSNANSKI: Is there a
25 motion, Commissioner Bass?

1 COMMISSIONER BAAS: To accept.

2 COMMISSIONER MARTIN: Second.

3 CHAIRMAN POSNANSKI: Call the vote?

4 MR. DOSTANIC: On the motion to

5 accept the vote.

6 Commissioner Baas.

7 COMMISSIONER BAAS: Aye.

8 MR. DOSTANIC: Commissioner Martin.

9 COMMISSIONER MARTIN: Aye.

10 MR. DOSTANIC: Chairman Posnanski.

11 CHAIRMAN POSNANSKI: Aye.

12 MR. DOSTANIC: Three ayes. No noes.

13 The motion carries.

14 (Recess taken from 11:39 a.m. to
15 12:47 p.m.)

16 CHAIRMAN POSNANSKI: We are back on
17 the record.

18 Mr. Christenson.

19 MR. CHRISTENSON: Mr. Chairman,
20 Commissioners, we are here to just report the
21 results of the finish report and the rerun
22 report for Oak Creek for the -- for the
23 reporting units discussed previously.

24 There is a point of clarification.
25 Earlier we -- I believe it was Reporting Units

1 10 through 12. The clerk had misspoke. She
2 meant to say 7 through 9, and we did clear that
3 with both counsel. So we are talking about 7
4 through 9. And then we are talking about 16
5 through 18. okay?

6 CHAIRMAN POSNANSKI: 16 through 19?

7 MR. CHRISTENSON: 16 through 19. So
8 the first report that we have is the canvass
9 statement which is -- which I've shown both
10 representatives both of these reports, and
11 we'll make copies immediately thereafter but
12 they've both seen these.

13 So the wards 7 through 9 represent
14 central count absentee numbers which was what
15 was being run at the time we had to stop last
16 night.

17 The total ballots were 2,444 on
18 the -- on the canvass statement. The finish
19 report, as I'm calling it, when they finished
20 up what they were doing, that number was
21 reported as 2,460, which is clearly more,
22 clearly not correct.

23 So they would have rerun that anyway,
24 and that would be attributed to some type of
25 human error when they were putting ballots

1 away. So they reran the report which is what
2 they were going to do anyway. That number came
3 to 2,441, so that results in a difference of
4 just three from the canvass.

5 And then with respect to wards 16
6 through 19, that represents the central count
7 absentee and election day at the poll numbers
8 because that was what was being run last night
9 when they stopped.

10 And so we reran all of those. So
11 those numbers -- the numbers of that will be
12 866 for at the polls and 2,072 for absentee in
13 the canvass. That totals up to 2,938. 2,938.

14 The finish report -- so they finished
15 up what they were doing this morning, ran that
16 report. That number was 2,936. Then we reran
17 all of those ballots again, and that number was
18 2,936.

19 Mr. Chairman.

20 CHAIRMAN POSNANSKI: Thank you,
21 Mr. Christenson. I believe the clerk and
22 deputy clerk are here if there are any
23 questions.

24 I do have one question, and I just
25 have to direct to the clerk if she could come

1 forward and that is with respect to the
2 discrepancy where there was three different
3 from canvass on -- of the election.

4 Can you explain just in the customary
5 course of the recount how that will be handled
6 by your office?

7 MS. ROESKE: Certainly. Cathy
8 Roeske, City Clerk, City of Oak Creek.

9 So typically those ballots, the
10 district and the wards in which we're
11 referencing are central count, which are all
12 the in-person and by mail early absentee
13 ballots. Those are all folded. There's a lot
14 that happens to those ballots during the course
15 of election, so we have to plan those all out
16 and run them through the machines.

17 It takes up a lot of time to do that,
18 and it can be troubling in that there is a
19 total of 16,000 ballots that need to go through
20 the process. So it's not unheard of, even for
21 here, watching the ES&S when they're running
22 those ballots through that machine -- they're
23 folded -- it just -- commonly you can be off by
24 a couple ballots.

25 So what we usually do is we'll go

1 back when we do a reconciliation after an
2 election, if we are off on our canvas by a
3 couple of ballots, we'll go back through all of
4 our tape totals. We'll look back at the canvas
5 done by Milwaukee County.

6 We also conduct a canvass in our
7 municipality, and then we'll also check all of
8 the chief inspectors' statements for -- at
9 polls and for central count, and hopefully
10 there is a reason in there for being off by a
11 couple of ballots.

12 It could be that a voter had a number
13 that didn't vote at the polls for central
14 count, you know. It could just be that the
15 machine -- for some reason, that ballot was
16 ripped, torn, remade. So it's not uncommon.

17 And the Election Commission, if you
18 are five ballots or under in reconciliation,
19 typically that's a very acceptable, very minor,
20 small percentage when you're talking about
21 thousands of ballots.

22 CHAIRMAN POSNANSKI: Thank you.

23 MS. ROESKE: You're welcome.

24 COMMISSIONER BAAS: Forgive me if I
25 missed this. Have you come before us to

1 address any of these differences where there --
2 was there a drawdown? was there a ballot that
3 didn't to be recreated or whatever that will
4 explain these differences?

5 MS. ROESKE: No, we have not because
6 those original numbers that we're comparing
7 these to are election night totals. So those
8 are that very original tape we transfer onto a
9 call-in sheet the night of election. Those are
10 unofficial results until the Milwaukee Election
11 Commission conducts their canvass.

12 So when we're hand counting here
13 during a recount, it's not uncommon for a poll
14 worker or election inspector to be off by a few
15 ballots at the end of the 2,300 or 3,000
16 ballots.

17 So those ballots when they get run
18 through the machine, if that discrepancy
19 applies between running them through here
20 during a recount and looking at that original
21 canvass number, there's nothing that we're
22 pulling out to address. It's just simply that
23 the number does not match by three ballots.

24 COMMISSIONER BAAS: Understood. I
25 just was curious --

1 MS. ROESKE: Yeah. So, no, there was
2 nothing --

3 COMMISSIONER BAAS: -- if this body
4 affected that total.

5 MS. ROESKE: No, we haven't brought
6 anything to you.

7 COMMISSIONER BAAS: Thank you.

8 MS. ROESKE: You're welcome.

9 CHAIRMAN POSNANSKI: Thank you.

10 Mr. Karge.

11 MR. KARGE: Can I ask a question --

12 CHAIRMAN POSNANSKI: Sure.

13 MR. KARGE: -- just on the numbers?
14 I acknowledge I was shown the numbers but not
15 yet given a copy, so which way did the
16 three-ballot difference go?

17 CHAIRMAN POSNANSKI: In terms of --

18 MR. KARGE: Of plus Biden-Harris?
19 Plus Trump?

20 MS. DAUN: Mr. Chair, as a point of
21 fact, you can't really tell, right, because
22 most --

23 MR. KARGE: Yes, you can. It's on
24 the sheets. It showed the sheets. The votes
25 are listed by Trump or Biden.

1 MS. DAUN: Go ahead then. You can
2 observe the totals, but it depends which three
3 you pull out, of course.

4 MR. CHRISTENSON: So let me be clear.
5 You're looking for me to --

6 CHAIRMAN POSNANSKI: I guess which --
7 so it's my understanding the reporting at 16
8 through 19, the count was the same. So you're
9 asking for the difference in the Reporting
10 units 9 through -- or 7 through 10?

11 MR. KARGE: Yeah. My understanding,
12 without having the paper, is there's a
13 three-ballot difference between the various
14 counts. I'm simply --

15 CHAIRMAN POSNANSKI: You mean the
16 final count, correct?

17 MR. KARGE: Yes. I'm simply asking
18 which way did that go.

19 COMMISSIONER BAAS: You're simply
20 asking which tally changed?

21 MR. KARGE: Yes.

22 MR. CHRISTENSON: So the tally -- the
23 canvass tally totals for wards 7, 8, 9 from the
24 canvass versus the rerun report is Biden,
25 1,365; 1,365. Trump, 1,035; 1,032.

IN RE: 2020 PRESIDENTIAL RECOUNT

Location: The Wisconsin Center
400 West Wisconsin Avenue
Milwaukee, Wisconsin

Date: November 23, 2020

Time: 9:02 a.m. to 6:32 p.m.

Proceedings Reported By:
Tiffany L. De Bruin, RPR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE ELECTION COMMISSION:

Mr. Tim Posnanski, Chairman
Ms. Dawn Martin, Election Commissioner
Mr. Rick Baas, Election Commissioner

Mr. George Christenson, Milwaukee County Clerk
Mr. Stefan Dostanic, Milwaukee County Clerk

Ms. Julietta Henry, Milwaukee County Elections
Director
Ms. Michelle Hawley, Milwaukee County Elections
Deputy Director
Mr. Kyle Weber, Milwaukee County Elections Deputy
Director

Mr. David Farwell, Assistant Milwaukee County
Corporation Counsel
Ms. Kathryn M. West, Assistant Milwaukee County
Corporation Counsel

FOR THE TRUMP CAMPAIGN:
Attorney Stewart Karge
Attorney Joseph Voiland

FOR THE BIDEN CAMPAIGN:
Attorney Christopher Meuler
Attorney Chris Trebatoski
Attorney Stacie Rosenzweig
Attorney Michelle Umberger

* * * * *

03:31:26 1 COMMISSIONER MARTIN: So I would vote
03:31:28 2 that this ballot not be counted.
03:31:33 3 COMMISSIONER BAAS: Second.
03:31:33 4 MR. DOSTANIC: On the motion,
03:31:37 5 Commissioner Baas.
03:31:37 6 COMMISSIONER BAAS: No.
03:31:38 7 MR. DOSTANIC: Commissioner Martin.
03:31:38 8 COMMISSIONER MARTIN: Aye.
03:31:38 9 MR. DOSTANIC: Chairman Posnanski.
03:31:38 10 CHAIRMAN POSNANSKI: Aye.
03:31:41 11 MR. DOSTANIC: Two ayes. One no.
03:31:43 12 The motion carries.
03:31:47 13 MS. HUMITZ: Thank you.
03:51:05 14 (Recess taken from 3:31 p.m. to 3:51 p.m.)
03:51:05 15 CHAIRMAN POSNANSKI: All right.
03:51:05 16 We're going to go back on the record to deal
03:51:11 17 with -- with the set-asides and other issues
03:51:14 18 for Wauwatosa.
03:51:16 19 MS. KOLLMANSBERGER: Thank you.
03:51:19 20 Melanie Kollmansberger, City of Wauwatosa, City
03:51:19 21 Clerk.
03:51:21 22 So for Ward 1, we had eight ballots
03:51:24 23 that had ink issues. We had 76 that were
03:51:29 24 indefinitely confined. For Ward 2, we had 17
03:51:36 25 ballots with ink issues.

03:51:40 1 CHAIRMAN POSNANSKI: And if -- if I
03:51:41 2 can interrupt. When you say "ink issues,"
03:51:44 3 those are the envelopes that include different
03:51:46 4 colored ink where it indicates the poll worker
03:51:46 5 or municipal clerk filled in the address on the
03:51:52 6 absentee envelope, correct?

03:51:53 7 MS. KOLLMANSBERGER: Correct. And
03:51:56 8 then for Ward 2, indefinite, we had 43. For
03:52:04 9 Ward 3, we had ten with ink, 91 indefinite.
03:52:14 10 Ward 4, we had 12 with ink, 145 indefinite.
03:52:25 11 Ward 5, we had 13 with ink, 200 indefinite.
03:52:32 12 Ward 6, we had nine with ink, 75 indefinite.
03:52:40 13 Ward 7, we had six with ink, 107 indefinite.
03:52:48 14 Ward 8, we had six with ink, 310 indefinite.
03:52:57 15 Ward 9, we had nine with ink, 107 indefinite.
03:53:05 16 Ward 10, we had one with ink, 54 indefinite,
03:53:12 17 and we had one ballot that was both an
03:53:15 18 indefinite and had an ink issue.

03:53:20 19 Ward 11, we had 35 with ink, 137
03:53:25 20 indefinite. Ward 12, we had 12 with ink, 96
03:53:33 21 indefinite. Ward 13, two with ink, 100
03:53:40 22 indefinite. Ward 14, we had ten with ink, 76
03:53:47 23 indefinite. Ward 15, we had seven with ink, 82
03:53:55 24 indefinite. Ward 16, we had six with ink, 94
03:54:02 25 indefinite. Ward 17, we had six with ink, 107

03:54:10 1 indefinite. Ward 18, we had three with ink,
03:54:20 2 eight indefinite. Ward 19, there were no ink
03:54:25 3 issues reported. There were 108 indefinite.
03:54:31 4 Ward 20, there were 13 ink, 159 indefinite.
03:54:40 5 21, there were six with ink, 84
03:54:45 6 indefinite. Ward 22, there were five with ink,
03:54:51 7 97 indefinite. Ward 23, there were two with
03:54:57 8 ink, 83 indefinite. And Ward 24, there were
03:55:04 9 five with ink, 150 indefinite.

03:55:04 10 MR. KARGE: Mr. Chairman, if I could,
03:55:04 11 just for the record, restate that the previous
03:55:04 12 objections we had asserted on behalf of these
03:55:04 13 categories are restated in full here as they
03:55:22 14 had been previously for the record.

03:55:24 15 CHAIRMAN POSNANSKI: The record is
03:55:25 16 noted, Mr. Karge. Thank you.

03:55:28 17 The -- the objections have been
03:55:28 18 noted. The objections for the same reasons
03:55:30 19 have been overruled by the Board. These will
03:55:33 20 all be received, although, we -- accepted and
03:55:36 21 received.

03:55:37 22 We have agreed to separately mark
03:55:40 23 these envelopes sequentially, so the next one I
03:55:43 24 believe will be marked City of Wauwatosa
03:55:46 25 Exhibit 85, and we will mark them sequentially

2020 PRESIDENTIAL RECOUNT

Location: The Wisconsin Center
400 West Wisconsin Avenue
Milwaukee, Wisconsin

Date: November 24th, 2020

Time: 9:19 a.m. to 6:28 p.m.

Proceedings Reported by:

Sarah M. Gilkay, RMR, CRR

A P P E A R A N C E S

FOR THE ELECTION COMMISSION:

Mr. Tim Posnanski, Chairman
Ms. Dawn Martin, Election Commissioner
Mr. Rick Baas, Election Commissioner
Ms. Claire Woodall-Vogg - Election Commission
Director

Mr. George Christenson, Milwaukee County Clerk
Mr. Stefan Dostanic, Milwaukee County Deputy Clerk
Ms. Julietta Henry, Milwaukee County Elections
Director
Ms. Michelle Hawley, Milwaukee County Elections
Deputy Director

Mr. David Farwell, Milwaukee County Corporation
Counsel
Ms. Melinda Lawrence, Assistant Milwaukee County
Corporation Counsel

FOR THE TRUMP CAMPAIGN:

Attorney Stewart Karge
Attorney Joseph Voiland

FOR THE BIDEN CAMPAIGN:

Attorney Christopher Meuler
Attorney Chris Trebatoski
Attorney Stacie Rosenzweig

CLERKS:

Village for Fox Point - Ms. Kelly Meyer
City of South Milwaukee - Ms. Karen Kastenson
City of St. Francis - Rebecca Gagnon
City of West Allis - Ms. Gina Gresch
City of Greenfield - Ms. Jennifer Goergen

1 prior stated objections, notwithstanding the
2 clerical issue that was raised here.

3 CHAIRMAN POSNANSKI: Do you wish to
4 maintain a separate objection on the clerical
5 issue that has been explained by Ms. Woodall?

6 MR. KARGE: I don't believe that's
7 necessary since we already have an objection to
8 this ballot, envelope and ballot.

9 CHAIRMAN POSNANSKI: Good. Thank you.
10 I just needed to know if we needed to discuss
11 that.

12 So for the reasons -- the objection is
13 noted. For the reasons previously stated and
14 determined by the Board, this envelope and
15 ballot associated therewith should be counted.

16 MS. WOODALL-VOGG: Lastly, I would
17 like to file an Affidavit with the County Board
18 of Election Commissioners.

19 Because we have been segregating our
20 indefinitely confined certificate envelopes and
21 those where we made corrections to the witness
22 address, we feel it's very important that the
23 Commission have on record the City of Milwaukee
24 policies and procedures related to indefinitely
25 confined voters and for filling in missing

1 information from witness addresses that are
2 missing.

3 CHAIRMAN POSNANSKI: Does either party
4 have any objection to submitting this Affidavit
5 for the record?

6 MR. KARGE: No, sir.

7 MR. MEULER: No.

8 CHAIRMAN POSNANSKI: The Affidavit
9 will be accepted and will be marked. Per
10 previous discussion regarding housekeeping,
11 I'll -- I will announce what exhibit number that
12 Affidavit will be.

13 MS. WOODALL-VOGG: Thank you. That's
14 it.

15 CHAIRMAN POSNANSKI: Thank you.

16 (Recess from 9:36 a.m. to 9:58 a.m.)

17 CHAIRMAN POSNANSKI: Ms. Woodall.

18 MS. WOODALL-VOGG: Good morning.

19 It has been brought to my attention
20 that in Ward 315, as we began to work on it,
21 underneath our opened certificate envelopes,
22 there are 386 unopened envelopes where voters
23 were not processed on election day. 409 voters
24 were processed on election day.

25 The typical process is that a team

1 either campaign that wants to watch the zeroing
2 out of the machines now that the central count
3 has been processed for the City of Milwaukee.

4 MR. KARGE: Mr. Chairman, we'll find
5 the appropriate person to do that.

6 CHAIRMAN POSNANSKI: Thank you.

7 MR. KARGE: It won't be me.

8 CHAIRMAN POSNANSKI: You've had enough
9 of witnessing that process?

10 MR. KARGE: Yes.

11 CHAIRMAN POSNANSKI: Okay. I believe
12 next up is West Allis. City of West Allis.

13 CLERK GRESCH: Good afternoon. My
14 name is Gina Gresch, G-I-N-A, G-R-E-S-C-H. I'm
15 with the City of West Allis.

16 So I bring to you the indefinitely
17 confined voter envelopes and any envelopes that
18 had a different ink. I believe you-all have the
19 exhibits that I completed.

20 CHAIRMAN POSNANSKI: We do, and the
21 exhibit identifies all 25 of your wards and the
22 number of envelopes falling in with each
23 category; is that right?

24 CLERK GRESCH: Correct.

25 CHAIRMAN POSNANSKI: All right. We

1 will accept the form you completed as an
2 exhibit, and we will accept the envelopes that
3 you have brought -- you brought those with you;
4 correct?

5 CLERK GRESCH: They're on the cart.
6 Yep.

7 CHAIRMAN POSNANSKI: We will accept
8 and mark separately each of those envelopes,
9 noting the Trump's campaign's objection to the
10 acceptance of all of these envelopes.

11 MR. KARGE: Thank you.

12 CLERK GRESCH: Thank you.

13 (Recess from 1:48 p.m. to 1:59 p.m.)

14 CHAIRMAN POSNANSKI: All right.

15 St. Francis is here to do the drawdown at random
16 based upon the rejection of the absentee
17 envelope from the third reporting unit.

18 Commissioner Baas, if you would like
19 to do the honor.

20 (Recess from 1:59 p.m. to 2:59 p.m.)

21 CHAIRMAN POSNANSKI: Back on the
22 record. Mr. Karge, I believe you wanted to note
23 an objection.

24 MR. KARGE: Thank you, Mr. Chairman.
25 I understand the Board has previously ruled they

1 will not entertain or sustain, I should say,
2 objections to ballots without the requisite
3 number of initials. I wanted to reiterate that
4 we continue to assert that objection and that at
5 Table 124, Ward 66, I have been informed that
6 there is a significant number of ballots which
7 have no initials.

8 So not only do I object to that in
9 particular, but also just to make sure the
10 record is clear that the Trump campaign is
11 asserting a standing objection to all ballots
12 which do not have the requisite number or sets
13 of initials.

14 CHAIRMAN POSNANSKI: The objection is
15 noted for the record. And to the extent
16 necessary, I would say that with respect to this
17 particular issue, the Board has ruled. As for
18 the previous determinations of the Board, this
19 specific objection is overruled, but the
20 standing objection from the Trump campaign is
21 noted for the record.

22 MR. KARGE: And granted for continuing
23 purposes?

24 CHAIRMAN POSNANSKI: Certainly. We
25 will allow the Trump campaign to assert a

IN RE: 2020 PRESIDENTIAL ELECTION RECOUNT

Location: The Wisconsin Center
 400 West Wisconsin Avenue
 Milwaukee, Wisconsin

Date: November 27, 2020

Time: 9:06 a.m. to 5:31 p.m.

Reported by: Samantha J. Shallue, RPR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE ELECTION COMMISSION:

Mr. Tim Posnanski, Chairman
Ms. Dawn Martin, Election Commissioner
Mr. Rick Baas, Election Commissioner
Ms. Claire Woodall-Vogg, Election Commission
Director

Mr. George Christenson, Milwaukee County Clerk
Mr. Stefan Dostanic, Milwaukee County Deputy Clerk
Ms. Julietta Henry, Milwaukee County Elections
Director
Ms. Michelle Hawley, Milwaukee County Elections
Deputy Director

Ms. Margaret Daun, Milwaukee County Corporation
Counsel

FOR THE TRUMP CAMPAIGN:

Attorney Stewart Karge
Attorney Joseph Voiland

FOR THE BIDEN CAMPAIGN:

Attorney Christopher Meuler
Attorney Chris Trebatoski
Attorney Michelle Umberger

* * * * *

12:31:50 1 information for. Have -- are those the ones
12:31:52 2 that haven't been run through, or is that a
12:31:55 3 different subset?

12:31:56 4 CHAIRMAN POSNANSKI: No, those are
12:31:57 5 completely different issues. So, for instance,
12:32:00 6 the request regarding the envelopes that had
12:32:01 7 not yet been set aside for Brown Deer, Brown
12:32:05 8 Deer did not come up and present those numbers
12:32:06 9 to us. We have reviewed the Brown Deer
12:32:10 10 absentee envelope boxes, and they had been set
12:32:12 11 aside as we had instructed. So we have the
12:32:15 12 total number. Those were properly separated by
12:32:18 13 the municipality. The missing piece was the
12:32:19 14 clerk just didn't come up here and identify the
12:32:22 15 number that fell into each category for us.

12:32:25 16 MR. KARGE: Thank you for that
12:32:26 17 clarification.

12:32:30 18 CHAIRMAN POSNANSKI: All right. From
12:32:32 19 our perspective, obviously the work continues.
12:32:34 20 I hope that we are close to verifying the
12:32:37 21 results and will soon be in position where we
12:32:42 22 can certify the recount canvas.

12:32:45 23 MR. KARGE: If I might, Mr. Chairman,
12:32:48 24 I -- I've been advised that I may not have been
12:32:49 25 as clear as I should have been this morning, so

12:32:52 1 I want to not revisit, but just sort of restate
 12:32:55 2 what my -- what I thought I had said earlier on
 12:32:59 3 with regard to the indefinitely confined subset
 12:33:05 4 list that I talked about, the 19,488.

12:33:10 5 What I wanted to make sure was that
 12:33:12 6 we had on the record a separate objection for
 12:33:15 7 that subset list, and it's been reported to me
 12:33:21 8 I may not have gotten that on the record. So I
 12:33:25 9 would ask that that information -- there
 12:33:27 10 clearly be a record of my objection to that
 12:33:29 11 subset of the larger list that we have
 12:33:33 12 previously objected to.

12:33:35 13 CHAIRMAN POSNANSKI: Okay.

12:33:37 14 MR. KARGE: So --

12:33:38 15 CHAIRMAN POSNANSKI: So noted. I
 12:33:39 16 have no issue with you making that record.

12:33:42 17 COMMISSIONER BAAS: Are you looking
 12:33:43 18 for a vote, sir?

12:33:45 19 MR. KARGE: Yes.

12:33:46 20 COMMISSIONER BAAS: Okay.

12:33:46 21 CHAIRMAN POSNANSKI: I see. So to
 12:33:48 22 the extent that it is required, there is now a
 12:33:51 23 separate specific objection to the indefinitely
 12:33:54 24 confined absentee voters that were added to the
 12:33:58 25 indefinitely confined list maintained by the

12:34:00 1 Wisconsin Election Commission since March 25th
12:34:03 2 of 2020; am I understanding that correctly?

12:34:06 3 MR. KARGE: Yes, and that number is
12:34:07 4 19,488 based upon the sort that we did that was
12:34:11 5 part of the information put into the record
12:34:12 6 yesterday.

12:34:13 7 CHAIRMAN POSNANSKI: Okay. And there
12:34:14 8 had previously been an objection which this
12:34:17 9 Board has ruled upon to all indefinitely
12:34:20 10 confined voters in Milwaukee County. That
12:34:22 11 objection was overruled. For the same reasons
12:34:26 12 articulated by the Board when addressing that
12:34:28 13 objection, I would move that we similarly
12:34:32 14 overrule this specific objection to the subset
12:34:34 15 so identified by Mr. Karge.

12:34:37 16 COMMISSIONER MARTIN: Second.

12:34:39 17 CLERK CHRISTENSON: On the motion,
12:34:42 18 Commissioner Baas?

12:34:43 19 COMMISSIONER BAAS: No.

12:34:45 20 CLERK CHRISTENSON: Commissioner
12:34:46 21 Martin?

12:34:46 22 COMMISSIONER MARTIN: Aye.

12:34:48 23 CLERK CHRISTENSON: Chairman
12:34:48 24 Posnanski?

12:34:51 25 CHAIRMAN POSNANSKI: Aye.

12:34:51 1 CLERK CHRISTENSON: Two ayes. One
 12:34:54 2 no.

12:34:54 3 MR. KARGE: Thank you, Mr. Chairman.
 12:35:00 4 (Brief recess taken.)

05:22:58 5 CHAIRMAN POSNANSKI: Okay. First, we
 05:22:59 6 have a few housekeeping matters to attend to.
 05:23:03 7 Through the course of the day, county staff has
 05:23:06 8 compiled the -- what I'll call the "master
 05:23:09 9 exhibit list" which has been distributed to
 05:23:11 10 both parties. That has been marked as Exhibit
 05:23:14 11 820.

05:23:15 12 As you'll see in that exhibit list,
 05:23:17 13 we have included placeholders for Oak Creek.
 05:23:21 14 If you recall, Oak Creek did not separately set
 05:23:22 15 aside their absentee envelopes. That will be
 05:23:25 16 done over the course of the next week.

05:23:28 17 Mr. Karge, we have promised to
 05:23:34 18 produce the images that were requested of all
 05:23:37 19 ballots over the course of the next week. That
 05:23:40 20 process will similarly play out so that we can
 05:23:42 21 get those images to you as soon as we can.

05:23:45 22 With respect to the canvas reports,
 05:23:49 23 the detailed results, and the tally sheets that
 05:23:52 24 we have been providing over the course of the
 05:23:54 25 proceedings, those, too, will be made

05:28:05 1 recount proceedings reflect, no instances of
05:28:07 2 fraud were discovered during this recount.

05:28:09 3 Thank you for this time on the floor.
05:28:11 4 And we appreciate, again, all of your efforts.
05:28:14 5 Thank you.

05:28:15 6 CHAIRMAN POSNANSKI: Thank you. At
05:28:17 7 this time I will turn it over to Ms. Julietta
05:28:20 8 Henry, the Milwaukee County Elections Director,
05:28:24 9 to announce what we have found through the
05:28:26 10 course of these proceedings.

05:28:27 11 MS. HENRY: Thank you, Mr. Chair.
05:28:32 12 The summary statement of the Board of
05:28:35 13 Canvassers for the total number of votes cast
05:28:37 14 for the president of the United States was
05:28:43 15 459,723, of which Joseph R. Biden/Kamala D.
05:28:49 16 Harris received 317,527; Donald J.
05:28:54 17 Trump/Michael R. Pence received 134,482; Don
05:29:01 18 Blankenship and William Mohr received 624; Jo
05:29:05 19 Jorgensen and Jeremy Spike Cohen received
05:29:09 20 4,342; Brian Carroll and Amar Patel received
05:29:14 21 752; Kasey Wells (write-in) received 3; Jade
05:29:20 22 Simmons and Claudeliah Roze (write-in) received
05:29:23 23 6; President R19 Boddie (write-in) received 1;
05:29:27 24 Howie Hawkins/Angela Walker (write-in) received
05:29:32 25 214; Gloria La Riva and Sunil Freeman

05:29:36 1 (write-in) received 37; Kanye West and Michelle
05:29:41 2 Tidball received 107; and Mark Charles/Adrian
05:29:44 3 Wallace received 11. Scattering votes received
05:29:47 4 1,617.

05:29:49 5 At this time I would like to ask that
05:29:51 6 the Board sign off on the actual canvas that is
05:29:55 7 before you.

05:31:07 8 (Signing of canvas.)

05:31:07 9 CHAIRMAN POSNANSKI: Ms. Henry,
05:31:09 10 Mr. Clerk, we have now -- the Board has now
05:31:11 11 executed and certified the presidential
05:31:15 12 recount.

05:31:17 13 MS. HENRY: Thank you.

05:31:21 14 COMMISSIONER BAAS: It is my absolute
05:31:27 15 pleasure to move that we adjourn.

05:31:31 16 COMMISSIONER MARTIN: And as I always
05:31:35 17 do, second.

05:31:39 18 CHAIRMAN POSNANSKI: The Milwaukee
05:31:41 19 County Election Commission sitting as the
05:31:43 20 Milwaukee County Board of Canvassers is now in
05:31:46 21 recess.

22 (Exhibit No. 820 was marked.)

23 (Proceedings concluded at 5:31 p.m.)

24

25

= = = = =

IN RE: 2020 PRESIDENTIAL ELECTION RECOUNT

= = = = =

Madison, Wisconsin

November 20, 2020

Reporter: Jessica Bolanos

Page 2

2020 Presidential Election Recount, 11-20-2020

1 TRANSCRIPT OF 2020 PRESIDENTIAL
 2 ELECTION RECOUNT, taken before Jessica Bolanos, a
 3 notary public in and for the State of Wisconsin, at
 4 the offices of Monona Terrace, 1 John Nolen Drive,
 5 City of Madison, County of Dane, and State of
 6 Wisconsin, on the 20th day of November 2020,
 7 commencing at 8:00 a.m.

8 A P P E A R A N C E S

9

10 ATTORNEYS FOR JOE BIDEN AND KAMALA HARRIS:
 11 Diane M. Welsh, Christa O. Westerberg, David Anstaett

12

13 ATTORNEYS FOR DONALD J. TRUMP AND JOE BIDEN:
 14 Christ Troupis, Lou Esposito, Mike Dean,
 15 Andy Manchester, James Troupis

16

17 ATTORNEY FOR THE BOARD OF CANVAS:
 18 David Gault

19

20 BOARD OF CANVAS MEMBERS:
 21 Scott McDonell (Chair), Allen Arntsen, Joyce Waldrop,

22
 23
 24
 25

Page 3

1 MR. MCDONELL: Okay. Welcome,
 2 everybody. Can everyone hear me okay? My
 3 name is Scott McDonell. I'm the Dane County
 4 Clerk. Thank you all for coming today. We
 5 greatly appreciate you being here.

6 I want to introduce our Board of
 7 Canvass: Allen Arntsen, who represents the
 8 Democratic Party; myself, Scott McDonell;
 9 Joyce Waldrop representing the
 10 Republican Party.

11 Just so you can understand what's going
 12 on in this area, because I'm sure everyone is
 13 curious, we have our Dane County Corporation
 14 Counsel. We have a court reporter. We have
 15 representatives of Biden and Trump campaign,
 16 and, you know, they'll present them and
 17 object to things.

18 All of this is being broadcast over the
 19 web. So this right here is a camera.
 20 There's actually several cameras around the
 21 room.

22 So we're basically operating -- and I
 23 think most of you know this, but we're
 24 operating in four areas. Today we're going
 25 to be using three, which is this -- this

Page 4

1 interior area here will be one group that's
 2 going to be tabulating one community, or in
 3 the case of Madison or Fitchburg, one ward,
 4 one reporting unit. The second one, there's
 5 one there. So that's -- that would be a
 6 separate one and a third one here.

7 And then we have three high-speed
 8 scanners on that side of the room that can
 9 actually tabulate the candidates; so how many
 10 voted for Trump or Biden, or there's actually
 11 several candidates on the ballot. So that
 12 will -- and that -- that won't be happening
 13 today, but it will be starting tomorrow,
 14 because we have to have a public test, and
 15 then going forward for the next few days,
 16 that's where I'll go.

17 So we'll be counting the -- the number
 18 of ballots only to match against the number
 19 of ballots that were received on election
 20 day, and also there will be maybe a couple of
 21 provisional ballots that were sent later. So
 22 we're going to match -- our goal is to match
 23 the numbers for each one and then not count
 24 for the candidates, and then that would
 25 happen down there.

Page 5

1 There'll be opportunities for observing
 2 all of this. So I think we're -- we're all
 3 happy or at least reasonably happy with our
 4 ability to see everything and make sure it's
 5 totally transparent or as transparent as
 6 humanly possible, anyway, in this world we're
 7 in.

8 So the -- if -- everyone seems to be
 9 able to see everything. And just -- just a
 10 reminder, what's going to happen is one
 11 tabulator will be counting either ballots or
 12 votes, so say 50 ballots. And then the
 13 person next to them will count that to make
 14 sure that's accurate. So you'll be -- either
 15 person observing, each person will see the
 16 ballots once either here or there. So there
 17 should be plenty of opportunity for everyone
 18 to be distanced but also be able to see
 19 everything that's happening.

20 The -- I think we did that. We tried to
 21 pass out a bunch of purple and green pens.
 22 So I really -- if you have a black pen that
 23 you just brought in, because that's normal,
 24 please get rid of that or put it somewhere
 25 safe. We don't want someone to be accused of

Page 14

1 can't -- that's endangering everyone in this
 2 room. Wearing masks above your nose is
 3 really important. All right? We're not
 4 going to make it to Christmas, and if it
 5 continues to be a problem, we're going to
 6 start asking people to leave. Thank you.
 7 (Off the record.)
 8 MR. MCDONELL: Okay. All right,
 9 everyone. Just for transparency, we're going
 10 to have a little Board of Canvass here so we
 11 can try to keep everything moving and
 12 uniform. That was the hope of the attorneys.
 13 So, yeah, we'll -- we'll do that now, and you
 14 won't be able to hear us as well, but if
 15 we're all quiet, you probably could --
 16 Okay. So there's been an objection
 17 to the absentee envelopes that do not have an
 18 application associated with them;
 19 specifically in the City of Edgerton, there
 20 are none at all present. Do you want to come
 21 forward and talk about your objections to
 22 those envelopes? Can you hear me?
 23 MR. TROUPIS: I'm sorry. My name
 24 is Christ Troupis. I'm a designated
 25 representative on behalf of the Petitioners,

Page 16

1 which states, quote, "The municipal clerk
 2 shall not issue an absentee ballot unless the
 3 clerk receives a written application from a
 4 qualified elector of the municipality."
 5 The petitioners have previously
 6 requested prior to the beginning of this
 7 recount the written applications for absentee
 8 ballots. I would propose to introduce into
 9 the record a letter from James Troupis dated
 10 November 18, 2020 -- I know he's back at the
 11 table. I'll get there in a second -- that
 12 requested that the written applications be
 13 produced.
 14 I want to thank the clerk,
 15 Scott McDonell, for getting us the written
 16 applications; however, under the present
 17 circumstances, we are unable to -- to verify
 18 that the written applications are for each of
 19 these ballots; and therefore, we're going to
 20 make a standing objection to all of the
 21 absentee ballots that are being counted here
 22 since we cannot determine whether or not a
 23 written application was made.
 24 As a result, there is no evidence that a
 25 written application for an absentee ballot

Page 15

1 Donald --
 2 MR. MCDONELL: The mic doesn't go
 3 up because otherwise --
 4 MR. TROUPIS: -- Donald J. Trump
 5 and Mike Pence. We object to absentee --
 6 MR. MCDONELL: Hang on a second.
 7 There is no mic. That mic doesn't work.
 8 (Discussion held off the record.)
 9 MR. TROUPIS: My name is
 10 Christ Troupis. I'm the designated
 11 representative on behalf of Petitioners
 12 Donald J. Trump and Mike Pence.
 13 It's our understanding that we -- while
 14 written applications for ballots are present
 15 in the room, that they cannot be -- they
 16 can't be compared to the absentee ballots
 17 envelopes or the absentee ballots themselves;
 18 and, therefore, we are unable to verify
 19 whether or not a particular absentee ballot
 20 is accompanied by a written application.
 21 We object to the counting of all
 22 absentee ballots that are issued without the
 23 elector first having submitted a written
 24 application to receive an absentee ballot as
 25 required by Wisconsin Statute 6.86(1)(AR)

Page 17

1 that's being counted was received by the
 2 municipal clerk prior to the issuance of the
 3 challenged absentee ballot. We're
 4 challenging all absentee ballots as a result
 5 for which there's no written application.
 6 I would also like to enter into the
 7 record a copy of the appellant decision in re
 8 the appeal of ballot recount, Walter V. Lee
 9 versus Dave Paulson, decided December 27,
 10 2000. In this decision, the Court held that
 11 Wisconsin Statute 6.84(2) mandates that
 12 Wisconsin Statute 6.866(1)(AR) be strictly
 13 construed. Wisconsin Statute 6.86(1)(AR)
 14 mandates that absentee ballots cast without a
 15 prior written application in contradiction of
 16 Wisconsin Statute 6.86(1)(AR) may not be
 17 counted.
 18 Finally, I would like to enter into the
 19 record a copy of the Wisconsin application
 20 for absentee ballot as an exemplar, which I
 21 note has, in the upper right-hand corner, a
 22 box the municipal clerk is supposed to check
 23 if the elector presented themselves in person
 24 requesting an absentee ballot. Therefore, we
 25 object to all the absentee ballots that are

Page 18

1 going to be submitted during this recount
 2 since none of them have a written application
 3 attached or relating thereto. All such
 4 absentee ballots without written application
 5 should not be counted.
 6 We request that the board order a draw
 7 down equal to the number of all the
 8 challenged absentee ballots. Even if the
 9 board rejects our challenges, we request that
 10 the board either conditionally draw down and
 11 create two vote totals; one, the one with the
 12 challenged ballots included, and one without
 13 the challenged ballots included. Thank you
 14 very much.
 15 MR. MCDONELL: Yeah. Thank
 16 you -- thanks -- thank you very much.
 17 Well --
 18 MS. WELSH: May I respond?
 19 MR. MCDONELL: You want to respond
 20 to that --
 21 MS. WELSH: Does it reach to here
 22 or not?
 23 MR. MCDONELL: Yeah. You're going
 24 to need to use this, and we'll fix this by
 25 tomorrow. So --

Page 20

1 the recount.
 2 Notably, the absent ballot applications
 3 the petition for recount contends are
 4 missing, which are the applications for
 5 voters who voted in person during the early
 6 voting period will be available for review.
 7 That is because the absentee ballot envelope
 8 itself, form EL-122, is the written
 9 application to vote absentee.
 10 UNIDENTIFIED SPEAKER: Could you
 11 speak up a little bit? We can't hear.
 12 MS. WELSH: Okay. And we have
 13 copies of these briefs and exhibits that we
 14 will distribute to you as well.
 15 The Wisconsin Elections Commission
 16 Recount Manual states specifically --
 17 addresses this, and it specifically addresses
 18 that the board should not reject any absentee
 19 ballot due to the lack of a written
 20 application because there are a variety of
 21 reasons the board may not be able to locate a
 22 specific application. The up --
 23 MR. MCDONELL: Take your time.
 24 MS. WELSH: The manual instructs
 25 that while the Board of Canvassers need not

Page 19

1 MS. WELSH: Will it reach the
 2 podium? Do we think -- first of all,
 3 thank -- I want to thank the Board of
 4 Canvassers for being here and the County
 5 Clerk Scott McDonell. I'm Diane Welsh with
 6 Pines Bach. I'm counsel for the Biden team.
 7 With me I have Christa Westerberg and
 8 Scott (sic) Anstaett. So in response to this
 9 standing objection to counting -- sorry.
 10 MR. MCDONELL: Take your time.
 11 MS. WELSH: First, the Trump
 12 campaign claims it has a right to review
 13 every absentee ballot application as part of
 14 the review process. This is incorrect.
 15 Wisconsin Statute 9.01(1)(B) does not require
 16 the Board of Canvassers to review absentee
 17 ballot applications during the recount, and
 18 the right of the petitioner to review matters
 19 extends only to the materials and ballots
 20 present at the recount.
 21 To the extent ballot applications are
 22 maintained in the statewide MyVote database
 23 or in the municipal clerk's office, the
 24 statute does not require the Board of
 25 Canvassers to produce the applications during

Page 21

1 review every absentee ballot application, it
 2 can turn to such applications for assistance
 3 if it is unable to determine the number of
 4 absentee ballot voters.
 5 Regardless of whether the 2018 or 2020
 6 recount manual is followed, the Trump
 7 campaign does not have the right to demand
 8 its own mini audit of all of the absentee
 9 ballot applications. The Board of Canvassers
 10 controls the recount, not the losing
 11 candidate. This is particularly the case
 12 where the petitioners' only specific
 13 allegations is the frivolous contention that
 14 all early absentee voters, estimated by the
 15 election commission to be 650,237 registered
 16 voters, must be disenfranchised for failing
 17 to submit a separate written application.
 18 The absentee ballot envelope is entitled
 19 Official Absentee Ballot
 20 Application/Certification, and the voter
 21 states, "I further certify that I requested
 22 this ballot."
 23 What that means is that all absentee
 24 ballot applications the petitioner complains
 25 about will be, in fact, available for the

Page 30

1 statement, because if there's no request --
 2 if this envelope is the request, it's saying
 3 I already requested it. That's insufficient,
 4 because it's an after-the-fact statement. It
 5 doesn't certify the voter ever submitted a
 6 written application for the ballot.
 7 For these reasons, we believe that all
 8 absentee ballots can be objected to and that
 9 we're entitled to see the materials related
 10 thereto, which includes the application.
 11 Thank you.
 12 MR. MCDONELL: Thank you.
 13 Actually -- that's fine. Okay. So we had a
 14 request -- an objection made, and you can --
 15 MS. WELSH: Could I reply?
 16 MR. MCDONELL: Yeah, no problem.
 17 Sure.
 18 MS. WELSH: The Biden campaign will
 19 acknowledge that there's a standing challenge
 20 to all of the absentee ballots, including the
 21 early absentee ballots. We disagree that
 22 there's any validity to the challenge.
 23 I -- what the Trump campaign is asking
 24 is to ignore the reality of what happens in
 25 early voting. We have laid this out in our

Page 32

1 a healthcare company. I am married and have
 2 three children who attend schools in Madison.
 3 My husband and I chose to vote in person
 4 early because we were worried about putting
 5 our absentee ballots in the mail and whether
 6 that would lead to them not being counted.
 7 We voted in person during the early voting
 8 period on Friday, October 30th at
 9 approximately 10:00 a.m. at the polling site
 10 located at Edgewood College."
 11 "The process was very straightforward.
 12 It involved the following steps: When we got
 13 in line, we were given a clipboard and a
 14 piece of paper to fill out our name and
 15 registration address. The poll worker in the
 16 front of the line looked me up on the
 17 computer and confirmed I had registered to
 18 vote in the city of Madison. I showed my
 19 photo identification to the poll worker upon
 20 their request. The poll worker noted that I
 21 had requested an absentee ballot and asked me
 22 what I had done with it. I told them that I
 23 had destroyed it when we decided to vote in
 24 person. They reminded me that it would be a
 25 felony if I attempt to vote multiple times."

Page 31

1 briefs, which my colleagues will distribute
 2 so you have them; but as you know, if I go in
 3 to early vote, I say, "I'm here to early
 4 vote. Can I have a ballot?" You know, I
 5 don't just walk into my town hall and get a
 6 ballot thrown at me.
 7 So the form that is designed and shared
 8 by the Wisconsin Elections Commission is an
 9 official absentee ballot application and
 10 certification, and it says, "I further
 11 certify that I requested this ballot," and
 12 that happened when I walked into my town hall
 13 and said, "Can I please have a ballot to
 14 vote," or "May I please vote early?" Like,
 15 there is an actual request there.
 16 Again, we firmly object to the requested
 17 relief of a drawdown, which seeks to
 18 disenfranchise 69,000 Dane County workers. I
 19 request that the affidavits and their
 20 materials be entered into the record, and
 21 again, I want to share -- one example, is a
 22 declaration of Megan Spicer, if I may, for
 23 the record. She's a registered voter in the
 24 City of Madison.
 25 It says, "I'm a healthcare director for

Page 33

1 "The poll worker gave me an absentee
 2 ballot envelope, initialed it, and told me to
 3 go fill out the absentee envelope and come
 4 back. The top of the absentee envelope was
 5 marked "official absentee ballot
 6 application/certification." I filled out all
 7 of the information in the box for voter
 8 information, including my name and address,
 9 and the municipality. I returned the
 10 envelope to the poll worker who reviewed it,
 11 confirmed my proper ward, and gave me a
 12 ballot."
 13 "Then I took the ballot to the voting
 14 booth, and I voted in private. I took my
 15 completed ballot and the envelope to the poll
 16 worker at the finish table, folded the
 17 ballot, placed it in the envelope, and then
 18 signed and dated the certification box in
 19 front of the poll worker. The poll worker
 20 took the completed absentee envelope from me,
 21 signed and addressed it as my witness, and
 22 placed the ballot into a large red secure
 23 bag. The process was professional, secure,
 24 and transparent. I am outraged at the
 25 thought that a campaign would attempt to

Page 34

1 invalidate my vote based on a false
 2 allegation that I did not submit a written
 3 application to vote absentee. The absentee
 4 ballot envelope was my written application,
 5 and I followed all of the instructions given
 6 to me by poll workers."
 7 "I have voted early in person
 8 numerous times before, and I am very familiar
 9 with the process, and I feel that my husband
 10 and I did everything right in the way we were
 11 asked to, in accordance with the law. If our
 12 votes were thrown out, we would know that our
 13 voices are not being represented in this
 14 process." Thank you.
 15 MR. MCDONELL: Thank you. Okay.
 16 If you need to distribute that, that's fine.
 17 I think we need nicer tables. It's turned
 18 into a courtroom.
 19 The -- the -- okay. It seems like we
 20 need to dispose of a few issues here, the
 21 request for a standing objection. And again,
 22 Mr. Troupis, make sure I don't -- I say these
 23 things correctly and that -- I want to make
 24 sure for the -- we're all on the same page,
 25 because I know this is going to get

Page 36

1 MR. MCDONELL: All right. But we
 2 need to rule on it, and then -- we'll rule on
 3 those, and then we need to rule on how we can
 4 move forward and have everyone get what they
 5 need to do.
 6 MR. TROUPIS: And I have the
 7 exhibits too. I would hand those to the --
 8 MR. MCDONELL: Put it on the table
 9 here. Is that okay?
 10 MR. TROUPIS: I'll set it here.
 11 MR. MCDONELL: So we can put that
 12 in the record. So did I kind of go over it
 13 correctly?
 14 MR. TROUPIS: Yes, you did.
 15 MR. MCDONELL: Okay. Great. I'm
 16 going to -- So Board of Canvassers, the first
 17 decision that we need to make.
 18 Everyone -- can you guys hear me? All right.
 19 Thanks. Sorry. Even if you're talking
 20 quietly, because it echos, it can be a little
 21 hard.
 22 So the first question is: Do we accept
 23 a standing objection that we can use across
 24 all the wards and allow that to be recorded
 25 in our minutes that to the -- to the absentee

Page 35

1 litigated, and we want to make sure everyone
 2 has what they need to do what they need to
 3 do. You and I've talked about that.
 4 MR. TROUPIS: Really appreciate it,
 5 Scott. Thank you.
 6 MR. MCDONELL: And I appreciate
 7 your cooperation a lot too.
 8 So we need to adjudicate whether we're
 9 going to, one -- help me, Dave -- one, that
 10 we're -- yes, you have a standing objection
 11 to the ones that you have mentioned.
 12 MR. TROUPIS: Mm-hmm.
 13 MR. MCDONELL: Two, that you asked
 14 for a drawdown or a conditional drawdown. We
 15 should decide that.
 16 MR. GAULT: You need to rule on the
 17 objection first.
 18 MR. MCDONELL: Right. I know. I'm
 19 just talking -- yes.
 20 MR. GAULT: Well, you asked me to
 21 help you out.
 22 MR. MCDONELL: I'll stop doing
 23 that.
 24 MR. TROUPIS: We're all doing good
 25 so far.

Page 37

1 ballots and the fact that they are unable to
 2 then -- that they're not able to review the
 3 applications themselves.
 4 MS. WALDROP: The objection to
 5 the --
 6 MR. MCDONELL: Allow them to have
 7 it be a standing objection that we note in
 8 all of our minutes for every single ward that
 9 comes through, that they're objecting to
 10 those ballots being counted. Is that -- is
 11 that right?
 12 MR. TROUPIS: That's correct.
 13 MR. MCDONELL: Okay.
 14 MR. GAULT: Scott, again, I think
 15 you should rule on your decision on the
 16 objection, and then they can have a standing
 17 objection moving forward.
 18 MS. WALDROP: I just told him
 19 there.
 20 MR. MCDONELL: Oh, I see. He wants
 21 me to reverse the order.
 22 MR. GAULT: I think you rule on the
 23 objection first. Then we --
 24 MR. MCDONELL: All right. That's a
 25 fair point. We'll do both. So the first one

Page 38

1 would be: Do we accept the objection to
 2 those ballots, and draw them -- and agree
 3 that we should draw them down either
 4 conditionally or not conditionally based on
 5 the fact that they do not have an attached or
 6 identifiable application? That would be all
 7 in person -- if I'm saying this correctly --
 8 so all in-person absentee voting, two weeks
 9 before the election, that would include --
 10 MR. TROUPIS: All absentee voting,
 11 whether in person or absentee.
 12 MR. MCDONELL: An example would be
 13 everyone two weeks before, because they're
 14 just using the envelope. They don't have
 15 another paper application is an example of
 16 it, but not solely that.
 17 MR. TROUPIS: That's correct. It's
 18 part of it but not all.
 19 MR. MCDONELL: Correct. This is a
 20 good example so we understand what we're
 21 talking about. And so they're asking for
 22 that, and we need to --
 23 MS. WALDROP: They're asking
 24 us -- you're asking us to rule on the
 25 objection, whether we accept it or not?

Page 40

1 law. And I'm not willing to just throw that
 2 out and disenfranchise, as the lady said,
 3 voters.
 4 MR. MCDONELL: Okay.
 5 MS. WALDROP: Everybody has a vote,
 6 but it has to be a legal vote. They have to
 7 have submitted an application, or they
 8 don't -- they didn't follow the law;
 9 therefore, not -- not legally able to vote.
 10 MR. MCDONELL: Okay. So -- so
 11 we're going to take this up, and then we'll
 12 take up the issue of -- of whether we allow a
 13 standing objection. So, all right. Let's
 14 vote on whether we're going to agree to the
 15 drawdown and the exclusion of those ballots.
 16 Allen?
 17 MR. ARNTSEN: I vote no.
 18 MR. MCDONELL: I vote no. Joyce?
 19 MS. WALDROP: I don't agree. I
 20 vote no.
 21 MR. MCDONELL: You vote no?
 22 MS. WALDROP: Just --
 23 MR. MCDONELL: You got that down,
 24 3-0 on that? And it's being recorded on
 25 audio too, so we've got it on the recording.

Page 39

1 MR. MCDONELL: No. We're going to
 2 do that next. We're ruling on whether we
 3 really -- we want to draw down all of those
 4 ballots --
 5 MS. WALDROP: Oh.
 6 MR. MCDONELL: -- and throw them to
 7 -- not throw them out but not count them.
 8 So discussion on -- on that from you
 9 two?
 10 MR. ARNTSEN: Yeah, I
 11 would -- I -- I don't favor the objection. I
 12 don't think we should have -- I don't think
 13 we should do the drawdown, conditional or
 14 otherwise.
 15 MR. MCDONELL: Okay.
 16 MS. WALDROP: Well, I -- I
 17 have -- I have a problem with not ruling on
 18 the objection first, because I don't -- I
 19 think if they have -- they have the right to
 20 object.
 21 MR. MCDONELL: Yes.
 22 MS. WALDROP: No problem with that.
 23 As to whether requiring us to absolutely
 24 ignore everything and draw down, in my mind,
 25 there is a law, and we have to observe the

Page 41

1 Okay. So the second question, I think,
 2 was because we are not in agreement on that.
 3 Can we have a standing objection to all the
 4 ballots that would fall into that category
 5 and use that going forward and record the
 6 objection? Okay? I certainly support that.
 7 I don't know if you guys want to comment
 8 or -- or just vote on that?
 9 MS. WALDROP: I -- I support it
 10 also.
 11 MR. MCDONELL: Can you say that --
 12 MS. WALDROP: I support it also.
 13 MR. MCDONELL: Okay. So let's
 14 vote. Anything else?
 15 MR. ARNTSEN: Yeah, no. As do I.
 16 MR. MCDONELL: All right. So all
 17 those in favor of allowing the Trump campaign
 18 to have a standing objection to the ballots
 19 that they indicate and will indicate in the
 20 minutes, say "aye."
 21 MR. ARNTSEN: And, again, just
 22 being clear, it's essentially a procedural
 23 decision. It's not a sub -- we're not ruling
 24 on any objection. We're just saying --
 25 MR. MCDONELL: Going forward.

Page 46

1 MR. TROUPIS: There'll be other
 2 objections.
 3 MR. MCDONELL: Objections happen
 4 all the time. Is that what we're talking
 5 about?
 6 MR. TROUPIS: That's right.
 7 MR. GAULT: Scott, you may want to
 8 recommend that if they are going to make
 9 objections to ballots, they should bring them
 10 to Mr. Troupis and he brings them to you,
 11 rather than do it out there.
 12 MR. MCDONELL: Yeah, and I think
 13 just for -- all of us want to move this
 14 forward. No one's trying to slow this down.
 15 Nobody is. That's not -- actually, that's
 16 not in anyone's interest. So we need to be
 17 able to have a system where we're -- the
 18 objections are not going on. I mean, you can
 19 say I -- I want to have that ballot
 20 separated, but --
 21 MR. TROUPIS: That's --
 22 MR. MCDONELL: Things that need to
 23 come here need to come from you guys. Same
 24 with the Biden campaign.
 25 MR. TROUPIS: So long as we can

Page 48

1 to talk practically now instead of legally.
 2 So if you have someone and they -- what we do
 3 is we separate it into in-person at one
 4 table, absentees at another table. Your
 5 table is all absentees, and you're supposed
 6 to object to these. That's fine. We know
 7 that those are all objected to.
 8 MR. TROUPIS: Right. They --
 9 MR. MCDONELL: So now what they
 10 should be doing is looking for other things
 11 that might be going on.
 12 MR. TROUPIS: Got it.
 13 MR. MCDONELL: I'm -- not valid.
 14 An X mark next to Trump that misses the oval,
 15 something like that. There's other
 16 perfectly -- we want to make sure they're
 17 counted properly or objected to properly; but
 18 not just en masse of the absentees. That's
 19 what the point of this was.
 20 MR. TROUPIS: Exactly.
 21 MR. MCDONELL: Thank you.
 22 MR. GAULT: Scott, let me talk to
 23 you first.
 24 (Discussion held off the record.)
 25 MR. MCDONELL: So one -- one

Page 47

1 have the objected-to ballots separated, we'll
 2 deal with the objections here.
 3 MR. MCDONELL: Great. That
 4 sounds -- that's all I can ask for. Thank
 5 you. All right. I think we have our
 6 rulings, and I would like the tabulators --
 7 MS. ANDERSON: Can I just ask a
 8 question for the community? (Inaudible.)
 9 MR. MCDONELL: We're not objecting
 10 to all ballots en masse, are we?
 11 MR. TROUPIS: Only the -- we have
 12 the standing objection with respect to all
 13 absentee ballots, and that's all the absentee
 14 ballots. The other ballots we're going to
 15 object to if -- for instance, corrections by
 16 the clerk, those kinds of things.
 17 MR. MCDONELL: Okay. So I just
 18 want to clarify that. So we -- so for
 19 the -- again, I don't want to speak for you,
 20 but please -- you know, so for observers,
 21 your objections to the absentees will be
 22 recorded now.
 23 MR. TROUPIS: Great.
 24 MR. MCDONELL: If you're looking at
 25 a table and it's all absentees -- I'm going

Page 49

1 question that Corp. Counsel asked is we know
 2 the -- the ones with the signatures
 3 that -- the addresses that were filled in and
 4 they should be initialled, are you objecting
 5 to those en masse as well? I think you are.
 6 MR. TROUPIS: Yes, we are; and even
 7 if the address has been added by the clerk,
 8 we're objecting.
 9 MR. MCDONELL: The address -- I'll
 10 repeat it just for the microphone. Objecting
 11 to the addresses being added by the clerk,
 12 you know, not the original person who did it.
 13 MR. TROUPIS: Right.
 14 MR. MCDONELL: And I'm -- so we're
 15 going to instruct our tabulators, when they
 16 see that initial -- and, of course,
 17 the -- you know, anyone sees that. Those
 18 will also get separated as well --
 19 MR. TROUPIS: Yes.
 20 MR. MCDONELL: -- into a different
 21 pile.
 22 MR. TROUPIS: Okay.
 23 MR. GAULT: Do they just want to
 24 make their standing objection now to that?
 25 MR. MCDONELL: They don't know how

Page 50

1 many there are. And that's a standing
 2 objection to all those that we'll carry
 3 forward.
 4 MR. TROUPIS: Okay.
 5 MR. MCDONELL: Is that okay?
 6 MR. TROUPIS: I believe so. We're
 7 still going to have to have specific examples
 8 since that's --
 9 MR. MCDONELL: You need evidence.
 10 MR. TROUPIS: Yeah.
 11 MR. GAULT: You should -- I mean it
 12 makes sense while you're doing this now to
 13 have them state their objection, and you guys
 14 rule on it --
 15 MR. MCDONELL: Right.
 16 MR. GAULT: -- while we're convened
 17 now.
 18 MR. MCDONELL: Yeah, so we're
 19 convened now. So do you want us to rule on
 20 that objection of the --
 21 MR. TROUPIS: I think that's
 22 probably a good idea.
 23 MR. MCDONELL: Yeah. Let's just
 24 knock all this stuff out. We're all standing
 25 here. All right.

Page 52

1 So I actually have two objections that
 2 I'm going to state. That way we'll have
 3 these both as standing objections, and then
 4 we can deal with the individual ballots and
 5 exemplars to each of those -- to which those
 6 objections apply as we receive the ballots.
 7 The first is for clerk-supplied information.
 8 Again, my name is Christ Troupis. I'm
 9 the designated representative on behalf of
 10 Petitioners Donald J. Trump and Michael
 11 Pence. I'm challenging and objecting to
 12 ballots to -- to ballots for which the
 13 certification on the envelope was
 14 complete -- was improperly completed, in this
 15 case, because the envelopes lack the required
 16 witness address when received by the clerk.
 17 It should have been rejected pursuant to
 18 Wisconsin Statute 6.87(6D) which states,
 19 quote, "If a certificate is missing the
 20 address of a witness, the ballot may not be
 21 counted." The clerk is not authorized to
 22 supply the address for each such improperly
 23 completed absentee ballot certification.
 24 We ask that the poll thus be reduced by
 25 the number of ballots set aside.

Page 51

1 MR. ARNTSEN: We pointed out
 2 missing a ZIP code.
 3 MR. MCDONELL: So if -- there's a
 4 few things that we can do now, and I'll give
 5 you the mic back. Again, I don't want to
 6 ignore the Biden campaign. I apologize for
 7 that. But if there's a few things we can
 8 knock out, it will make everything go faster.
 9 Everyone -- tabulators will understand. The
 10 observers will understand.
 11 So the first one will be there -- I'm
 12 going to -- there is an objection to the
 13 Clerk filling in the address.
 14 MR. GAULT: Why don't you let him
 15 make the statement.
 16 MR. MCDONELL: Yeah. Why don't you
 17 make it instead of me. You'll do a better
 18 job. If it's okay with you, I just think
 19 that might be easier later, easier on all of
 20 us later.
 21 MR. TROUPIS: I think it's better
 22 if I make my own objection.
 23 MR. MCDONELL: I think that's a
 24 pretty good idea.
 25 MR. TROUPIS: You've got it.

Page 53

1 I note parenthetically that the
 2 statute -- that the law provides the specific
 3 recourse to correct a problem if an address
 4 is not completed. That is to return the
 5 ballot to the elector and have the elector
 6 complete a new ballot or complete the ballot
 7 and return it back.
 8 Since that procedure was not followed in
 9 all cases in which the clerk supplied
 10 information rather than following the
 11 statutory procedure, we believe that ballot
 12 is invalid and should not be counted.
 13 Again, even if the Board of Canvassers
 14 rejects our challenges, we request that the
 15 board determine the total number of eligible
 16 voters on the poll list as if the challenge
 17 was granted and conduct an appropriate
 18 drawdown. This will prevent the need to
 19 conduct an additional and unnecessary recount
 20 if the objection is ultimately allowed by the
 21 Court, as we believe will happen.
 22 Secondly, we want to make an objection
 23 to all indefinitely confined ballots, all
 24 persons who file ballots as indefinitely
 25 confined. Again, the statute that creates

Page 54

1 the category of indefinitely confined
 2 electors creates an impermissible
 3 classification of electors in violation of
 4 equal protection and due process.
 5 Unlike electors who request an absentee
 6 ballot, those who assert they are
 7 indefinitely confined are not required to
 8 present a valid photo ID or proof of legal
 9 residence, nor is there any uniform
 10 justification or basis required for such
 11 classification as the Wisconsin absentee
 12 ballot application simply allows the
 13 purported voter to individually certify that
 14 they are indefinitely confined with no
 15 discernible objective standard. The statute
 16 is, therefore, void for vagueness.
 17 There is no requirement to determine the
 18 valid status of the voter, which is an open
 19 invitation for fraud and abuse. The number
 20 of those claiming to be indefinitely confined
 21 has risen exponentially since the clerk, for
 22 Milwaukee and Dane Counties, posted on their
 23 websites encouraging electors to claim to be
 24 indefinitely confined regardless of their
 25 actual status.

Page 56

1 lawyer. On behalf of the Biden for President
 2 Campaign, we oppose both challenges that were
 3 raised by the Trump campaign. Both seek to
 4 disenfranchise tens of thousands of
 5 Dane County voters.
 6 As it relates to the absentee witness
 7 addresses, the votes should stand. In 2016,
 8 the Elections Commission, which has statutory
 9 authority to administer Wisconsin election
 10 laws, ordered municipal clerks to themselves
 11 correct missing witness address information.
 12 If the Clerks could not remedy the error
 13 with information available to them, then they
 14 were to contact the voter to inform the voter
 15 of the error and provide an absentee the
 16 opportunity to correct.
 17 They have -- there have been 11
 18 statewide elections since that time. 11. No
 19 one, including the Trump campaign in the 2016
 20 recount, has objected to this procedure. I
 21 will provide to you the brief -- instead of
 22 reading a brief to you, which I'm sure you
 23 appreciate, but attached will be the WEC
 24 guidance and materials.
 25 So again, we have voters who relied on

Page 55

1 We have evidence that purportedly
 2 indefinitely confined electors were not, in
 3 fact, indefinitely confined. I would like to
 4 submit into the record a spreadsheet with
 5 evidence of such electors who asserted they
 6 were indefinitely confined but were not.
 7 For each such improperly completed
 8 absentee ballot certification for
 9 indefinitely confined individuals, we ask
 10 that the poll list be reduced by the number
 11 of ballot envelopes set aside. And again,
 12 even if the board rejects our challenges, we
 13 request that the board determine the total
 14 number of eligible voters on the poll list as
 15 if this challenge was granted and conduct an
 16 appropriate drawdown.
 17 This will prevent the need to conduct an
 18 additional and unnecessary recount if the
 19 objection is ultimately allowed by the Court,
 20 as we believe will happen.
 21 MR. MCDONELL: Okay. Thank you
 22 very much for that. I will -- I guess I
 23 would -- why don't you go next. Thank you.
 24 Sorry.
 25 MR. WELSH: Now I feel like a

Page 57

1 the advice of their clerks, the advice of the
 2 Wisconsin Elections Commission, and lawfully
 3 voted.
 4 The request to draw down the vote in
 5 Dane County seeks to disenfranchise tens of
 6 thousands of our votes, and we adamantly
 7 oppose that request.
 8 As it relates to indefinitely confined
 9 voters, we also object to the challenge or
 10 the remedy proposed. The challenge is
 11 without merit and did not justify
 12 disenfranchising valid voters. The issue was
 13 litigated in the spring, and the Wisconsin
 14 Supreme Court ruled that the decision to
 15 claim indefinite confinement is one left to
 16 the voters.
 17 No new directives were issued by any
 18 election officials in advance of the
 19 November 3rd election on this topic. The
 20 election commission's March 29th, 2020,
 21 guidance, which remains in effect, provides,
 22 in pertinent part, designation of
 23 indefinitely confined status is for each
 24 individual voter to make based upon their
 25 current circumstances. It does not require

Page 58

1 permanent or total inability to travel
 2 outside of the residence.
 3 The designation is appropriate for
 4 electors who are indefinitely confined
 5 because of age, physical illness, or
 6 infirmity or are disabled for an indefinite
 7 period.
 8 The Elections Commission also provided a
 9 remedy if someone is not deemed to be found
 10 to be indefinitely confined, then the clerk
 11 is to update the roll and remove them as an
 12 indefinitely confined voter. The remedy is
 13 not to draw down a vote or not count that
 14 person's vote.
 15 Again, I will offer into the record our
 16 briefs and exhibits related to both these
 17 topics. We opposed the introduction of the
 18 spreadsheet, which is not evidence and which
 19 is not -- we have not seen. And again, we
 20 ask you to reject the challenges presented
 21 but acknowledge them as standing challenges.
 22 MR. MCDONELL: Thank you.
 23 MR. GAULT: Again, I'm David Gault.
 24 I'm with the Dane County Corporation Counsel
 25 office. I'll deal in reverse order with the

Page 60

1 As to the clerks adding addresses to the
 2 witness statements, it is true that the
 3 statute provides that if the certificate is
 4 missing the address of a witness, the ballot
 5 should not be counted. That's what the
 6 statute says.
 7 The statute doesn't expressly state the
 8 clerk can't about it. It doesn't say the
 9 clerk can add it too, but as has been pointed
 10 out, the guidance with the Wisconsin Election
 11 Commission since 2016 has been not only
 12 should -- the clerks should add that
 13 information if they have it, but the
 14 Wisconsin Elections Commission told our
 15 municipal clerks they must add that
 16 information if they have it,
 17 whether -- through any extraneous means.
 18 So if they know personally where
 19 somebody lives or if they have that
 20 information on poll records or other official
 21 records, the Commission specifically told our
 22 municipal clerks they have to add that
 23 information to the absentee ballot envelope.
 24 Thank you.
 25 MR. MCDONELL: Okay. So there's

Page 59

1 objections.
 2 The indefinitely confined objection,
 3 what I'd advise the board is indefinitely
 4 confined status provision is part of the
 5 Wisconsin statutes. The legislature has
 6 provided for that. As I understand the Trump
 7 campaign, they are making a facial challenge
 8 to the constitutionality of that statute.
 9 And what I would tell you right now is you
 10 don't have the authority or the jurisdiction
 11 to make such a ruling.
 12 (Interruption.)
 13 MR. MCDONELL: We're in the middle
 14 of a hearing right now. I'm going to have to
 15 ask you to leave.
 16 MR. GAULT: The bottom line is as
 17 far as a facial challenge to the
 18 constitutionality of the statute, that's for
 19 the Court. You've got to follow the statutes
 20 that are on the books, and the indefinitely
 21 confined provision is there. So I understand
 22 they're making the record for court, but it
 23 really isn't appropriate for you to -- you
 24 really can't say that the statute's
 25 unconstitutional.

Page 61

1 been two requests; one to take them up and
 2 one to exclude the envelopes that had a
 3 witness address added by the clerk and to
 4 draw down an appropriate number to that.
 5 MR. TROUPIS: I'd like to --
 6 MR. MCDONELL: Respond?
 7 MR. TROUPIS: -- respond a little
 8 bit.
 9 MR. MCDONELL: Oh, I'm sorry.
 10 MR. TROUPIS: Are you going to go
 11 first?
 12 MR. ANSTAETT: Can I just refer
 13 you, for the record, the briefs that the
 14 Biden campaign has on the two issues that
 15 you're discussing.
 16 MR. MCDONELL: Just put it over
 17 there.
 18 I'm sure a lot of you are impatient to
 19 get to your jobs, but if we can resolve
 20 these, then it will make it run much smoother
 21 going forward. I think that is the goal for
 22 all of us here.
 23 You've got copies for everybody?
 24 MR. TROUPIS: This is an additional
 25 exhibit. I just want to clarify.

Page 62

1 MR. MCDONELL: Absolutely. Please
 2 do.
 3 MR. TROUPIS: I wanted to add a
 4 comment on -- on the indefinitely confined
 5 objection, we did raise a constitutional
 6 objection. I understand that is -- that's a
 7 legal objection that the Court will address
 8 at some point, but that was not all inclusive
 9 of my objection.
 10 I also noted that basically when
 11 the -- this exponential increase in
 12 indefinite confinement occurred because
 13 the -- the Board of Elections dispensed with
 14 the statutory requirements that defines
 15 indefinite confinement and changed it
 16 to -- to simply a requirement that the person
 17 declare their status.
 18 By doing that, they dispensed with
 19 statutory protections that the legislature
 20 enacted, including the identification of the
 21 voter and determination of -- of their
 22 status. That -- and so it's in addition to
 23 the constitutional challenge.
 24 MR. MCDONELL: Right. And I
 25 appreciate that. I know you want that on the

Page 64

1 either one? Joyce?
 2 MS. WALDROP: I have a question.
 3 Did I understand you to say that the statute
 4 includes the requirement that the clerk add
 5 that address?
 6 MR. GAULT: No. The statute does
 7 not say that.
 8 MR. MCDONELL: Either way?
 9 MR. GAULT: The commission guidance
 10 said that the clerks must add -- they said if
 11 the clerks have that information, they're
 12 required to add it.
 13 MS. WALDROP: And they are like a
 14 board that creates rules and that kind of
 15 thing.
 16 MR. GAULT: By statute, the
 17 Wisconsin Elections Commission is authorized
 18 to interpret and give guidance as to how
 19 municipal clerks apply the Wisconsin election
 20 laws.
 21 MS. WALDROP: Okay. Thank you.
 22 MR. MCDONELL: Do you have
 23 anything, Allen? Do you have anything?
 24 MR. ARNTSEN: I'm all right.
 25 MR. MCDONELL: Okay. So on that

Page 63

1 record.
 2 MR. TROUPIS: I do. Thank you.
 3 MR. GAULT: I just want to address
 4 that for the board, because the indefinitely
 5 confined status statute is under review by
 6 the Wisconsin Supreme Court now under certain
 7 circumstances. And back on March 31st, the
 8 Wisconsin Supreme Court entered an order that
 9 the Wisconsin Elections Commission guidance
 10 of March 29th, which included the provision
 11 that it's a self-certification matter for the
 12 individual voter, the Wisconsin Supreme Court
 13 has already issued an order that that
 14 guidance was sufficient for purposes of
 15 application of that statute.
 16 MR. MCDONELL: Anything -- anything
 17 else from -- all right. Let's try to keep
 18 moving here.
 19 So the first objection that we need to
 20 rule on is on the clerk-supplied information,
 21 which is the clerks using WEC -- the
 22 Wisconsin Election Commission guidance, if
 23 they were able to determine an address and
 24 were told to add it. Do we want to exclude
 25 or draw down or do a separate drawdown,

Page 65

1 question, those in favor of -- and we'll get
 2 to the issue of whether we'll have a standing
 3 objection, which we can get to after
 4 the -- but do we want to exclude and draw
 5 down those that have the witness address
 6 added by the clerk and create a drawdown for
 7 that? Are you all in favor?
 8 MR. ARNTSEN: I don't think we
 9 should.
 10 MR. MCDONELL: Okay. So, no. I'm
 11 going to vote no on that.
 12 MS. WALDROP: I'm going to vote no
 13 too.
 14 MR. MCDONELL: Okay. So 3-0
 15 against that drawdown. We'll get back
 16 to -- we'll come back to that issue in a
 17 second about a standing objection.
 18 The second one is all indefinitely
 19 confined. All those who indicated that they
 20 were indefinitely confined, should those be
 21 separated, drawn down, or drawn down just to
 22 create a record, either one? That's the
 23 question.
 24 MR. ARNTSEN: And I say no. I
 25 mean, I think the -- this is a Wisconsin

Page 66

1 Supreme Court thing which seems to me like a
 2 rule.
 3 MR. MCDONELL: All right. I vote
 4 no on that.
 5 MS. WALDROP: I'm going to have to
 6 vote yes.
 7 MR. MCDONELL: So Joyce votes yes,
 8 so that's a 2 to 1 on a drawdown on all the
 9 indefinitely confined.
 10 Now, can we go back to the question of
 11 whether we allow these to be standing
 12 objections and that we can add to the -- that
 13 we can have going forward as a process?
 14 MR. ARNTSEN: As we dealt with
 15 earlier, I'm fine with handling this as a
 16 standing objection.
 17 MR. MCDONELL: I'm fine with both
 18 of these being standing objections as well.
 19 MS. WALDROP: As long as it has an
 20 end to it; it doesn't go on forever.
 21 MR. MCDONELL: Well, I think
 22 the -- okay. So we'll say 3-0 on that, but
 23 we will -- the point of all this is to
 24 expedite the process and make sure that the
 25 Trump campaign has what they need to use to

Page 68

1 follow along.
 2 And if -- if there are concerns about
 3 that, we can try to address it. Just so
 4 everyone knows, if it's got -- if it's
 5 folded, that's an absentee. You know, if
 6 it -- it also should be marked as an
 7 absentee. Sometimes we have occasionally a
 8 remake of a destroyed ballot that they should
 9 then mark -- but that should be marked
 10 absentee. So we'll try to help everyone
 11 through that as we're going through the
 12 tables.
 13 MR. TROUPIS: Thank you very much.
 14 That'll be helpful.
 15 MR. MCDONELL: Okay. Thank you. I
 16 think we're done for now. And tomorrow
 17 morning, just to remember, we're going to try
 18 to work on the scanner issue and allow for
 19 the evidence that you guys will need, as this
 20 clearly -- hopefully this won't continue as a
 21 courtroom.
 22 Okay. So why don't we resume. And
 23 thanks, everyone, for this time out. Sorry
 24 for the delay, but I think that will be
 25 helpful. Thank you.

Page 67

1 go to the Court, which is part of this
 2 process. So -- yes?
 3 MR. TROUPIS: And I just have a
 4 procedural matter that I'd like to try to --
 5 maybe to move things along.
 6 We -- our -- our observers, they have
 7 questions regarding whether or not in a
 8 particular table the votes being counted
 9 or -- and the ballots or the envelopes are
 10 for in-person or absentee, and what
 11 ward -- ward's identified. They're trying to
 12 make notes so that we know what ward it came
 13 from and whether or not we're looking at
 14 absentees or envelopes.
 15 Could we have perhaps have the
 16 tabulators tell them that at the outset,
 17 "We're counting absentee now" or "We're
 18 counting" and what ward?
 19 MR. MCDONELL: Okay. What we want
 20 to avoid is a little bit too much of the
 21 conversation one-on-one here, but the person
 22 who -- the lead tabulator can -- maybe I'll
 23 instruct them to explain what's happening at
 24 each table, what ward we're on, and just
 25 be -- try to explain it so everyone can

Page 69

1 (Off the record.)
 2 MR. MCDONELL: Okay. So the
 3 question is: There's -- it's missing an
 4 address for the witness. The ballot was
 5 counted. Should it have been counted, is the
 6 question. There's an objection from the
 7 Trump campaign that it was counted --
 8 MR. TROUPIS: Right.
 9 MR. MCDONELL: -- for this one
 10 reason, which there's no witness address.
 11 We're all following along? Okay. Allen
 12 feels the statute, reading it, doesn't count.
 13 MR. ARNTSEN: Looking at
 14 9.01(1)(b)(2), which says we don't count what
 15 are called defective absentee ballots, and it
 16 is defective only -- the official absentee
 17 ballot envelope is defective only if it is
 18 not witnessed or if it is not signed by the
 19 voter, and then it says "or if certificate
 20 accompanying the absentee ballot the voter
 21 received by facsimile transmission or
 22 electronic mail is missing," which is --
 23 MR. MCDONELL: This isn't a
 24 facsimile.
 25 MR. ARNTSEN: So this ballot has

= = = = =
IN RE: 2020 PRESIDENTIAL ELECTION RECOUNT
= = = = =

Madison, Wisconsin
November 21, 2020

Reporters: Taunia Northouse
Jessica Bolanos

Page 2

1 TRANSCRIPT OF 2020 PRESIDENTIAL
 2 ELECTION RECOUNT, taken before Taunia Northouse and
 3 Jessica Bolanos, notaries public in and for the State
 4 of Wisconsin, at the offices of Monona Terrace,
 5 1 John Nolen Drive, City of Madison, County of Dane,
 6 and State of Wisconsin, on the 21st day of November
 7 2020, commencing at 8:39 a.m.

A P P E A R A N C E S

10 ATTORNEYS FOR JOE BIDEN AND KAMALA HARRIS:
 11 Diane M. Welsh, Christa O. Westerberg, David Anstaett

13 ATTORNEYS FOR DONALD J. TRUMP AND MIKE PENCE:
 14 Christ Troupis, Lou Esposito, James Troupis,
 15 Wren Williams

17 ATTORNEY FOR THE BOARD OF CANVASS:
 18 David Gault

20 BOARD OF CANVAS MEMBERS:
 21 Scott McDonell (Chair), Allen Arntsen, Joyce Waldrop

Page 4

1 designated spots. It looks really good right now.
 2 So I really appreciate that. We really need to
 3 keep our social distance.
 4 So the way -- masks work really well, but
 5 they work in conjunction with distance. They
 6 don't work by themselves. If you're standing
 7 right next to somebody for 20 minutes who is
 8 infected, mask or not, it isn't going to help you.
 9 So it really doesn't take an hour. It takes 15,
 10 20 minutes. So really protect yourself and your
 11 family members who you're going to see over the
 12 holidays.
 13 Only tabulators, county staff, should touch
 14 anything election related. I know it's hard with
 15 these screens. You can't hear each other very
 16 well sometimes, but don't reach through this
 17 little gap and touch anything if you're an
 18 observer; okay? Imagine if someone else did that
 19 and what you would think of that. So I know it
 20 might just be by accident. There should only
 21 be -- if you need a pen for any reason, it needs
 22 to be a colored pen of green or purple. And
 23 there's a bunch out. If you don't have a black, a
 24 blue, or a pencil -- we don't want anyone being
 25 accused of marking a ballot or something looks

Page 3

1 MR. McDONELL: Okay, everybody. We're
 2 going to get started. I appreciate everyone being
 3 here and following the rules. I'm just going to
 4 go over a couple things. I'm Scott McDonell. I'm
 5 the Dane County Clerk. This is Allen Arntsen
 6 representing the Democratic Party on the Board of
 7 Canvass; Joyce Waldrop representing the Republican
 8 Party. We're the three members that make
 9 decisions on things like the objections to
 10 ballots, et cetera.
 11 Just an overview, we're going to be in three
 12 -- four areas today. There are two tables
 13 anterior here, two over there, two over here,
 14 where they'll be counting ballots and looking --
 15 and counting envelopes. Those are just counts to
 16 see that the numbers match, not to see whether the
 17 vote total for Biden and Trump. That will go on
 18 on the far end. Jon, way -- Jon, the
 19 Sheboygan County Clerk, has been calling or
 20 helping me down there. They will -- that total
 21 counting will be going on in those high-speed
 22 scanners down there. And they will be displaying
 23 ballots on the screen, just so you guys understand
 24 the process.
 25 And then the observers must stay in their

Page 5

1 suspicious, or I don't want to see something on
 2 YouTube later. So please, that's for everyone's
 3 own protection.
 4 And let's see. Try to keep your voices down
 5 for a couple of reasons. It gets really hard to
 6 hear. We need to be quiet in the Board of Canvass
 7 here, but if the sound goes up, then we have to
 8 get louder, and it's just really hard on
 9 everybody.
 10 Also, talking is what spreads the virus. It
 11 showed in a classroom if one of the children has
 12 COVID, it doesn't spread because they're listening
 13 to the teacher. If the teacher has COVID, all the
 14 kids are going to get it. So that's where we need
 15 to keep our voices down and try to talk low. And
 16 if everyone's talking low, that helps. The
 17 problem is, is everyone starts talking, you have
 18 to talk louder to just be heard on a normal level.
 19 And that's it.
 20 So we're convening the Board of Canvass.
 21 We're calling it to order. And you guys can start
 22 opening the bags and get going down there. And
 23 then we'll probably meet in a few minutes if
 24 that's okay with you guys. All right?
 25 Thanks, everybody.

Page 14

1 ensure that anything where the challenge was
 2 defeated, those materials get in the right place
 3 again?
 4 MR. McDONELL: YEAH.
 5 MS. WELSH: Like, so there just seems to
 6 be the potential for materials being disconnected
 7 with their ward and not reconnected --
 8 MR. McDONELL: I think we can manage
 9 that. Okay? Are we good with this topic?
 10 MR. JAMES TROUPIS: Yes, that's good
 11 with that topic, the first procedural question I
 12 wanted to make sure.
 13 MS. WELSH: Those are the materials
 14 (indicating). So we will provide a separate set
 15 for the record and have them marked.
 16 MR. ARNTSEN: With exhibit numbers.
 17 (Recess)
 18 MR. JAMES TROUPIS: So the next
 19 procedural question has to do with -- because
 20 today we'll be getting to counting ballots. So as
 21 you know, statewide they do an audit of machines.
 22 And Madison and Milwaukee County are excluded from
 23 that audit because we're in recount. It seems to
 24 me to avoid -- there's been a lot of worry, a lot
 25 of conspiracy theories vis-à-vis machines counting

Page 16

1 why we didn't start yesterday because we didn't
 2 have the public test notice 48 hours.
 3 MR. JAMES TROUPIS: Oh, well, I
 4 apologize. I was unaware.
 5 MR. McDONELL: So yeah. So there are
 6 wards that are hand counted for the audit.
 7 MR. JAMES TROUPIS: Right.
 8 MR. McDONELL: So there was a public
 9 test. As we go along, I actually was considering
 10 taking one of the hand counted ones that we did
 11 and running through the tabulator to match it.
 12 But I -- if we could put that issue off, I think I
 13 would want to do that. But we did do a public
 14 test, and it did show the correct tabulation. So
 15 I understand your point.
 16 MR. JAMES TROUPIS: But you understand
 17 -- that's fine. And again this is helpful, you
 18 know, with everybody on this. Apparently you
 19 thought of the same exact thing. So that's fine.
 20 The third item is we've been trying to deal
 21 with -- yesterday we were trying to deal with the
 22 absentee in-person vote. So you provided us with
 23 an Excel spreadsheet late yesterday. And forgive
 24 the timing. You know, I was only able to look at
 25 it early this morning. And what I wanted to tell

Page 15

1 ballots.
 2 MR. ARNTSEN: Let Scott.
 3 MR. McDONELL: We're hand counting those
 4 audit votes. Is that your question?
 5 MR. JAMES TROUPIS: No, it wasn't a hand
 6 count question. I was suggesting that you count
 7 out a number of ballots to begin with and
 8 essentially do an audit of the machine. In other
 9 words, you know, here's a hundred ballots.
 10 Everybody's agreed these are a hundred ballots A
 11 or B and then run them through as they would in a
 12 normal audit so that you verify the machine at the
 13 front end that it is an accurate count. It will
 14 assure the public that there's an accurate count.
 15 MR. McDONELL: So we did a public test
 16 of machines where a test deck was run through and
 17 truly counted before --
 18 MR. JAMES TROUPIS: When did you do
 19 that? I'm sorry. I wasn't here.
 20 MR. McDONELL: That was the first thing.
 21 It was noticed for 8 a.m. for today in a public
 22 test.
 23 MR. JAMES TROUPIS: Oh, yesterday?
 24 Yeah.
 25 MR. McDONELL: Today. We had -- that's

Page 17

1 you is we're looking at that and we'll get back to
 2 you about it.
 3 MR. McDONELL: Sure.
 4 MR. JAMES TROUPIS: So I wanted to let
 5 you know that we're trying to address the
 6 questions from yesterday by looking at that, and I
 7 want to tell you I can't talk about yet because I
 8 just haven't had a chance to look at it carefully.
 9 It appears to be much of the information that
 10 might satisfy a good deal of the problems that
 11 we've been --
 12 MR. McDONELL: So you reserve the rights
 13 to talk about that later? That's fine.
 14 MR. JAMES TROUPIS: That's all. I
 15 didn't want you to think that we had forgotten or
 16 that we had somehow put that off. We just saw it
 17 late last night.
 18 MR. ARNTSEN: You did put it off.
 19 MR. JAMES TROUPIS: That's good. So we
 20 will come back to it sometime today.
 21 MR. McDONELL: Thank you, guys.
 22 Appreciate it. Anything else?
 23 MR. JAMES TROUPIS: I did not have any.
 24 Did we have anything else? No. That's good,
 25 except that please --

1 MR. McDONELL: If you could focus on
 2 helping us. They're getting kind of slowed down
 3 over here like yesterday. So if you could --
 4 MR. JAMES TROUPIS: I'll talk to our
 5 team leaders.
 6 MR. ARNTSEN: Get them dispersed.
 7 MR. JAMES TROUPIS: Thank you. Our
 8 people were supposed to have hats this morning. I
 9 don't see them.
 10 (Recess)
 11 MR. McDONELL: Put it there. Just one?
 12 MR. WILLIAMS: If we're on the record, I
 13 can do it. This is Blooming Grove Wards 1 through
 14 3. And we have one objection -- or we have an
 15 objection to that ballot because it's missing a
 16 voter signature.
 17 MR. McDONELL: Okay. So Blooming Grove
 18 1 and 3, it is missing --
 19 MR. ARNTSEN: It is, yeah.
 20 MR. McDONELL: So three zero that this
 21 is a drawdown. So you've one drawdown.
 22 MR. ARNTSEN: It's one drawdown.
 23 CLERK: Thank you.
 24 MR. McDONELL: Sorry. I think it's the
 25 double mask.

1 There's no initials by the clerk.
 2 MS. WELSH: And we oppose the challenge
 3 because it's a clerk error, and the voter
 4 shouldn't be disenfranchised for a clerk error.
 5 There's not an overcount in the Town of Dunn that
 6 we're aware of, and it doesn't appear to be an
 7 absentee ballot.
 8 MS. WALDROP: So there's no evidence
 9 that we can point to that says -- well, there is
 10 because it went through the counter; right? It
 11 says -- I was looking for evidence that it was
 12 actually a ballot that was submitted by a person.
 13 And other than the fact that it went through the
 14 counter, there's no proof because there's no
 15 initials. It could have been anybody dropped this
 16 in someplace if it hadn't been through the
 17 counter. So this is on the counter as a record;
 18 right?
 19 MR. EXUM: We haven't counted all of the
 20 ballots yet so --
 21 MR. ARNTSEN: But initially. This is
 22 the recount.
 23 MR. EXUM: It came in with everything
 24 else.
 25 MS. WALDROP: So the numbers match is

1 CLERK: So how do we do that?
 2 MR. McDONELL: So just take an absentee.
 3 Make sure you can't see through it. Pull one out
 4 and change the vote totals. Segregate that
 5 ballot. Actually put it in that envelope.
 6 MS. WELSH: Does the Board of Canvass
 7 review it?
 8 MR. McDONELL: I'm going to let them do
 9 it unless there's an objection.
 10 SPEAKER: We just want to be able to
 11 watch it.
 12 MR. McDONELL: Yeah. Your observer
 13 should go to watch it over there. Then take that.
 14 And then we're going to do a plastic bag when you
 15 come back up.
 16 (Recess)
 17 MR. ARNTSEN: So it's Town of Dunn, and
 18 there's a ballot that doesn't have the clerk
 19 initials on it. And I believe what we said is
 20 this is okay because it's a clerk error.
 21 MS. WELSH: Oh, wait. We haven't put
 22 our challenge on the record.
 23 MR. WILLIAMS: To restate, this is Town
 24 of Dunn. It says all wards. There's no initials.
 25 This is an official ballot. That's our objection.

1 what I'm saying?
 2 MR. EXUM: We don't know yet.
 3 MS. WALDROP: In the initial report and
 4 canvassing, was there an overvote in the Town of
 5 Dunn?
 6 MR. EXUM: I don't know.
 7 MS. WALDROP: I'm not ready to say this
 8 is a legitimate ballot.
 9 MR. McDONELL: Is Baxter the one that's
 10 doing it?
 11 MR. WILLIAMS: I'm objecting to it. He
 12 just brought it forward.
 13 MR. McDONELL: Okay. We can rule on it.
 14 It is the --
 15 MS. WELSH: Baxter's getting the clerk
 16 because Joyce had a concern.
 17 MS. WALDROP: I had a concern.
 18 MR. McDONELL: Okay. Sure.
 19 (Discussion off the record)
 20 MR. EXUM: I don't see the clerk, but I
 21 have the inspector's statement. So the total
 22 number of ballots cast was 3625.
 23 MS. WALDROP: And the count?
 24 MR. EXUM: Optical scan ballots 3625.
 25 MS. WALDROP: Okay. So obviously it

= = = = =
IN RE: 2020 PRESIDENTIAL ELECTION RECOUNT
= = = = =

Madison, Wisconsin
November 22, 2020

Reporters: Taunia Northouse
Jessica Bolanos

Page 2

2020 Presidential Election Recount, 11-22-2020

E X H I B I T S

1 BOARD EXHIBITS

No.	Description	Identified
Exh. 1	Order by the Board	59

6 TRUMP ADMINISTRATION EXHIBITS

No.	Description	Identified
Exh. 6	Affidavit	9
Exh. 6-A	Supporting document	9
Exh. 6-B	Supporting document	9

12 (Original exhibits retained by Dane County Board of
Canvassers.)

Page 3

TRANSCRIPT OF 2020 PRESIDENTIAL

1 ELECTION RECOUNT, taken before Taunia Northouse and
2 Jessica Bolanos, notaries public in and for the State
3 of Wisconsin, at the offices of Monona Terrace,
4 1 John Nolen Drive, City of Madison, County of Dane,
5 and State of Wisconsin, on the 22nd day of November
6 2020, commencing at 8:22 a.m.

A P P E A R A N C E S

8 ATTORNEYS FOR JOE BIDEN AND KAMALA HARRIS:
9 Diane M. Welsh, Karen Timberlake, Christa Westerberg,
10 David Pekarek Krohn, Chris Hanewicz
11

12 ATTORNEYS FOR DONALD J. TRUMP AND MIKE PENCE:
13 Christ Troupis, Lou Esposito, James Troupis,
14 Wren Williams, Sophia Papandreas Tjotjos
15

16 ATTORNEY FOR THE BOARD OF CANVASS:
17 David Gault
18

19 BOARD OF CANVASS MEMBERS:
20 Scott McDonell (Chair), Allen Arntsen, Joyce Waldrop
21
22
23
24
25

Page 4

1 MR. McDONELL: I'm Scott McDonell. I'm
2 the Dane County Clerk. The Board of Canvass is
3 Allen Arntsen, Joyce Waldrop. I don't know where
4 Joyce is, but you've all seen her the past couple
5 days.
6 There are four areas. This is one tabulation
7 area. There's another one. There's another one.
8 And then the actual high-speed scanners are
9 counting the votes for the different candidates.
10 Here we're counting the ballots and reviewing the
11 envelopes and counting the envelopes and matching
12 them together.
13 We really need to enforce the social
14 distancing because, you know, masks help a lot,
15 but the actual six feet separation combined is
16 what is going to slow COVID or stop it from
17 spreading. So please when you're asked to
18 separate or keep your mask on, you need to do
19 that.
20 There should be no black or blue pens in this
21 room, you know, a pencil so that no one can accuse
22 you of filling in an oval. There will be purple
23 and pink pens. So we'll try to supply you with
24 those if you need a pen. But please just for all
25 of our sakes.

Page 5

1 Put your -- excuse me -- cell phones on
2 silent or vibrate. Do that now. We would
3 appreciate it. And then try to keep the noise
4 down because sometimes what happens, you guys know
5 how it is in a restaurant. It gets loud and you
6 get louder, and it gets louder and louder and
7 louder. So let's all try to keep our voices down.
8 And also that helps minimize the spread of COVID.
9 It's the speaking that -- is what pushes the virus
10 out.
11 Okay. So one of the things we're going to
12 try to get doing, and one thing I did want to
13 point out, is that we're not going to start up the
14 high-speed scanners right away. So there's not
15 going to be really any action down there till a
16 little bit later. But maybe I'll make an
17 announcement when that starts, make sure there's
18 observers, obviously, when that starts. But
19 that's how we're starting this morning. Those
20 things can catch up very easily to what's
21 happening out here.
22 All right. So I'll call this to order. And
23 as soon as staff's ready to start the first two
24 communities, and then we'll, as soon as we can,
25 start this bunch.

Page 14

1 that Attorney Troupis presented to us that he
 2 wants us to decide?
 3 MR. JAMES TROUPIS: If it is as I
 4 stated, you will be able to check it. If it's
 5 not, I certainly would agree.
 6 MS. WELSH: Again for purposes of this
 7 recount, I don't think we need to identify the
 8 exact number. But we will review it, yes.
 9 MR. JAMES TROUPIS: Are you agreed that
 10 if my representation is correct, the Board may
 11 accept that as the number?
 12 MS. WELSH: Again, we agree it's
 13 publicly available information, which again may be
 14 subject to change based on what happens today.
 15 MR. McDONELL: If you need -- if you
 16 want to say anything more, that's fine. But I
 17 would say we would just want a little bit of
 18 time --
 19 MR. ARNTSEN: Yeah.
 20 MR. McDONELL: -- to review it
 21 ourselves. I think this is helpful. So -- but we
 22 need to, you know --
 23 MR. JAMES TROUPIS: Oh, no, sure. We're
 24 all trying to solve problems.
 25 MR. McDONELL: If we have a question, we

Page 16

1 MR. ARNTSEN: There we go.
 2 MR. WILLIAMS: Thank you.
 3 (Recess)
 4 MR. WILLIAMS: Village of Cross Plains.
 5 There are four ballots here. If the clerk -- I'm
 6 sorry. The Board of Canvassers could later enter
 7 each --
 8 MR. ARNTSEN: Yeah, numbering.
 9 MR. WILLIAMS: -- number, these are all
 10 four missing the initials at the top. Same
 11 objections. That's why we'd ask for a drawdown.
 12 MS. WELSH: First, we oppose to a
 13 drawdown based on the missing initials. The first
 14 ballot is a military voter. Because that's sent
 15 electronically, clerks can't figure out how to
 16 initial something that's sent via email or fax.
 17 So I want to point out that's a military ballot.
 18 The fourth ballot, AB 936, is an in-person
 19 voting with the clerk's office. This is voted in
 20 person. And again, where there has clerk error --
 21 I'm sorry, there's two military ballots here. I
 22 just want to correct the record. These first two,
 23 AB 1506 and AB 372, are military ballots that the
 24 clerk would have sent electrically and didn't
 25 physically initial the electronic copy. AB 316,

Page 15

1 might pull you back up and try to figure something
 2 out. Does that make sense?
 3 MR. JAMES TROUPIS: Yeah.
 4 MR. McDONELL: And we'll try to get at
 5 this soon.
 6 MR. JAMES TROUPIS: Thank you very much.
 7 (Recess)
 8 MR. WILLIAMS: So my name is
 9 Wren Williams. This is from the Village of
 10 Cross Plains. I'm not sure exactly which wards
 11 they're all out of. But there are six of them,
 12 and they're all missing the top initials. And
 13 that we just restate our objection and challenge
 14 previously stated.
 15 MS. WELSH: Yeah. We oppose the
 16 drawdown based on this clerk error for reasons
 17 previously stated on the record.
 18 MR. McDONELL: Okay. Anything else?
 19 MR. WILLIAMS: No.
 20 MR. McDONELL: Based on our previous
 21 rulings, this would be a two-one vote to not
 22 reject these six, and they will not be drawn down.
 23 And I can give you the numbers if you want:
 24 AB 1618, AB 1615, AB 167, AB 158, AB 1617,
 25 AB 1616.

Page 17

1 AB 936, simply clerk error. The voter shouldn't
 2 lose their vote based on clerk error. So we
 3 oppose the drawdown.
 4 MR. WILLIAMS: Just quick response. I
 5 want to make sure the record understands that
 6 these two that have been identified as military,
 7 they could also just be overseas voters.
 8 MR. ARNTSEN: And just to make sure
 9 everybody's in agreement -- and I can get Scott if
 10 need be, but this is the same issue that has come
 11 up a number of times with the lack of initials
 12 there. And what the ruling has generally been is
 13 two to one to accept that, with Scott and I on the
 14 two and Joyce is the one.
 15 MR. WILLIAMS: I'm okay with that being
 16 accepted.
 17 MR. ARNTSEN: Joyce, are you okay with
 18 just --
 19 MS. WALDROP: Yes.
 20 MR. ARNTSEN: So there will be no
 21 drawdowns on this.
 22 MS. WELSH: I don't know, Joyce, how
 23 you've been ruling on the electronic ones. So I
 24 don't recall.
 25 MR. ARNTSEN: I'm not trying to put

Page 54

1 MR. McDONELL: And then don't draw that
 2 down.
 3 And, unfortunately, on this one, even though
 4 I get the point quite clearly that the addresses
 5 are up here and you can actually read their names,
 6 if you couldn't read their names, we would not be
 7 able to figure this out. I -- this is a two-one
 8 vote, Joyce and I, to draw down two ballots.
 9 Allen is a no. Two drawdowns.
 10 MR. CHRIST TROUPIS: Thank you.
 11 (Recess)
 12 MR. WILLIAMS: City of Verona, Ward 1,
 13 two absentee ballot envelopes. Neither have
 14 witness signatures or addresses. We ask for a
 15 drawdown as previously stated in the record.
 16 MS. WELSH: No comment.
 17 MR. McDONELL: No comment? And I just
 18 want to make sure they weren't in person. I just
 19 want to look at it further.
 20 MS. WELSH: Yeah. Can you tell?
 21 MR. McDONELL: They don't have addresses
 22 on the back, but they don't have check marks and
 23 there isn't any stamp. These could have been
 24 easily dropped off like in a dropbox or something.
 25 So it's probably what it was.

Page 56

1 Two one to draw this down.
 2 So this is also a drawdown.
 3 MR. WILLIAMS: Okay. So these are two
 4 ballots -- or two envelopes here. They are both
 5 missing the initials at the top. And we would
 6 object to them, ask for a drawdown for the same
 7 reasons as previously stated.
 8 MR. McDONELL: So the only problem is
 9 the lack of a signature at the top?
 10 MR. WILLIAMS: That's correct. The
 11 initials.
 12 MR. ARNTSEN: The initials, clerk's
 13 initials.
 14 MR. McDONELL: Initials.
 15 MS. WELSH: And for reasons previously
 16 stated on the record, we oppose the drawdown.
 17 MR. McDONELL: So this has been I
 18 think --
 19 MS. WELSH: Clerk error, I think.
 20 MR. McDONELL: Two-one vote to not draw
 21 these down just because of the initials. So these
 22 are okay.
 23 Others? Is that it? Four drawdowns.
 24 MR. WILLIAMS: Before we leave, have we
 25 been stating by name or number the ones with the

Page 55

1 MS. WELSH: Two from the same household.
 2 MR. McDONELL: So I would say three zero
 3 they need to be drawn down.
 4 MR. ARNTSEN: Wait. Let me look at
 5 something. Oh, because there's no witness
 6 signature.
 7 MR. McDONELL: Three zero these are
 8 drawdowns. Oh, this is really obvious.
 9 MR. WILLIAMS: Do you want to do it for
 10 me? I'm kidding. There's two here. They're from
 11 the City of Verona, Ward 2. They're both missing
 12 signatures -- voter signatures.
 13 MS. WALDROP: Oh, my gracious.
 14 MR. McDONELL: No comment? Okay.
 15 Consistent with our previous, these are two
 16 drawdown, no voter signatures.
 17 MR. WILLIAMS: This is from City of
 18 Verona, Ward 5, and it is missing an address for
 19 the witness signature.
 20 MS. WELSH: For reasons previously
 21 stated on the record -- can you turn it over. For
 22 reasons previously stated on the record, we don't
 23 believe there should be a drawdown.
 24 MR. McDONELL: So this was mailed. It
 25 is missing the address. I can't read the name.

Page 57

1 initials? So if those two could be specified, the
 2 ones that were not drawn down that are missing the
 3 initials at the top. That's what we have been
 4 doing?
 5 MR. McDONELL: Okay. Yeah, because we
 6 were doing numbers, but now we don't have numbers.
 7 Do you have these, or you need these?
 8 THE CLERK: City of Verona. These ones
 9 we're not drawing down?
 10 MR. WILLIAMS: If they do not have the
 11 numbers, we've been saying the name; right? Is
 12 that right?
 13 MR. McDONELL: Okay, sure. So the two
 14 that we're not drawing down, Pamela Gust, G-U-S-T,
 15 and Kallie, with a K, Knueppel, K-N-U-E-P-P-E-L.
 16 MR. WILLIAMS: Thank you.
 17 MR. BESANT: Those are now drawdowns?
 18 MR. McDONELL: No.
 19 MR. WILLIAMS: So what was the total
 20 drawdowns?
 21 MR. BESANT: Five drawdowns.
 22 (Recess)
 23 MR. ARNTSEN: An issue had arisen
 24 earlier concerning ballot applications and the
 25 absentee ballot envelope and separate applications

Page 58

1 and requests to look at applications. And the way
 2 that we have resolved it is that the Board by a
 3 two-to-one vote, with Chairman McDonell and I,
 4 Allen Arntsen, yes, and Joyce Waldrop no, are
 5 making the following order. And it is my
 6 understanding that the parties have no objection
 7 to the order. And the order is as follows: The
 8 WEC identifies, through publicly available
 9 information, that 61,193 electors cast absentee
 10 ballots in person in Dane County. This
 11 constitutes the beginning total of in-person
 12 absentee voters. A final total may be determined
 13 after the recount to account for drawdowns and
 14 in-person voters for which a ballot may not have
 15 been submitted.

16 2. Each of the in-person ballots delivered
 17 in person were accompanied by a signed EL-122
 18 language.

19 3. The Board concludes that the EL-122 is
 20 legally sufficient to satisfy Wis Stat
 21 Section 6.86(1)(ar) and 9.01(1)(b)(2).

22 No. 4. On November 20, 2020, the Board
 23 determined that a review of all absentee ballot
 24 applications is not required by the recount
 25 statute, Wis Stat Section 9.01(1)(b). The Board

Page 60

1 MR. McDONELL: Their concern is that
 2 that looks a lot like this. Of course this could
 3 be -- I don't know that a husband or wife's
 4 signature would look similar so I'm not -- I think
 5 it's okay if this address doesn't match this
 6 because that's not an issue.

7 MR. WILLIAMS: That wasn't the issue.

8 MR. McDONELL: I know. What you're
 9 saying is that looks a lot like that is your
 10 problem.

11 MR. WILLIAMS: Yeah. And a lot of times
 12 when they did look the same and they're in the
 13 same household, that usually isn't that
 14 questionable. This is a little more questionable.

15 MR. PEKAREK KROHN: So what it seems
 16 like I think what they're saying is the same
 17 person signed as both the voter and the witness,
 18 which if the address was the same, there might be
 19 some support for that. But here the addresses
 20 aren't even the same, so it looks like there's a
 21 separate witness that signed that happens to
 22 have --

23 MR. McDONELL: Kind of, yeah, a similar
 24 way of signing but --

25 MS. WALDROP: I think it's okay.

Page 59

1 granted the Trump Campaign a standing objection as
 2 to all absentee ballots.

3 5. The Board concludes as to in-person
 4 absentee voters, it is not necessary to make
 5 additional written absentee applications available
 6 at this time for further inspection. That's the
 7 order.

8 MR. JAMES TROUPIS: That is consistent
 9 with the language.

10 MR. McDONELL: Okay. Any comments? Are
 11 we good on that? Thank you.

12 (Board Exhibit No. 1 marked for
 13 identification)
 14 (Recess)

15 MR. WILLIAMS: This is Village of
 16 Cottage Grove, Ward 3, envelope 3906. And so the
 17 issue with this one is that those two signatures
 18 are very similar and then they have different
 19 addresses. That's a different address and this is
 20 a different address. So we didn't feel like they
 21 were in the same household.

22 MR. PEKAREK KROHN: So there's no
 23 signature matching requirement. We'd object to a
 24 drawdown. Two different people signed it.
 25 There's nothing wrong with this ballot.

Page 61

1 MR. McDONELL: Three zero.

2 MR. ARNTSEN: We don't signature match.

3 MR. WILLIAMS: All right. This is 1047,
 4 and the issue with this one is that it is an
 5 overseas or military ballot, but it wasn't
 6 initialed which we have a standing -- or we've
 7 already made our arguments on that one. So that's
 8 why we continue to object.

9 MR. McDONELL: Do you want to say
 10 something on that one?

11 MR. PEKAREK KROHN: Just that we object
 12 to a drawdown for the same reasons we stated on
 13 the record; especially this appears to be overseas
 14 likely military.

15 MS. WALDROP: It's military -- I think
 16 it's okay.

17 MR. McDONELL: She's talking to herself.

18 MR. ARNTSEN: Three zero it's good.

19 MR. PEKAREK KROHN: Three zero to not
 20 draw down?

21 MR. McDONELL: Yeah. No drawdown. Is
 22 there another one?

23 MR. WILLIAMS: Yeah. There's three
 24 more. This one's missing a signature of the
 25 witness and of the address, 3183.

= = = = =
IN RE: 2020 PRESIDENTIAL ELECTION RECOUNT
= = = = =

Madison, Wisconsin
November 24, 2020

Reporters: Taunia Northouse
Jessica Bolanos

Page 2

E X H I B I T S

No.	Description	Identified
CITY OF MADISON EXHIBITS		
Exh. 1	Affidavit from City Attorney Haas and City Clerk Witzel-Behl in support of Democracy in the Parks	50
Exh. 2	Affidavit from City Attorney Haas and City Clerk Witzel-Behl in support of Democracy in the Parks	50
TRUMP ADMINISTRATION EXHIBITS		
No.	Description	Identified
Exh. 10	List of objected-to ballots	37
Exh. 11	List of objected-to ballots	43
Exh. 12	Affidavits RE Democracy in the Parks	50
Exh. 13	Photo of 75 non-objected-to Town of Westport Ballots with clerk initials and an affidavit cover sheet	79

(Original exhibits retained by Dane County Board of Canvassers.)

Page 4

1 MR. McDONELL: Okay, everybody. I'm Scott
 2 McDonell. Let's get going this morning. I want
 3 to just introduce the Board of Canvass again:
 4 Joyce Waldrop representing the Republican Party,
 5 Allen Arntsen representing the Democratic Party,
 6 and myself, the Dane County Clerk.
 7 Let's go over the -- first I just want
 8 to mention that my friend, Wren, here from
 9 Virginia came in to -- I want you to describe the
 10 weather today. Locally, we would describe this as
 11 partly cloudy. This would shut down schools for a
 12 week in Virginia.
 13 MR. WILLIAMS: It would.
 14 MR. McDONELL: I know. I grew up in
 15 Maryland.
 16 The plan for today, we're going to
 17 finish Middleton. We're going to start and finish
 18 Fitchburg. And Sun Prairie is a big one. We're
 19 going to make sure -- hopefully we're done with
 20 Sun Prairie. They use one large reporting unit.
 21 It will be a little bit different, but we should
 22 be able to follow it fine. And if we can also
 23 hopefully get done -- almost done with the massive
 24 sorting. We're already far enough ahead to make
 25 sure Madison rolls when we get to it. So it would

Page 3

1 TRANSCRIPT OF 2020 PRESIDENTIAL
 2 ELECTION RECOUNT, taken before Taunia Northouse and
 3 Jessica Bolanos, notaries public in and for the State
 4 of Wisconsin, at the offices of Monona Terrace,
 5 1 John Nolen Drive, City of Madison, County of Dane,
 6 and State of Wisconsin, on the 24th day of November
 7 2020, commencing at 8:19 a.m.

A P P E A R A N C E S

8
 9 ATTORNEYS FOR JOE BIDEN AND KAMALA HARRIS:
 10 Diane M. Welsh, Christa Westerberg,
 11 David Pekarek Krohn
 12
 13 ATTORNEYS FOR DONALD J. TRUMP AND MIKE PENCE:
 14 Jim Troupis, Christ Troupis, Sophia Papandreas
 15 Tjotjos, Wren Williams, Megan Revis Frederick,
 16 Lou Esposito, Kyle Hudson
 17
 18 ATTORNEY FOR THE BOARD OF CANVASS:
 19 David Gault
 20
 21 ATTORNEY FOR THE CITY OF MADISON:
 22 Michael Haas
 23
 24 BOARD OF CANVASS MEMBERS:
 25 Scott McDonell (Chair), Allen Arntsen, Joyce Waldrop

Page 5

1 be nice to get that one. We'll be doing really
 2 well if we get into Madison later. If not, we'll
 3 start it tomorrow morning. Hopefully we can get a
 4 few of those wards done later tonight.
 5 Just a reminder about the social
 6 distancing, masks. You know, it is really
 7 important to combine those two together. And try
 8 to limit your conversations because really if you
 9 are next to someone talking, like me and Allen,
 10 for 15 minutes, that's even with masks. So maybe
 11 just switch up who you're even talking to and
 12 stuff so you're not in that tightness. And keep
 13 your -- when you're eating or drinking, you know,
 14 pull down your mask. You put it back up. If
 15 you've got a whole bag of chips or something, you
 16 need to go in the hall just for your own sake and
 17 everyone else's. We appreciate that. I always
 18 say it's like if were Klingons and Romulans, the
 19 virus is the Borg. And if you don't know what I
 20 said, just Google that when you're waiting around
 21 later.
 22 All right. I'm going to try to work on
 23 some thank yous, not all of them at once. I
 24 really want to thank my own staff, Patty and
 25 Rachel, and all of the IT and Human Resources, Sam

Page 50

1 while. So you can take a break. You can sit and
 2 watch, whatever you want to do. But then you'll
 3 get to see all those ballots; okay? I wanted
 4 everyone to just be on the same page. So great.
 5 And that's it. Thanks, everybody.
 6 Actually, one last thing. What I'll do
 7 is I'll get back on the mic and give you a
 8 heads-up we're switching to inspection, get back
 9 in your seat so you know that you can see the
 10 ballots. So you're walking around now. I'll let
 11 you know. Okay. Thanks.
 12 (Recess)
 13 MR. McDONELL: Hey, everyone. I promised
 14 that I would announce when Sun Prairie ballot
 15 count was done and a ballot review would begin.
 16 If you want to be part of the observation or
 17 looking at the Sun Prairie ballots, that will
 18 begin in a couple minutes. Thanks.
 19 (City Exhibit Nos. 1 and 2 and
 20 Trump Exhibit No. 12 marked for
 21 identification)
 22 MR. WILLIAMS: This is City of Fitchburg.
 23 There are nine envelopes here. Each of them
 24 appears to have a corrected address because
 25 they're different from the handwriting and

Page 52

1 two one. This one's fine. So no drawdown.
 2 (Off the record)
 3 MR. McDONELL: We're going to get to some
 4 arguments about Madison and Democracy in the Park
 5 in a minute.
 6 MR. JAMES TROUPIS: So for the record, I'm
 7 Jim Troupis from the Trump Campaign. And we are
 8 today objecting to those votes that were cast and
 9 those ballots that were received, all ballots
 10 received in the Democracy in the Park process here
 11 in the City of Madison.
 12 To begin with, I'd like to have Mike
 13 Haas, who is the city attorney, if he could, he's
 14 got some affidavits to introduce about the event
 15 as well as to address the number. So Mike?
 16 MR. HAAS: Good afternoon. My name is
 17 Michael Haas, H-A-A-S. I'm the city attorney for
 18 the City of Madison. And hopefully that's better.
 19 I have entered a couple of affidavits in the
 20 record: One from me and one from the City clerk,
 21 Maribeth Witzel-Behl, to address the Democracy in
 22 the Park event and the ballots that were collected
 23 through that process. So my affidavit basically
 24 recounts correspondence I had with an attorney
 25 representing the leadership in the state assembly

Page 51

1 penmanship on each of those.
 2 MR. PEKAREK KROHN: And we'd say that these
 3 shouldn't be drawn down for the reasons previously
 4 stated.
 5 MR. McDONELL: Yeah, so three zero. These
 6 are all fine.
 7 MR. WILLIAMS: And then I've got another
 8 envelope here that's missing a city, state, and
 9 ZIP and does not match up there.
 10 MR. McDONELL: Right. I understand what
 11 you're saying. You couldn't just quickly
 12 ascertain.
 13 MS. WALDROP: What's the address? It doesn't
 14 say Fitchburg?
 15 MR. McDONELL: Then three zero.
 16 MR. ARNTSEN: We're good. You're okay.
 17 MR. McDONELL: Don't leave us. There you go.
 18 That's fine.
 19 MR. WILLIAMS: And then this one is missing a
 20 witness signature.
 21 MR. McDONELL: Okay, two one. This one is
 22 fine since it's clerk error.
 23 MR. WILLIAMS: And finally, this one is --
 24 I'm sorry, oh, missing the initials at the top.
 25 MR. McDONELL: Initials at the top. I think

Page 53

1 and the state senate, the Republican leaders,
 2 those bodies who were objecting to the event that
 3 was provided the day before the first Saturday
 4 that it was held.
 5 My affidavit also includes my response
 6 the following day to the attorneys. The gist of
 7 it is that that attorney was claiming that the
 8 Democracy in the Park event did not comply with
 9 Wisconsin law. It cited some statutes but not
 10 really any reason under those statutes that I
 11 could tell that the event would not be valid and
 12 those ballots would not be valid.
 13 So I responded to him to that effect and
 14 said that, as far as I could tell, the event
 15 complied with all laws because ballots would not
 16 be issued in the parks. Only ballots would be
 17 collected that had already been mailed out to
 18 voters. Sworn election officials would be
 19 collecting the ballots. And the ballots would be
 20 secured and then delivered to the clerk's office.
 21 And we thought that that was valid under
 22 Wisconsin Statute 6.87(6), which only requires
 23 returning the ballot to the clerk. It does not
 24 require the individual voter to return their
 25 ballot.

Page 54

1 I can sit in the park all day long and
 2 collect a hundred ballots from my friends and turn
 3 them in to the clerk, and that would be a valid
 4 process. This was actually a more secure process
 5 than that.
 6 And, in fact, I visited the parks. And
 7 at the end of the day, the clerks sent couriers to
 8 the parks to pick up the ballots. The couriers
 9 were required to have a photo ID. And they
 10 actually had to have a password to pick up the
 11 ballots.
 12 I witnessed in one case a courier
 13 arrived, got out of her car, did not have her ID.
 14 The worker sent her back to her car to get her
 15 license so they can match it up with who was
 16 supposed to collect the ballots. She did not know
 17 the password at that point, so they actually had
 18 to contact the clerk's office to verify her
 19 identity and that it was okay to send the ballots
 20 with her.
 21 The election officials could also serve
 22 as witnesses. There were two ways that voters
 23 could submit their ballots. They could bring
 24 their completed ballot in a sealed envelope with
 25 their signature and the witness signature and

Page 56

1 Those were considered to be absentee ballots just
 2 as any mailed-in ballots. They were assembled and
 3 then divided into the wards that they belonged to.
 4 So those ballots are no longer
 5 segregated. They cannot be identified at this
 6 point because anybody from anywhere in the city
 7 could go to any park in the city. It was not
 8 divided up by ward. And so when the ballots were
 9 received, they were put in the ballot boxes with
 10 the ballots from the appropriate wards.
 11 So I would just ask the -- and also the
 12 total number of ballots collected at Democracy in
 13 the Park was 17,271 ballots.
 14 So thank you. I'd be happy to answer
 15 any questions.
 16 MR. McDONELL: Thank you.
 17 MR. JAMES TROUPIS: No, I have no questions.
 18 I have no questions. Thank you, Mike.
 19 So as we look at this situation with
 20 Democracy in the Park, it appears to us -- and I
 21 think it is a fairly obvious attempt to get around
 22 Wisconsin's requirements for absentee votes that
 23 in fact what this was was an attempt to have
 24 something other than the absentee voting that we
 25 have in our state. In effect, it was in-person

Page 55

1 address. And that would merely be collected by
 2 the election officials. Or they could bring their
 3 blank ballot and fill it out in front of a witness
 4 at the park, and the witness would then sign the
 5 envelope and list their address as any other
 6 absentee ballot.
 7 That event took place on the last
 8 Saturday of October and the first -- I'm sorry,
 9 the last Saturday of September, September 26th,
 10 and the first Saturday of October.
 11 My letter to the attorney was delivered
 12 on September 26th, obviously several weeks before
 13 the election. We did not receive any response.
 14 There is a process permitting individuals to file
 15 a complaint with the Wisconsin Elections
 16 Commissions if they think a clerk is acting
 17 outside of the law and asking the Wisconsin
 18 Elections Commission to rule on the complaint.
 19 There was no complaint filed with the Wisconsin
 20 Elections Commission. There was no lawsuit filed.
 21 In fact, I had a conversation with the
 22 administrator and the chair of the Wisconsin
 23 Elections Commission on September 26th to ensure
 24 that we were in compliance with the law. Those
 25 ballots were collected at the end of the day.

Page 57

1 voting going on during two days well in advance of
 2 the deadline that is set by the statute.
 3 Now, if you look at what happened here,
 4 the details are really fairly well known. I don't
 5 think there's a lot of debate about that. There
 6 were over 200 sites around the city. And we've
 7 submitted an affidavit of Mr. Hudson, which just
 8 attaches a number of documents which are readily
 9 available out there on the Internet, about the
 10 event.
 11 For example, to the Biden Campaign there
 12 was little doubt that this was in fact simply an
 13 opportunity to have advanced voting, not some sort
 14 of specific absentee as required. Here's the ad
 15 which is in fact attached too.
 16 (Audio played as follows)
 17 SPEAKER: Hey, Madison. This year, voting
 18 early is a walk in the park, literally. On
 19 Saturday, September 26th and Saturday, October 3rd
 20 from 9:00 a.m. to 3:00 p.m., City of Madison poll
 21 workers will be in over 200 City parks registering
 22 voters, answering questions about voting, and
 23 accepting your completed absentee ballot.
 24 Absentee voters who still need to find a
 25 witness can just bring their blank ballot with

Page 58

1 them and have a poll worker serve as their
 2 witness. Poll workers will be wearing bright
 3 yellow vests and can be found by one of the "vote"
 4 yard signs you're used to seeing at your polling
 5 place. So make your plan now to return your
 6 ballot.
 7 Democracy in the Park, Saturday,
 8 September 26th or Saturday, October 3rd, 9:00 a.m.
 9 to 3:00 p.m. at any of the 200-plus City parks in
 10 Madison. Visit CityofMadison.com to learn more.
 11 That's CityofMadison.com.
 12 MR. BIDEN: I'm Joe Biden, candidate for
 13 president, and I approve this message.
 14 SPEAKER: Paid for by Biden for President.
 15 This event is hosted by the City of Madison and is
 16 nonpartisan. All are welcome.
 17 MR. JAMES TROUPIS: So the question -- and
 18 you're taking ballots. You're registering voters.
 19 You're helping them complete envelopes. You're
 20 instructing them on ballot processes. You're
 21 witnessing those who vote. All of those are
 22 attributes of in-person voting. But the exhibits
 23 that are attached to the affidavit of Mr. Hudson
 24 simply illustrate that fact.
 25 And I don't think again that there's

Page 60

1 So the only question for the Board is
 2 whether or not that section applies, that is
 3 Section 6.855. It does. It does. Let's look at
 4 the exact wording of that statute.
 5 It provides, "The governing body of a
 6 municipality may elect to designate a site other
 7 than the office of the municipal clerk or Board of
 8 Election Commissioners as the location from which
 9 electors of the municipality may request and vote
 10 absentee ballots and to which voted absentee
 11 ballots shall be returned by electors for any
 12 election."
 13 Well, electors. It says "electors."
 14 Why does it use the plural "electors"? Because
 15 it's an invitation for anyone from the public to
 16 come to this place. That's dramatically different
 17 than the explanation we just heard, which is that
 18 somehow a single witness could accept these.
 19 That's not what happened here. They invited all
 20 electors to come. This was a move of the office
 21 of the municipal clerk to 200 separate locations,
 22 when this statutory provision says you can't do
 23 that. Doesn't seem to be a debate you can't do
 24 that under the statute.
 25 So then the second question you ask,

Page 59

1 much debate about what in fact went on there. The
 2 whole question for the Board, and ultimately for
 3 all of us, is whether or not they could do that.
 4 And we heard from Michael, a fine attorney, about
 5 this.
 6 But if this is in-person voting, then
 7 it's governed by Section 6.855(1) of the statutes.
 8 That statute provides quite explicitly that if
 9 you're going to have multiple voting -- if you're
 10 going to have a voting location with clerks, with
 11 the clerks' offices, you must have the governing
 12 body, for example, authorizing. That did not
 13 happen here. The City of Madison did not
 14 authorize it. There was no vote by the Madison
 15 City Council.
 16 You have to be as near as practicable to
 17 the clerk's office. That didn't happen here. You
 18 had 200 sites. That certainly wouldn't be the
 19 case. And the statute requires in fact that you
 20 can only have one site. So 200 sites doesn't
 21 comply. So I think it can be accepted that if
 22 this is in-person voting, if this satisfies those
 23 requirements -- and certainly the Biden Campaign
 24 thought it was that -- then it cannot comply with
 25 the statute.

Page 61

1 well, obviously there was an attempt to move the
 2 entire office there. But what activities qualify?
 3 What activities make it subject to the statute?
 4 Again, it's fairly obvious. It says
 5 quite specifically that it's an activity covered
 6 by the statute when it is a place "to which voted
 7 absentee ballots shall be returned by electors for
 8 any election." Well, everybody agrees that's
 9 exactly what this did. You could return your
 10 absentee ballot to this location sponsored by the
 11 City for these. So it clearly met the statutory
 12 obligation.
 13 But we don't have to rely just on that
 14 statute. If we look deeper and ask the question
 15 "How do we vote absentee in Wisconsin?" There's a
 16 specific statute again on that. It's 6.87(4)(b).
 17 That's a provision of the statute that provides
 18 how you return ballots. And here's what it says:
 19 It says, "There are two ways to return ballots.
 20 The envelope shall be mailed by the elector or
 21 delivered in person to the municipal clerk issuing
 22 the ballot or ballots."
 23 That's exactly what you did here. At
 24 most, you had the second item delivering it to the
 25 clerk. But you couldn't do that because then

Page 62

1 you're governed -- if it's a clerk's office and
 2 you're delivering it to the clerks, they could not
 3 receive it at 200 locations. The statute said you
 4 can only have one. Or, alternatively, if you
 5 think about the statute, it's consistent with the
 6 overall view of absentee voting. That absentee
 7 voting is done in advance, independently of the
 8 clerk's office, independently of those events, so
 9 as to avoid undue influence and the like. So if
 10 this was the municipal clerks, it violates the
 11 provision that restricts you to one office. If
 12 it's not to the municipal clerk, if it's something
 13 like what Mr. Haas said is delivered to anybody,
 14 well, that's not even allowed. There's no
 15 provision in the statute that allows it. There's
 16 only two ways you can bring these. It's not one
 17 of those. So it's either the municipal clerk's
 18 office, and therefore invalid, or it's otherwise.
 19 And that's not even authorized in the statute.
 20 So it all makes sense if you consider
 21 that we are not an advanced voting state. That is
 22 not what we are. We are a absentee voting state.
 23 One last comment I think I would make at
 24 this point, which is the commingling of the
 25 ballots from that day with all of the other

Page 64

1 discern that today or at a future date by simply
 2 looking for clerks and their signatures on them.
 3 And we could ultimately determine the number that
 4 were in fact witnessed on those dates.
 5 As to the secondary group, I have no
 6 method by which they can be identified. So we're
 7 left with relief to the whole city at least as to
 8 regard those. And again, those are the statutory
 9 methods. I'm not predicting -- there might be
 10 others. I just don't have any for you.
 11 MS. WELSH: Good evening. The Biden Campaign
 12 disputes that 17,271 ballots dropped off with
 13 election officials during Madison's Democracy in
 14 the Park event should found to be invalid.
 15 According to public reports, while the
 16 City of Madison clerk, Maribeth Witzel-Behl, was
 17 figuring out how to hold a presidential election
 18 during a once-in-a-century pandemic, she took her
 19 dog to the dog park, and she had the idea that we
 20 could use the parks to facilitate voting in a safe
 21 way. In an outdoor setting, her election
 22 officials could safely register voters, could
 23 serve as witnesses for absentee voters who needed
 24 a witness, and could serve as a staffed drop box
 25 for completed ballots. This idea reduced exposure

Page 63

1 ballots was extraordinarily inappropriate. Now, I
 2 don't have evidence as I stand here that this was
 3 a coordinated effort to avoid our ability to
 4 identify the ballots that were cast on that day.
 5 But everyone knew this was controversial. Counsel
 6 already said that. And yet they did nothing to
 7 allow us to be able to identify these ballots for
 8 later consideration.
 9 Under those circumstances, it seems to
 10 me the City's at fault. And the relief eventually
 11 that we ought to get for this has to be directed
 12 at the entire city. That's unfortunate, but it's
 13 a consequence of the City's own behavior.
 14 Thank you.
 15 MR. ARNTSEN: Attorney Troupis, just a quick
 16 question. For this court, what relief are you
 17 asking?
 18 MR. JAMES TROUPIS: I'm asking that those --
 19 that 17,271 ballots be drawn down in the city, or
 20 that we come up with some other form of relief if
 21 we can identify those ballots that were passed
 22 that day. You have two separate sets of ballots.
 23 You have those ballots that are I think readily
 24 identifiable as having been witnessed by the
 25 clerks. And for that group we could in fact

Page 65

1 to COVID-19 for the absentee voters, for her
 2 staff, and for voters who voted on election day by
 3 reducing the number of voters who would feel
 4 compelled to show up in person and vote on
 5 November 3rd.
 6 This effort also addressed concerns that
 7 many voters had about mail delays or reliability.
 8 Election officials were -- as indicated in their
 9 materials, election officials had processes in
 10 place to secure all of the envelopes that were
 11 submitted those days, and they were tracked and
 12 voters could look back to see the ways -- to see
 13 that their vote had arrived.
 14 Again, the officials acted as mobile
 15 staffed drop boxes.
 16 Attorney Troupis would have you believe
 17 that this was in-person voting. I have voted in
 18 person. Attorney Troupis has voted in person.
 19 There's one critical difference here. You could
 20 not get a ballot at the parks.
 21 I observed a couple of the parks. I saw
 22 a couple come up and ask for a ballot. When the
 23 workers explained that they don't have any ballots
 24 there to hand out, the people kind of prodded a
 25 little bit to kind of test the workers. And they

Page 70

1 the proper time. The proper time was when they
 2 admittedly knew what was happening and could have
 3 brought a challenge to the Elections Commission or
 4 to a court and simply did not.
 5 And to be clear, the Biden Campaign
 6 recognized it for what it was. You could ask
 7 questions. You could register to vote if you had
 8 the proper ID. And you could have a valid witness
 9 or drop it off. They made it clear they never
 10 called it early in-person voting.
 11 The Trump Campaign could have also
 12 encouraged their voters to drop off ballots; or if
 13 they thought it was an illegal event, they could
 14 have tried to shut it down. But they can't be
 15 heard now to try to punish Madison voters for
 16 relying on the actions of their officials. Thank
 17 you.
 18 MR. McDONELL: Thank you.
 19 MR. HAAS: Can I just briefly --
 20 MR. McDONELL: Yeah, Mike. Do you want to
 21 follow up?
 22 MR. HAAS: Just because the City's actions
 23 have been mentioned here, just a couple brief
 24 points. We had every reason to believe that this
 25 was no longer controversial after I sent my letter

Page 72

1 you change the statute.
 2 There's no requirement that a ballot be
 3 personally submitted from the voter to the clerk.
 4 Thank you.
 5 MR. McDONELL: Thank you. Any questions from
 6 Board of Canvass members? Do you have any
 7 questions, Joyce? Okay.
 8 Well, thank you for your arguments.
 9 We'll take it up now. One thing I do want to say,
 10 Mr. Troupis, I want to defend the clerk's office
 11 in the sense that since there was no legal
 12 challenge or complaint with the Elections
 13 Commission, and as you guys have been able to see
 14 for the last several days, they would have to take
 15 those ballots and put them in the correct wards to
 16 be processed on election day. So maybe right away
 17 something could have been done. Legally they
 18 would have to get them in the right wards. So I
 19 just want to defend any clerk, you know, to have
 20 to do that part of the job at some point.
 21 And to me, you know, really what was
 22 happening in the parks were human drop boxes. You
 23 mentioned that this was an obvious attempt, when
 24 you first -- first thing you said this was an
 25 obvious attempt to get around the early voting

Page 71

1 because we received no response. There was a
 2 second -- given that the attorney sent us a letter
 3 the day before the evening before the first event,
 4 there's still a second event seven days later.
 5 There was no objection raised in that entire time.
 6 Not only that, as I said, there was no
 7 complaint filed with the Wisconsin Elections
 8 Commission. Not only that, there was a lawsuit
 9 filed in the Dane County Circuit Court to try to
 10 have a judge confirm that these ballots would be
 11 valid. The Republican leadership was essentially
 12 invited into that lawsuit. They had notice of
 13 that lawsuit. That would have been an opportunity
 14 for them to bring their arguments to the court, to
 15 have a court rule on them.
 16 And as Attorney Welsh said, these voters
 17 for six weeks or whatever it was, they were under
 18 the understanding that those ballots were valid.
 19 And if an objection had been brought at the
 20 appropriate time and it was ruled that they were
 21 not valid, those voters would have had an
 22 opportunity to vote. Now they have no more
 23 opportunity to vote. This court cannot
 24 disenfranchise 17,000 voters because you don't
 25 like the statute. If you don't like the statute,

Page 73

1 law. And I view that as an obvious attempt to get
 2 around the postal service slow-down. And I don't
 3 see any -- you know, there should be a high bar to
 4 disqualify someone's vote.
 5 We've been doing it here when we haven't
 6 had a witness signature, when they haven't had
 7 a -- when the voter didn't sign it, and we're
 8 willing to do it in those situations. But those
 9 are cited in law.
 10 This is speculative. So I think we
 11 should move on. We'll rule on it. So two-one we
 12 are not going to draw down or do --
 13 MR. JAMES TROUPIS: Deny the objection?
 14 MR. McDONELL: Yeah, we're going to deny your
 15 objection on that. So Al and myself, and Joyce is
 16 the one. Okay?
 17 MR. JAMES TROUPIS: Mr. Chairman, may I say
 18 something else?
 19 MR. McDONELL: Yeah, sure.
 20 MR. JAMES TROUPIS: So this is one of the
 21 rare occasions when everybody's sort of listening
 22 in. And on behalf of the Trump Campaign, I want
 23 to thank the Board -- but even more, I want to
 24 thank all the tabulators and others who have given
 25 of their time this week to come in here, and thank

= = = = =
IN RE: 2020 PRESIDENTIAL ELECTION RECOUNT
= = = = =

Madison, Wisconsin

November 28, 2020

Reporters: Taunia Northouse

Jessica Bolanos

Page 2

E X H I B I T S		
TRUMP ADMINISTRATION EXHIBITS		
No.	Description	Identified
Exh. 16	Affidavit of Lori Opitz	6
Exh. 17	Affidavit of Jordan Moskowitz	7
Exh. 18	Affidavit of Kyle Hudson; Exhibits 1 through 6, supporting documents to the affidavits above	7
Exh. 19	Cover sheet prepared by Kathy Wilson for Town of Christiana	33
Exh. 20	Affidavit of Gerald Mullen regarding election day observations	80
Exh. 21	Affidavit by Gerald Mullen regarding Democracy in the Park	80
Exh. 22	Affidavit by Mary Carvey	80
Exh. 23	Variety of affidavits that were taken over the course of the recount	82

(Original exhibits retained by Dane County Board of Canvassers.)

Page 4

1 Scott McDonell (Chair), Allen Arntsen, Joyce Waldrop

2 MR. McDONELL: Okay. I'm going to call this

3 Board of Canvass to order. And so the technician,

4 you guys can get started down on that end. I will

5 say yesterday was amazing. We got through so

6 much, and everyone in this room did a great job.

7 And what I would ask is whatever you were doing

8 yesterday, do that today. I don't know what it

9 was. I'm not a superstitious ballplayer.

10 Whatever it was, do that again. We're down --

11 we're now up to 83 percent complete. So that's

12 amazing. It really is.

13 One thing I wanted to let you guys know

14 is we sort of bumped out that end table and pushed

15 things down a little bit. So hopefully later

16 today we're going to open one more table. If you

17 guys -- anyone here who's working this morning and

18 not this afternoon and is interested in continuing

19 to work to try to help push this through, let your

20 table captains know so we can make sure we make

21 that up later.

22 Obviously I just want to reiterate the

23 social distancing which has been great the last

24 few days, so six feet plus masks plus this air

25 handling system should work really well. So

Page 3

1 TRANSCRIPT OF 2020 PRESIDENTIAL

2 ELECTION RECOUNT, taken before Taunia Northouse and

3 Jessica Bolanos, notaries public in and for the State

4 of Wisconsin, at the offices of Monona Terrace,

5 1 John Nolen Drive, City of Madison, County of Dane,

6 and State of Wisconsin, on the 28th day of November

7 2020, commencing at 8:01 a.m.

A P P E A R A N C E S

9 ATTORNEYS FOR JOE BIDEN AND KAMALA HARRIS:

10 Diane M. Welsh, Ellen Campbell, Christa Westerberg,

11 Melissa Schultz

12

13 ATTORNEYS FOR DONALD J. TRUMP AND MIKE PENCE:

14 Jim Troupis, Christ Troupis, Lou Esposito,

15 Wren Williams, Sophia Papandreas Tjotjos,

16 Megan Revis Frederick

17

18 ATTORNEY FOR THE BOARD OF CANVASS:

19 Marcia MacKenzie, Sue Rauti, Assistant Corporation

20 Counsel

21

22 ATTORNEY FOR THE CITY OF MADISON:

23 Michael Haas, City Attorney

24

25 BOARD OF CANVASS MEMBERS:

Page 5

1 really they all work together. Again, no --

2 silence your cell phones. I haven't heard one in

3 a while, but it's on my list. And pens, obviously

4 we want to see no black or blue pens. Purple,

5 green, I guess you could use red but I hate red

6 ink.

7 So -- and then we have some -- we have

8 some procedural stuff we're going to be doing up

9 here, but it doesn't affect anything you're

10 looking for at all. So try not to get distracted.

11 Fortunately the Packers don't play till

12 7:20 tonight, so that's an added distraction you

13 don't have. Again it's just the bears so --

14 they're starting Trubisky at quarterback. So I

15 think that's -- all right. Oh, is it tomorrow

16 night? I thought it was tonight. Anyway, not

17 right now. Thank you all. I really appreciate

18 it.

19 (Recess)

20 (Trump Exhibit Nos. 16 through 18 marked

21 for identification)

22 MS. HILBY: City of Madison Ward 82 squeezing

23 in here.

24 MR. ARNTSEN: Clerk filled in.

25 MS. REVIS FREDERICK: City of Madison Ward

Page 6

1 82. We have an absentee envelope. We have a
 2 clerk cured address, different colored ink to show
 3 that with no initials or signatures on it but
 4 different colored ink. Therefore, we object on
 5 that basis.
 6 MR. ARNTSEN: Three-zero. It's good.
 7 MR. JAMES TROUPIS: So on the record, I'm
 8 Jim Troupis, and I'm here on behalf of the
 9 Trump Campaign to address a number of issues this
 10 morning. The first of those issues is a response
 11 to the -- in part, a response to the Kennedy
 12 affidavit that was supplied several days ago in
 13 here. For the Board's benefit, I -- for the
 14 Board's benefit, we have obtained and are
 15 submitting an affidavit of Lori Opitz, who's the
 16 town clerk in the Town of Hartford in
 17 Washington County. This is an affidavit that
 18 indicates that outside of Dane and
 19 Milwaukee County, in fact, applications were
 20 required in order to complete an EL-122 form; that
 21 the ballot envelope was not considered sufficient
 22 elsewhere in the state, and that this town clerk
 23 is attesting to that fact in the Town of Hartford.
 24 And we want to submit that to the record, ask that
 25 it be admitted.

Page 8

1 defining the question, which is failure to present
 2 identification. Indefinite confinement itself is
 3 a statutory right, an important one for certain
 4 individuals. And so we understand that. But
 5 because of the lack of identification it's a
 6 unique -- it's a unique one. And so we have
 7 attempted to determine an amount that would more
 8 accurately reflect the failure to prevent
 9 identification in a way that triggered an
 10 obligation from the clerks to inquire further and
 11 to disqualify those individuals that ought to have
 12 been disqualified.
 13 And so this is an objection to counting
 14 in Dane County of 8,907 individuals designated as
 15 those individuals added to the list of indefinite
 16 confined after March 25th, which is the date on
 17 which a Facebook post from Scott McDonell was
 18 submitted.
 19 I'm going to discuss that in a second
 20 because I do not mean to imply that Scott acted on
 21 the 25th with some evil motive but, rather, during
 22 the COVID crisis people were reacting in many
 23 different ways and attempting to accommodate
 24 voters. The statutes, however, obligated that
 25 certain steps be taken after that that were not

Page 7

1 MR. ARNTSEN: Exhibit 16 is admitted.
 2 MR. JAMES TROUPIS: Exhibit 16. We'd like
 3 that submitted to complete the record on that.
 4 The next issue this morning that we'd
 5 like to raise and I'm submitting -- that, by the
 6 way, was Trump Exhibit 16 previously. This is
 7 Trump Exhibit 17 and Trump Exhibit 18.
 8 Exhibit 17 is an affidavit of
 9 Jordan Moskowitz, and Exhibit 18 is an affidavit
 10 of Kyle Hudson. I'll discuss those in context,
 11 but I will offer those for admission.
 12 The question of indefinite confinement
 13 has arisen before in these proceedings. I'll give
 14 additional copies so that -- so you can reference
 15 that while I'm talking and you can see what I'm
 16 talking about.
 17 So we've previously objected to the
 18 indefinite confinement. Those are individuals who
 19 claimed indefinite confinement status and asked
 20 that those ballots be withdrawn or those envelopes
 21 be turned down. This board declined to do that.
 22 And that was as to all.
 23 In the process of the recount, we have
 24 been able to determine that a subset of that that
 25 we believe is potentially more accurate in

Page 9

1 undertaken.
 2 So if one looks at the Jordan Moskowitz
 3 declaration -- and there are two -- I apologize.
 4 These are the spreadsheets that would also go with
 5 those two exhibits which I must submit to you.
 6 Those are Exhibits 2 and 3. There's a
 7 placeholder. When you look at your
 8 Jordan Moskowitz declaration, what you'll see is
 9 it says spreadsheets. These are the actual
 10 spreadsheets.
 11 MR. ARNTSEN: These are part of Exhibit 18?
 12 MR. JAMES TROUPIS: That is correct. That is
 13 correct. Exhibit 17. Exhibit 17 is the Moskowitz
 14 declaration -- affidavit. It's the actual
 15 spreadsheets with the actual names.
 16 So what we did is we took the absentee
 17 information supplied by the Board and we broke
 18 that down in a number of ways. We took the
 19 absentee list and we asked -- we queried the
 20 application type and the date of the request and
 21 we asked only for indefinite confinement, which
 22 the list gave us. And then we took that and we
 23 asked further to eliminate anybody who had in fact
 24 an identification on file because some people
 25 actually had IDs on file, even though they were on

Page 10

1 the list.

2 We also asked if they were in special

3 voting units, that is at nursing homes and the

4 like. Obviously, they were the ones that were

5 intended, and that's shown on the list, so we were

6 able to take all of those people out. And if

7 there was any other comment that indicated that

8 the identification would have reasonably been

9 expected to occur, they were taken off the list.

10 That yielded, as Exhibit 2, 15,102

11 individuals. We started with 23,000. We got it

12 down to 15,102. We then organized it by date. We

13 asked what you can do from the data. In no sense

14 did we change any data. It was simply an Excel

15 spreadsheet, and we just broke it up that way.

16 And we asked how many occurred after March 25th.

17 Of that, 8,907 individuals following March 25th

18 claimed the status.

19 Attached to the affidavit if you look,

20 Exhibit No. 3 -- why don't you go ahead and put up

21 Exhibit No. 3. Let me show you. It's easier to

22 see, frankly. I can put it up on the Board. I

23 can show you this way.

24 So what we asked here of the data is how

25 many people claimed the status subsequent to the

Page 12

1 absentee -- all the absentees within our

2 subcategory occurred after March 25th. And we

3 know that number did not go down. That's what

4 this cumulative affidavit tells us.

5 Now, that's not the whole story of

6 course.

7 MR. McDONELL: Are you done with this chart?

8 Are you done with these charts now?

9 MR. JAMES TROUPIS: No. I'm done with the

10 charts. Take the charts down.

11 MR. McDONELL: It's creating a crowd.

12 MR. JAMES TROUPIS: No, I understand. Take

13 them down.

14 So as we know, the matter went to the

15 state Supreme Court, and the state Supreme Court

16 held that the Wisconsin Elections Commission

17 needed to do something to correct it and that they

18 felt that they had to some degree. I'm not going

19 to try to interpret what the Supreme Court said.

20 I'll only say that there was a subsequent post.

21 Now, this is when -- and I am pleased to

22 say the clerk of Dane County -- and we wanted to

23 make the record complete here so we included this

24 in our affidavit -- that the Dane County clerk in

25 fact put a second post out, withdrew the first

Page 11

1 Facebook post of March 25th. And you can see from

2 Exhibit 3 that we can identify exactly how many

3 occurred during that period. So we wanted to make

4 sure that we -- that what happened after that, you

5 can see there's a low level after that, but that

6 was the primary period. That's not unexpected

7 because people are claiming it just before the

8 election. We can understand that.

9 Now let me see Exhibit No. 4. And you

10 can see that it matches the numbers that I've just

11 told you with the 15,000 total. But then we ask

12 the question of the data, and this is

13 Exhibit No. 4. Did people remove themselves from

14 those lists? Did in fact people take the steps or

15 the clerks take the steps that we believe they're

16 required by statute to do to examine the number

17 and just simply find out? And what we see is that

18 did not happen. This is the cumulative number, in

19 other words, how many absentee indefinite

20 confinement status on any given day, the total.

21 And if in fact people had removed their names from

22 the list, it would go down. It does not. It

23 continues to rise into the election. And again,

24 not unexpected but disappointing because what we

25 know then is that 59 percent of all the

Page 13

1 post and put a second post up and pointed out a

2 number of things in that second post, including --

3 and this is Exhibit No. -- final exhibit to this,

4 Exhibit No. 6.

5 There will need to be a review of the

6 voter rolls after the election." Now that doesn't

7 fall on the county clerk. That falls on the

8 municipal clerks. So he was doing this so that

9 they can argue, so that they understood, you

10 better look over your rolls.

11 Also, in that post it was stated, "We

12 understand the concern over the use of

13 indefinitely confined status and do not condone

14 abuse of that option as it is an invaluable

15 accommodation for many voters in Wisconsin."

16 And finally, "There may be a need to do

17 some review of the absentee voting rolls after

18 this election to confirm voters who met the

19 definition of indefinitely confined during the

20 public health crisis who would like to continue

21 the status. And I believe that post exists to

22 today. I think that it's still up. But we

23 provided that post.

24 And I do that, not the least of which is

25 because I want the record to be completed. But

1 more importantly, I think the statutes -- the
 2 statutes of the state of Wisconsin anticipated
 3 this very kind of situation. They provide the
 4 municipal clerks are expressly charged with the
 5 responsibility to review and expunge from the
 6 voter rolls those claiming to be indefinitely
 7 confined voters when the clerk has, and I quote
 8 the statute, "reliable information that the
 9 elector no longer qualifies for the service."
 10 That's Wisconsin Statute 6.86(2).
 11 We know of no evidence that any
 12 municipal clerk in Dane County took any steps to
 13 do any of that. And of course the data strongly
 14 suggests it. And I understand that there are
 15 discussions of what they could or couldn't do and
 16 what the Wisconsin Elections Commission suggested
 17 or not suggested. But the statute to us is clear.
 18 They needed to take steps.
 19 And in that regard, we submit a second
 20 affidavit, the affidavit of Kyle Hudson.
 21 Kyle Hudson provides just a selection of about
 22 eight or nine Facebook posts from people who are
 23 in that list, in that list of 8,000, who went to
 24 weddings, went to birthday parties, spray painted
 25 on State Street during protests and other

1 activities. All of this suggests those people
 2 were not entitled, and they abused the status in
 3 violation of law. But equally important is that
 4 it was the clerk's obligation, who after all at
 5 least in Milwaukee County -- we had some in
 6 Dane County -- found all they had to do was go to
 7 the Internet and change names on voter envelopes,
 8 altered the addresses and fill in stuff, which
 9 they could do, and yet took no steps to examine
 10 these rolls and remove the people who a simple
 11 Google search would have indicated were improperly
 12 claiming this kind of status.
 13 MR. McDONELL: Can I ask a question?
 14 MR. JAMES TROUPIS: Yes, you may, of course.
 15 MR. McDONELL: So I know that Madison did
 16 send out a letter to all indefinitely confined
 17 after the April election. So did you query the
 18 clerks to see whether they had done that as per
 19 the advice of the Elections Commission to do that?
 20 Because I know that many or all of them did.
 21 MR. JAMES TROUPIS: I do not know.
 22 MR. McDONELL: I'm not sure. I just think
 23 that that would be something to follow up on to
 24 say -- because I know Madison, the largest
 25 municipality, did do that, follow up on it.

1 MR. JAMES TROUPIS: Unfortunately I don't
 2 have access to that information. And in a recount
 3 I only have a certain amount of information that I
 4 can get.
 5 MR. McDONELL: That's fair. I'm just telling
 6 you that I couldn't tell you whether Monona or
 7 Verona -- I just know that Madison did.
 8 MR. JAMES TROUPIS: As I said, to my
 9 knowledge, and we can tell from the data, whatever
 10 they did it was inadequate because we know that
 11 people continue to claim this status and in fact
 12 voted on election day.
 13 MR. McDONELL: One thing I would say is if
 14 you had COVID, that would be a reason why you
 15 would decide to self-quarantine. And in that
 16 moment if you were 35 years old, in that exact
 17 moment you could be in that situation.
 18 MR. JAMES TROUPIS: But, of course, that's
 19 not indefinitely confined. It's simply they kept
 20 COVID in our home, and they could in fact complete
 21 the identification requirements. I don't accept
 22 that simply having COVID would be the basis on
 23 which indefinite confinement -- indefinite
 24 confinement implies something quite different than
 25 a transitory illness.

1 MR. McDONELL: The court could decide that I
 2 think.
 3 MR. JAMES TROUPIS: Of course. All I'm
 4 suggesting is our reasoning as well.
 5 So we've asked now with this subset, as
 6 an additional objection, that the voter rolls be
 7 reduced by 8,907. We've provided an exact list of
 8 the names and ward numbers for you.
 9 MR. McDONELL: Thank you very much.
 10 MR. JAMES TROUPIS: Thank you very much.
 11 Thank you.
 12 MS. WELSH: Good morning. I'm Diane Welsh,
 13 legal counsel for President Elect Joe Biden's
 14 Campaign. The petition for recount filed by the
 15 Trump Campaign alleged mistakes and fraud were
 16 committed throughout the state, particularly in
 17 Dane and Milwaukee Counties.
 18 Yesterday -- or on Thanksgiving,
 19 President Trump reiterated his claims of fraud.
 20 We've now been here for more than a week.
 21 Hundreds of Trump observers and dozens of
 22 attorneys have traveled from across the country to
 23 Dane County in search of fraud. The
 24 Trump Campaign has failed to show the Board of
 25 Canvassers any actual instances of fraud, let

1 alone the widespread fraud it alleges. Instead,
2 the Trump Campaign has repeatedly requested the
3 wholesale disenfranchisement of Dane County voters
4 because the Trump Campaign believes the Wisconsin
5 Statutes were wrongly interpreted by the clerk,
6 the Elections Commission, or both.

7 Their campaign has made numerous
8 challenges based on misunderstandings about
9 Wisconsin election law. And their campaign has
10 made frequent challenges based on technicalities
11 that do not call into question the legal status of
12 the voter or the integrity of the vote. The
13 technicalities may be an error by the voter, a
14 witness, or election officials, but they are not
15 fraud.

16 It is important to remember that
17 Dane County election officials were doing their
18 level best to conduct a presidential election
19 during a pandemic. We have clerks and other
20 election workers who were out sick due to
21 COVID-19. Many long-time workers did not work
22 this election to avoid exposure. Due to the
23 pandemic, there were a lot of first-time workers
24 and there were a lot of first-time absentee
25 voters. I applaud the Board for rejecting so many

1 baseless challenges.

2 On behalf of President Elect Biden's
3 Campaign, I want to thank you for continuing to
4 apply the long recognized constitutional principle
5 that voters should not be disenfranchised based on
6 errors of their clerk or their government. We
7 appreciate that.

8 As it relates to the early voting
9 complaint, we have Biden Exhibit 33 to share with
10 the Board. Here President Trump himself
11 encouraged people to early vote on October 20th,
12 the first day of early voting in Wisconsin. They
13 cannot be heard to now complain that people early
14 voted using the form developed by WEC in place for
15 ten years, a form that passed Republican votes and
16 democratic votes and independent votes, you know,
17 a form that was used to get President Trump
18 elected four years ago. You know, President Trump
19 is stopped from that argument and I know that you
20 have already ruled on it and would urge you to --
21 not to reconsider that issue.

22 As it relates to indefinite confinement,
23 indefinite means we don't know how long. It
24 doesn't mean permanent confinement, total
25 disability. I wholeheartedly dispute that having

1 COVID is not indefinite confinement. I don't know
2 if I get COVID if I will be quarantined in that
3 home just for ten days and feel fine, or if I will
4 be in the hospital on a respirator. I don't know
5 that I will be able to make it to the election.

6 So it's entirely appropriate for someone
7 who has COVID to use that designation of
8 indefinite confinement. It also means that if
9 someone is -- has been advised by their doctor to
10 not go out because of underlying health conditions
11 to avoid exposure, for them to use that definition
12 now.

13 What the Supreme Court made clear, what
14 the statute makes clear, what WEC guidance makes
15 clear is if someone is in fact not indefinitely
16 confined, the remedy is that they get removed from
17 the list of indefinitely confined voters, not that
18 their vote gets taken away from them after the
19 fact.

20 On March 31st, the Supreme Court issued
21 the order. If the Trump Campaign believed that
22 there were people who were not properly identified
23 as indefinite confined, they could have been doing
24 their like Facebook search, Google search, and
25 bringing those names to the attention of clerks

1 around the state. They didn't do so.

2 Like, there's no affirmative duty of the
3 clerks to do Google searches on all of the voters
4 who are identified as indefinite confined.

5 As Scott McDonell pointed out, the City
6 of Madison clerk did send out a letter to those
7 voters. That was not an obligation she had, but
8 she went above and beyond her responsibilities.

9 We don't know if -- their exhibit is
10 worthless. We don't know if the people pictured
11 in those Facebook posts are in fact the voters.
12 You know, some people have the same name. Some
13 people have similar names. But again, we don't
14 know their health histories. We don't know their
15 circumstances. But what we do know is that under
16 statute, constitutional principles, WEC guidance,
17 there's no provision that means we do a drawdown
18 of over 8,000 votes because some individuals
19 during a pandemic identified themselves as
20 indefinitely confined. That's a ridiculous
21 position. The Board has rejected those positions
22 in the past. And I urge you not to reconsider
23 your ruling on that.

24 Then as just a final procedural matter,
25 we are submitting an affidavit. We submitted a

1 declaration earlier. And so this is -- we're
2 submitting as Biden Exhibit 34 just to finish our
3 record. If the Board has any questions for me, I
4 would be happy to answer them.

5 MR. ARNTSEN: I don't.

6 MR. McDONELL: Thank you very much.

7 MR. ARNTSEN: Okay.

8 MR. JAMES TROUPIS: I'd like to respond to a
9 couple things. First of all, let me be
10 extraordinarily clear. One, we appreciate this
11 Board's civility and civility to everyone here.
12 I've said that publicly, and I meant it. But it
13 is not correct that we have not submitted evidence
14 with regard to fraud. We did that this morning.
15 We submitted no fewer than seven affidavits of
16 people who clearly are fraudulent, at least in our
17 view. And you may debate it, but don't say we
18 didn't do it.

19 Secondly, we've identified both here and
20 in Milwaukee hundreds and hundreds of
21 ballot evidence for which clerks inserted
22 information. We believe that's also evidence of
23 fraudulent.

24 It's ironic that we just were -- we just
25 heard Biden's counsel say that, well, maybe those

1 are different people. Maybe those are different
2 names. Yeah. Maybe that's true. Maybe that's
3 also true with regard to the envelopes that people
4 filled out which were directed by the
5 Wisconsin Elections Commission, people could just
6 go out to the Internet and fill in names and
7 addresses, which apparently they did by the
8 hundreds. And yet she says we can't do it. It's
9 wrong here, but it's right there.

10 Bottom line is that you have to have
11 clear and unequivocal integrity in an absentee
12 voting process, precisely because our statutes are
13 obligatory. They do provide that when it comes to
14 absentee voting it's a privilege, not a right and
15 that there must -- you must take corrective action
16 when they have been violated and they must follow
17 the rules specifically, precisely to avoid the
18 very thing that the Biden Campaign now accuses us
19 of which is, gee, we can't find enough fraud.

20 Of course it's difficult after the fact.
21 That's precisely why in Wisconsin Statute 6.84(1)
22 it provides that the legislature finds that the
23 privilege of voting by absentee ballot must be
24 carefully regulated to prevent the potential for
25 fraud or abuse, to prevent overzealous

1 solicitation of absentee electors who may prefer
2 not to participate in election, to prevent undue
3 influence on an absent elector to vote for or
4 against the candidate and other similar abuses.

5 It's precisely that problem that makes
6 absentee voting such a difficult undertaking and
7 one that is regulated so carefully.

8 So when we don't follow the rules, the
9 presumption of the statute is there was fraud and
10 abuse. Was there? In some cases we will never
11 know. That's why the statute makes it mandatory.
12 That's precisely the reason.

13 And I also want to thank -- because I
14 may not speak again publicly -- counsel for the
15 Biden Campaign also, who has been equally civil in
16 our undertakings here. I want to put that on the
17 record while I still have a chance. Thank you.

18 MR. McDONELL: Great.

19 MS. WELSH: I have a short sur reply. So
20 under Wisconsin Statute 5.01 of the statutes, the
21 constructions of Chapters 5 through 12, which are
22 the election statutes, indicate that
23 Chapters 5 through 12 shall be construed to give
24 effect to the will of the electors if that can be
25 ascertained from the proceedings, notwithstanding

1 informality or failure to fully comply with some
2 of their provisions. That supersedes the
3 provision that Attorney Troupis cited.

4 With respect to the indefinitely
5 confined electors, what I want to be clear is,
6 there's zero evidence before us that any of the
7 electors are not Wisconsin citizens who are
8 otherwise eligible to vote. There is zero
9 evidence that any of these voters did so to avoid
10 the ID requirement. And that is what I think is
11 important here.

12 The remedy -- if there's a suggestion
13 that anyone votes improperly in Wisconsin, we have
14 criminal statutes that allow for the
15 investigation, full fact finding and prosecution
16 of those people. It's not this second-guessing
17 that because procedures weren't applied as
18 interpreted by the campaign after the fact. We
19 can't hypothesize that maybe some votes slipped
20 through the cracks.

21 There is a definite way to find out if
22 every voter who is on the voter log and turned in
23 a vote is an actual voter. And we have procedures
24 in place. And that's not the procedure followed
25 here. Thank you.

Page 26

1 MR. McDONELL: Okay. I think we -- do you
 2 have any questions, Joyce?
 3 MS. WALDROP: No, I don't.
 4 MR. McDONELL: We're going to talk to our
 5 counsel and maybe we can bring this stuff in a few
 6 minutes. Is that okay?
 7 MR. JAMES TROUPIS: Sure. We'll stick
 8 around.
 9 MR. McDONELL: Thank you. Appreciate it.
 10 (Recess)
 11 MS. REVIS FREDERICK: So we have one ballot
 12 from Ward 80 that has no initials on it, so we
 13 place objection on no clerk initials.
 14 MS. WALDROP: It will be two for, one
 15 against. My vote's against.
 16 MS. REVIS FREDERICK: Thank you.
 17 (Off the record)
 18 MR. WILLIAMS: Scott, do you mind reading out
 19 that ballot number -- or envelope number?
 20 MR. McDONELL: 1144 A.
 21 MR. WILLIAMS: And your contest would be that
 22 all three signatures, which includes the voter's,
 23 witness, and the certification of assistance, are
 24 all identical.
 25 MR. McDONELL: But this name is different.

Page 28


1 objection, no clerk initials.
 2 MR. ARNTSEN: Two-one. They're good.
 3 MR. McDONELL: So just for the record, on the
 4 request to draw down the new list of indefinite
 5 confined voters, the vote of the Board of Canvass
 6 is two-one to not -- to deny that request.
 7 MR. JAMES TROUPIS: Thank you.
 8 MR. McDONELL: Thank you.
 9 (Off the record)
 10 MS. TJOTJOS: This is a ballot from City of
 11 Madison Ward 83. Objection, missing clerk's
 12 initials.
 13 MR. ARNTSEN: Two-one. Count it.
 14 MS. LINZENMEYER: Two-one?
 15 MR. ARNTSEN: The vote is two to one to count
 16 it.
 17 MS. LINZENMEYER: Thank you.
 18 MS. TJOTJOS: This is an express vote,
 19 absentee ballot from City of Madison Ward 83.
 20 Objection, no clerk initials.
 21 MR. ARNTSEN: Two-one. Count it.
 22 (Recess)
 23 MS. TJOTJOS: So the first one is an
 24 envelope, City of Madison Ward 85, 1712 A.
 25 Objection, no voter signature.

Page 27

1 MS. WALDROP: Who wrote this?
 2 MR. McDONELL: I don't know. A.S.
 3 MS. WALDROP: This one is exactly like that.
 4 MR. McDONELL: No. I'm going to -- I hear
 5 you.
 6 MR. WILLIAMS: I know you do. I know you do,
 7 Scott.
 8 MR. McDONELL: But let me just suggest
 9 something to you guys. And that is this is an
 10 indefinitely confined voter. And I bet that
 11 someone was helping them with this, like this
 12 voter --
 13 MR. WILLIAMS: Okay. Like on behalf of?
 14 MR. McDONELL: Right. This person is the
 15 witness.
 16 MR. WILLIAMS: Fair enough.
 17 MR. McDONELL: And she can't write.
 18 MR. WILLIAMS: Fair enough.
 19 MR. McDONELL: Because who would do something
 20 that's so obvious other than if you -- and so the
 21 witness is helping them -- the person --
 22 MR. WILLIAMS: Scott, I withdraw. Fair
 23 enough. Good job.
 24 MS. REVIS FREDERICK: We have Ward 78, two
 25 absentee ballots with no initials. And that's our

Page 29

1 MS. WESTERBERG: That one it appears that the
 2 voter may have signed the witness area, and the
 3 same address is --
 4 MR. McDONELL: Well, but if the voter signed
 5 down here, then we'd be missing a witness. So it
 6 kind of doesn't matter. It was mailed in. This
 7 is a drawdown.
 8 MR. ARNTSEN: Three-zero.
 9 MS. TJOTJOS: This one also Ward 85, City of
 10 Madison, No. 770 A. Objection, no voter signature
 11 because whoever signed this is not the name
 12 Michael Cahill, which is the voter designated on
 13 the form.
 14 MS. WESTERBERG: There's no signature match
 15 requirement. All the required information is
 16 there.
 17 MR. ARNTSEN: I have no idea.
 18 MR. McDONELL: I mean, you could be right,
 19 but I can't really tell. So knowing Joyce, that's
 20 two-one. Leave it alone. That's fine.
 21 MR. ARNTSEN: One drawdown, one okay.
 22 MR. WILLIAMS: Ward 77, two express ballots,
 23 two regular ballots. None of these have the
 24 required initial signatures. Same objection. Ask
 25 for a drawdown. Previously stated.

	Wisconsin Application for Absentee Ballot				(Municipal Clerk) If in-person voter, check here: <input type="checkbox"/>
	Absentee ballots may also be requested at MyVote.wi.gov				
	Confidential Elector ID# (HINDI - sequential #) (Official Use Only)		WisVote ID # (Official Use Only)		Ward No.

Instructions	<p>Detailed instructions for completion are on the back of this form. Return this form to your municipal clerk when completed.</p> <ul style="list-style-type: none"> You must be registered to vote before you can receive an absentee ballot. You can confirm your voter registration at https://myvote.wi.gov <p>! PHOTO ID REQUIRED, unless you qualify for an exception. See instructions on back for exceptions.</p>
---------------------	---

VOTER INFORMATION

1	Municipality	<input type="radio"/> Town <input type="radio"/> Village <input type="radio"/> City		County	
2	Last Name		First Name		
	Middle Name		Suffix (e.g. Jr, II, etc.)	Date of Birth <small>(MM/DD/YYYY)</small>	
	Phone		Fax	Email	
3	Residence Address: Street Number & Name				
	Apt. Number		City	State & ZIP	
4	Fill in the appropriate circle – if applicable (see instructions for definitions): <input type="radio"/> Military <input type="radio"/> Permanent Overseas <input type="radio"/> Temporary Overseas				

I PREFER TO RECEIVE MY ABSENTEE BALLOT BY: (Ballot will be mailed to the address above if no preference is indicated. Absentee ballots may not be forwarded.)

5	<input type="radio"/> MAIL	Mailing Address: Street Number & Name				
	<input type="radio"/> VOTE IN CLERK'S OFFICE	Apt. Number		City	State & ZIP	
		Care Facility Name (if applicable)				
		C / O (if applicable)				
	<input type="radio"/> FAX	Fax Number	For Military and Overseas Voters Only		Voter must have a computer and printer when receiving a ballot by fax or email. Voted ballots must be returned by mail.	
<input type="radio"/> EMAIL	Email Address	For Military and Overseas Voters Only				

I REQUEST AN ABSENTEE BALLOT BE SENT TO ME FOR: (mark only one)

6	<input type="radio"/> The election(s) on the following date(s): _____ <input type="radio"/> All elections from today's date through the end of the current calendar year (ending 12/31). <input type="radio"/> For indefinitely-confined voters only: I certify that I am indefinitely confined because of age, illness, infirmity or disability and request absentee ballots be sent to me automatically until I am no longer confined, or I fail to return a ballot. <i>Anyone who makes false statements in order to obtain an absentee ballot may be fined not more than \$1,000 or imprisoned not more than 6 months or both.</i> Wis. Stats. §§ 12.13(3)(i), 12.60(1)(b).
----------	--

TEMPORARILY HOSPITALIZED VOTERS ONLY (please fill in circle)

7	<input type="radio"/> I certify that I cannot appear at the polling place on election day because I am hospitalized, and appoint the following person to serve as my agent, pursuant to Wis. Stat. § 6.86(3).					
	Agent Last Name		Agent First Name		Agent Middle Name	
	AGENT: I certify that I am the duly appointed agent of the hospitalized absentee elector, that the absentee ballot to be received by me is received solely for the benefit of the above named hospitalized elector, and that such ballot will be promptly transmitted by me to that elector and then returned to the municipal clerk or the proper polling place.					
	Agent Signature	X		Agent Address		

ASSISTANT DECLARATION / CERTIFICATION (if required)

I certify that the application is made on request and by authorization of the named elector, who is unable to sign the application due to physical disability.

Agent Signature	X	Today's Date	
-----------------	---	--------------	--

VOTER DECLARATION / CERTIFICATION (required for all voters)

I certify that I am a qualified elector, a U.S. Citizen, at least 18 years old, having resided at the above residential address for at least 28 consecutive days immediately preceding this election, not currently serving a sentence including probation or parole for a felony conviction, and not otherwise disqualified from voting. **Please sign below to acknowledge that you have read and understand the above.**

Voter Signature	X	Today's Date	
-----------------	---	--------------	--

Wisconsin Application for Absentee Ballot Instructions

General Instructions: This form should be submitted to your municipal clerk, unless directed otherwise.

- This form should only be completed by registered voters; if you are not a registered voter or military elector, please submit a Voter Registration Application (EL-131) with this form.

Photo ID requirement: If you will receive your absentee ballot by mail, and have not previously provided a copy of acceptable photo ID with a prior by-mail absentee ballot request, a copy of photo ID must accompany this application. You may submit your application and a copy of your ID by mail, fax or email. In-person voters must always show acceptable photo ID.

The following documents are acceptable Photo ID (For specific information regarding expired documents visit <http://bringit.wi.gov>.)

State of WI driver license or ID card	Certificate of Naturalization
Military ID card issued by a U.S. uniformed service	WI DOT DL or ID card receipt
Photo ID issued by the federal Dept. of Veterans Affairs	Citation/Notice to revoke or suspend WI DL
University, college or tech college ID and enrollment verification	ID card issued by federally recognized WI tribe
U.S. passport booklet or card	

In lieu of photo ID, the voters listed below may satisfy the voter ID requirement by the following means:

- Electors who are indefinitely confined (see Section 6) – the signature of a witness on the Absentee Certificate Envelope.
- Electors residing in care facilities served by Special Voting Deputies – the signatures of both deputies on the envelope.
- Electors residing in care facilities not served by Special Voting Deputies – the signature of an authorized representative of the facility. If the elector is also indefinitely confined, the elector does not need a representative of the facility to sign.
- Military, Permanent Overseas and Confidential Electors – Exempt from the photo ID requirement.

1	<ul style="list-style-type: none"> • Indicate the municipality and county of residence. Use the municipality's formal name (for example: City of Ashland, Village of Greendale, or Town of Albion).
2	<ul style="list-style-type: none"> • Provide your name as you are registered to vote in Wisconsin. If applicable, please provide your suffix (Jr, Sr, etc.) and/or middle name. If your current name is different than how you are registered to vote, please submit a Voter Registration Application (EL-131) with this form to update your information. • Provide your month, day and year of birth. Remember to use your birth year, not the current year.
3	<ul style="list-style-type: none"> • Provide your home address (legal voting residence) with full house number (including fractions, if any). • Provide your full street name, including the type (eg., Ave.) and any pre- and/or post-directional (N, S, etc.). • Provide the city name and ZIP code as it would appear on mail delivered to the home address. • <u>You may not enter a PO Box as a voting residence.</u> A rural route box without a number may not be used.
4	<ul style="list-style-type: none"> • A "Military elector" is a person, or the spouse or dependent of a person who is a member of a uniformed service or the merchant marines, a civilian employee of the United States, a civilian officially attached to a uniformed service and serving outside the United States, or a Peace Corp volunteer. Military electors do not need to register to vote. • A "Permanent Overseas elector" is a person who is a United States citizen, 18 years old or older, who resided in Wisconsin immediately prior to leaving the United States, who is now living outside the United States <u>and has no present intent to return</u>, who is not registered in any other location, or who is an adult child of a United States citizen who resided in this state prior to establishing residency abroad. Permanent Overseas electors will receive ballots for federal offices only and must be registered to vote prior to receiving a ballot. • A "Temporary Overseas elector" is a person who is a United States citizen, 18 years of age or older, a resident of Wisconsin and is overseas for a temporary purpose and intends to return to their Wisconsin residence.
5	<ul style="list-style-type: none"> • Fill in the circle to indicate your preferred method of receiving your absentee ballot. • Military and Permanent Overseas voters may request and access their ballot directly at https://myvote.wi.gov. • If no preference is indicated, your absentee ballot will be mailed to your residence address listed in Box 3. • You are encouraged to provide a physical mailing address as backup in case of electronic transmission difficulties. Please only fill the circle for your preferred means of transmission. • If you are living in a care facility, please provide the name of the facility. • If someone will be receiving the ballot on your behalf, please list them after C/O. <u>Please note:</u> The absentee elector is still required to vote their own ballot, although they may request assistance in physically marking the ballot.
6	<ul style="list-style-type: none"> • Select the first option if you would like to receive a ballot for a single election or a specific set of elections. • Select the second option if you would like to have a standing absentee request for any and all elections that may occur in a calendar year (ending December 31). • Select the third option only if you are indefinitely confined due to age, illness, infirmity or disability and wish to request absentee ballots for all elections until you are no longer confined or fail to return a ballot for an election.
7	<ul style="list-style-type: none"> • This section is only to be completed by an elector or the agent of an elector who is currently hospitalized. • An agent completing this form for a hospitalized elector must provide his/her name, signature and address on this application.
Assistant Signature:	In the situation where the elector is unable to sign the Voter Declaration / Certification due to a physical disability, the elector may authorize another elector to sign on his or her behalf. Any elector signing an application on another elector's behalf shall attest to a statement that the application is made on request and by authorization of the named elector, who is unable to sign the application due to physical disability.
Voter Signature:	By signing and dating this form, you certify that you are a qualified elector, a U.S. citizen, at least 18 years old, having resided at your residential address for at least 28 consecutive days immediately preceding this election, not currently serving a sentence including probation or parole for a felony conviction, and not otherwise disqualified from voting.

STATE OF WISCONSIN

IN RE: THE 2020 ELECTION FOR PRESIDENT AND VICE PRESIDENT OF THE
UNITED STATES

AFFIDAVIT OF KYLE J. HUDSON

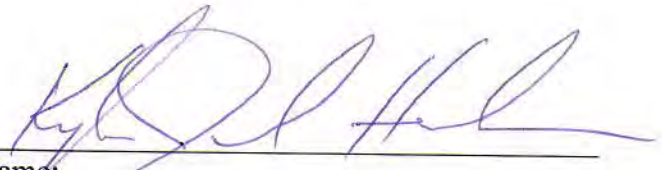
STATE OF WISCONSIN)
) SS.
COUNTY OF DANE)

I, Kyle J. Hudson, being first duly sworn on oath, state as follows:

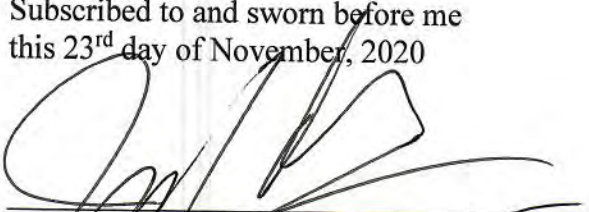
1. I am an adult resident of the state of Wisconsin. I am also a representative of President Donald J. Trump and Vice-President Michael R. Pence and their respective campaigns for the purposes of this recount.
2. Attached hereto as Exhibit A is a true and correct copy of a written transcript of a Biden for President funded radio advertisement for “Democracy in the Park” that was publicly broadcast in a Madison area media market that I personally heard.
3. Attached hereto as Exhibit B is a true and correct copy of a “Democracy in the Park” event advertisement as publicized under the following website link <https://www.cityofmadison.com/calendar/democracy-in-the-park>.
4. Attached hereto as Exhibit C is a true and correct copy of a public tweet from the official twitter of the Madison WI Clerk advertising “Democracy in the Park” in a computer generated event flyer. It is publicly available on twitter.
5. Attached hereto as Exhibit D is a true and correct copy of a tweet from the official Madison WI Clerk twitter for a “Democracy in the Park” event location map displaying the 200+ city parks where the event was to be held. It is publicly available on twitter.
6. Attached hereto as Exhibit E is a true and correct copy of a retweet by the City of Madison official twitter of a “Democracy in the Park” promotion from the official twitter of the Madison WI Clerk. It is publicly available on twitter.

[signature page follows]

Dated at this 23rd day of November, 2020.


Name: _____

Subscribed to and sworn before me
this 23rd day of November, 2020



Notary Public, State of Wisconsin
My Commission: Perpetual

EXHIBIT

A

Transcript of Democracy in America Biden Campaign AD

Hey Madison, this year voting early is a walk in the park...literally, On Saturday, September 26th and Saturday, October 3rd, from 9 am to 3 pm, City of Madison poll workers will be in over 200 city parks; registering voters, answering questions about voting, and accepting your completed absentee ballot. Absentee voters who still need to find a witness can just bring their blank ballot with them and have a poll worker serve as their witness, poll workers will be wearing bright yellow vests and can be found by one of the vote yard signs you are used to seeing at your polling place; so make your plan now to return your ballot. Democracy in the Park, Saturday, September 26th or Saturday, October 3rd 9am to 3pm at any of the 200+ city parks in Madison. Visit cityofmadison.com to learn more. That's cityofmadison.com. I'm Joe Biden, candidate for President and I approve this message. Paid for by Biden for President, this event is hosted by the City of Madison and is non-partisan, all are welcome.

EXHIBIT

B

Coronavirus (COVID-19)

[City Services \(/coronavirus\)](#)

[Public Health \(https://www.publichealthmdc.com/coronavirus\)](https://www.publichealthmdc.com/coronavirus)

[Get Alerts \(/health-safety/coronavirus/updates\)](#)

[Español \(/es/health-safety/coronavirus\)](#)

[Hmoob \(/hmn/health-safety/coronavirus\)](#)

[Home \(/\)](#) / [Calendar \(/calendar\)](#) / [Democracy in the Park](#)

Democracy in the Park

[Events - City \(/calendar?type=1\)](#)

Date & Time:

Saturday, September 26, 2020 - 9:00am to 3:00pm

Location(s):

City of Madison Parks

Madison, WI

[Directions ↗ \(https://maps.google.com?daddr=+Madison+WI+\)](https://maps.google.com?daddr=+Madison+WI+)

[Bike ↗ \(https://maps.google.com/maps?daddr=+Madison+WI+&dirflg=b&mra=itm&t=m&z=8\)](https://maps.google.com/maps?daddr=+Madison+WI+&dirflg=b&mra=itm&t=m&z=8)

[Bus ↗ \(https://maps.google.com/maps?daddr=+Madison+WI+&dirflg=r&mra=itm&t=m&z=8\)](https://maps.google.com/maps?daddr=+Madison+WI+&dirflg=r&mra=itm&t=m&z=8)



City of Madison poll workers will be in every City of Madison community park, neighborhood park, and mini park to register voters, answer questions about the voting process, and accept the delivery of absentee ballots (see [map ↗ \(https://smex12-5-en-ctp.trendmicro.com:443/wis/clicktime/v1/query?url=https%3a%2f%2furldefense.proofpoint.com%2fv2%2furl%3fu%3dhttps%2d3a%5f%5fwww.google.com%5fmaps%5fd%5fvviewer%2d3fmid%2d3d1o5tDkjJ8%2d5FjwanfpTvj471a55-4a40-bce1-d051895cb729&auth=f3d996c83dbc92895b11b4f2a0b957cbc0712333-d145e0573ceff3bd6e200a4c3422b488e07ba037\)](https://smex12-5-en-ctp.trendmicro.com:443/wis/clicktime/v1/query?url=https%3a%2f%2furldefense.proofpoint.com%2fv2%2furl%3fu%3dhttps%2d3a%5f%5fwww.google.com%5fmaps%5fd%5fvviewer%2d3fmid%2d3d1o5tDkjJ8%2d5FjwanfpTvj471a55-4a40-bce1-d051895cb729&auth=f3d996c83dbc92895b11b4f2a0b957cbc0712333-d145e0573ceff3bd6e200a4c3422b488e07ba037)). Poll workers will be wearing bright yellow vests and can be found by one of the Vote yard signs you are used to seeing at your polling place. The poll workers will be wearing face masks, disinfecting pens and clipboards after each use, and frequently sanitizing their hands.

Voters who need to register should bring **proof of address** (<https://www.cityofmadison.com/clerk/elections-voting/voter-registration/proof-of-residence>). Absentee voters who still need to find a witness could have a poll worker serve as their witness.

At the end of the event, absentee envelopes will be secured with a tamper-evident seal. Poll workers will document the seal number and the number of absentee ballots. They will immediately take the ballots to the City Clerk's Office, where both the seal number and the number of absentee ballots will be verified. The Clerk's Office will scan the barcode on each returned absentee envelope the following day, so voters will be able to check <https://MyVote.wi.gov> (<https://MyVote.wi.gov>) on Monday to verify that their ballot is ready to be counted at the polls.

In the case of inclement weather, the event will be held on Sunday instead.

Event Cost: Free

Handicapped Accessible: Yes

Pre-Registration?: No

American Sign Language (ASL) Provided?: No

Last Updated : 09/22/2020

[Skip to main content](#)

[Agency: Clerk's Office \(/clerk\)](#)

[Category: City Hall \(/city-hall\)](#)

[Event Type: Elections & Voting \(/event-type-city/elections-voting\)](#)

[Tags: Presidential Election 2020 \(/tags/presidential-election-2020\)](#)



(https://www.cityofmadison.com/sites/default/files/events/images/img_6135.jpg)

Attachments:

Democracy in the Park Map PDF (https://www.cityofmadison.com/sites/default/files/events-city/attachments/democracy_in_the_park.pdf)

Democracy in the Park Locations PDF (https://www.cityofmadison.com/sites/default/files/events-city/attachments/democracy_in_the_park_locations.pdf)



Was this page helpful to you? * required Yes No

Why or why not?

SUBMIT

City-County Building

210 Martin Luther King Jr. Blvd
Madison, WI 53703

Madison Municipal Building

215 Martin Luther King Jr. Blvd
Madison, WI 53703

Monday – Friday, 8:00 am – 4:30 pm

WI Relay Service (</civil-rights/programs/disability-rights-services-program/assistive-communication/wisconsin-relay>)

Connect with Us

(<https://www.facebook.com/cityofmadison>) (<http://twitter.com/cityofmadison>) (<https://www.instagram.com/cityofmadisonwi>)

(<https://www.youtube.com/cityofmadison>) (<https://my.cityofmadison.com>)

Contact Directory (</contact>)

Report a Problem (</reportaproblem>)

All Social Media (</outreach>)

Services

Make a Payment (</epayment>)

Apply for a Job (</jobs>)

Property Lookup (</assessor/property>)

Refuse & Recycling (<https://www.cityofmadison.com/streets/refuse/collectionlookup.cfm>)

EXHIBIT

C

← Tweet



Madison WI Clerk

@MadisonWIClerk

Have we mentioned how great our poll workers are? One of our poll worker all stars designed this image to promote Democracy in the Park Sept 26 & Oct 3 when they learned we hadn't had time in the office to create a flyer.



6:35 PM · 23 Sep 20 · [Twitter Web App](#)

23 Retweets 1 Quote Tweet 48 Likes

Tweet your reply



EXHIBIT

D

← Tweet



Madison WI Clerk @MadisonWIClerk

Democracy in the Park is happening this Saturday!

Drop your absentee ballot or update your voter reg if you need to at one of over 200 @madisonparkswi.

Full list of parks can be found on our website: cityofmadison.com/sites/default/...

#MadisonVotes2020 #VoteByMail #vote #elections2020



2:55 PM · 24 Sep 20 · Twitter Web App

Tweet your reply



EXHIBIT

E

City of Madison, Wisconsin

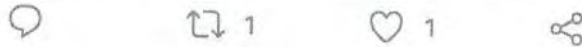
15.5K Tweets

- Tweets
- Tweets & replies
- Media
- Likes

including.

- cityofmadison.com
- online bus schedules
- online payments
- reporting services

Thank you for your patience while we improve our services!

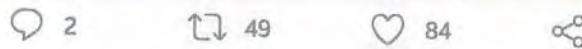


City of Madison, Wisconsin Retweeted



Madison WI Clerk @MadisonWIClerk · 02 Oct
 Tomorrow is our 2nd Democracy in the Park! Visit one of your fave @madisonparkswi & drop your completed absentee ballot w/ a @CityofMadison election official. You can also update your registration if you need to!

#MadisonVotes2020 #vote #elections2020



City of Madison, Wisconsin Retweeted



@publichealthmdc @PublicHealthMDC · 02 Oct
 This week's Data Snapshot is live! Dane Co 14-day average has declined from last wk. UW students/staff made up 38% of Dane Co cases. There was a significant ↓ in the # of cases from UW during this period and a significant ↑ in the number of non-UW cases. bit.ly/3na7DUK



Coronavirus (COVID-19)

[City Services \(/coronavirus\)](#)

[Public Health \(https://www.publichealthmdc.com/coronavirus\)](https://www.publichealthmdc.com/coronavirus)

[Get Alerts \(/health-safety/coronavirus/updates\)](#) [Español \(/es/health-safety/coronavirus\)](#)

[Hmoob \(/hmn/health-safety/coronavirus\)](#)

[Home \(/\)](#) / [News & Updates \(/news\)](#) / Democracy in the Park Event Planned for September 26 & October 3

Democracy in the Park Event Planned for September 26 & October 3

Monday, August 31, 2020 - 8:46am

Over 70,000 City of Madison residents have absentee ballot requests on file for the November 3 General Election. Ballots will be mailed by September 17.

Many City of Madison voters have been contacting the City Clerk's Office to ask about options for returning their absentee ballots in person. In response to these questions, the Clerk's Office is partnering with the City of Madison Parks Division to allow City of Madison voters to return their absentee ballots to poll workers stationed in more than 200 City of Madison parks.

The Democracy in the Park event will be held 9:00 AM – 3:00 PM, Saturday, September 26 and Saturday, October 3. In the case of inclement weather, the event will be held Sunday, September 27 and Sunday, October 4 instead.

[Skip to main content](#)
Poll workers wearing high visibility vests and face masks will be available next to a "Vote" yard sign in 206 city parks to register voters and to accept the delivery of absentee ballots. The poll workers will be available to serve as a witness, if needed (the voter would need to bring their blank ballot and absentee envelope from home).

Poll workers will practice social distancing and will sanitize materials after each use. When the event ends at 3:00 PM, an election official courier will bring the ballots back to the Clerk's Office. The courier and the poll workers on-site will count the number of absentee ballots

being returned to the Clerk's Office, and will seal them in a delivery package with a tamper evident seal that has a unique serial number. The number of ballots and the seal number will be documented on a chain-of-custody form that will be signed by the poll workers in the park and by the courier.

Ballots will be taken directly to the City Clerk's Office where seal numbers and the number of absentee ballots delivered will be verified by Clerk's Office staff.

Ballot drop boxes are on order. Locations will be announced once they are installed.

The following parks will be part of Democracy in the Park:

Park	Address	Type
Acewood Park	1402 Acewood Blvd	Neighborhood
Aldo Leopold Park	2906 Traceway Dr	Neighborhood
Allied Park	2730 Revival Ridge	Mini
Arbor Hills Park	3109 Pelham Rd	Neighborhood
B. B. Clarke Beach Park	835 Spaight St	Mini
Badger Park	418 Burdette Ct	Mini
Baxter Park	777 Englehart Dr	Neighborhood
Beld Triangle Park	1402 Beld St	Mini
Berkley Park	1730 Browning Rd	Mini
Bernie's Beach Park	901 Gilson St	Mini
Blackhawk Park	741 Bear Claw Way	Neighborhood
Bordner Park	5610 Elder Pl	Neighborhood
Breese Stevens Field	917 E Mifflin St	Sports Complex
Brentwood Park	1402 Mac Pherson St	Mini
Brigham Park	911 Rosedale Ave	Mini
Britta Park	4300 Britta Pkwy	Mini
Brittingham Park	829 W Washington Ave	Community
Burr Jones Park	1820 E Washington Ave	Neighborhood
Burrows Park	25 Burrows Rd	Neighborhood
Cardinal Glenn Park	426 Pine Lawn Pkwy	Neighborhood
Carpenter-Rideway Park	1220 Carpenter St	Neighborhood
Cherokee Park	1000 Burning Wood Way	Neighborhood
Churchill Heights Park	4402 DiLoreto Ave	Mini
Country Grove Park	7353 East Pass	Community
Cypress Spray Park	902 Magnolia Ln	Special

De Volis Park	4300 De Volis Pkwy	Mini
Demetral Park	601 N Sixth St	Community
Dominion Park	602 Wyalusing Dr	Neighborhood
Doncaster Park	4335 Doncaster Dr	Mini
Door Creek Park	7035 Littlemore Dr	Community
Droster Park	5629 Kalas St	Neighborhood
Duane F. Bowman Park	1775 Fish Hatchery Rd	Sports Complex
Dudgeon School Park	3200 Monroe St	Mini
Eagle Trace Park	10321 White Fox Ln	Neighborhood
Eastmorland Park	99 Silver Rd	Neighborhood
Edward Klief Park	1200 Milton St	Mini
Eken Park	2407 Coolidge St	Mini
Elmside Circle Park	500 Elmside Blvd	Mini
Elvehjem Park	1202 Painted Post Dr	Neighborhood
Elver Park	1250 McKenna Blvd	Community
Emerson East Park	1915 E Johnson St	Mini
Esther Beach Park	2802 Waunona Way	Mini
Everglade Park	406 Eveglade Dr	Mini
Felland Park	2601 Waterfall Way	Neighborhood
Filene Park	1610 Sherman Ave	Mini
Fisher Street Park	1834 Fisher St	Mini
Flad Park	4937 Flad Ave	Mini
Flagstone Park	8325 Flagstone Dr	Neighborhood
Galaxy Park	132 Milky Way	Mini
Garner Park	333 S Rosa Rd	Community
Giddings Park	429 Castle Pl	Mini
Glacier Hill Park	1018 Glacier Hill Dr	Neighborhood
Glen Oak Hills Park	301 Glen Hwy	Neighborhood
Glenwood Children's Park	602 Glenway St	Mini
Skip to main content Goodman Park	1402 Wingra Creek Pkwy	Community
Greenside Park	29 Greenside Cir	Mini
Greentree-Chapel Hills Park	6649 Schroeder Rd	Neighborhood
Haen Family Park	7702 Tree Ln	Neighborhood
Hammersley Park	6114 Hammersley Rd	Mini
Hampton Court Park	413 Park Way	Mini
Hawthorne Park	220 Division St	Mini

Heritage Heights Park	701 Meadowlark Dr	Neighborhood
Hiawatha Circle Park	99 Hiawatha Cir	Mini
Hiestand Park	4302 Milwaukee St	Community
High Crossing Park	5501 Burke Rd	Neighborhood
High Point Park	7499 Watts Rd	Neighborhood
Highland Manor Park	10 Manor Dr	Neighborhood
Hill Creek Park	9818 Hill Creek Dr	Community
Hillington Green Park	435 Hillington Way	Mini
Hillpoint Park	8213 Watts Rd	Mini
Honeysuckle Park	280 N Thompson Dr	Mini
Hoyt Park	3902 Regent St	Community
Hudson Park	2919 Lakeland Ave	Mini
Huegel Park	5902 Williamsburg Way	Neighborhood
Hughes Park	837 Hughes Pl	Mini
Ice Age Ridge Park	3502 Ice Age Dr	Mini
Indian Hills Park	5001 Flambeau Rd	Mini
James Madison Park	614 E Gorham St	Community
Junction Ridge Park	8502 Elderberry Rd	Neighborhood
Kennedy Park	5202 Retana Dr	Community
Kerr-McGee Triangle Park	728 Jenifer St	Mini
Kestrel Park	9702 Grey Kestrel Dr	Mini
Kingston-Onyx Park	334 Garnet Ln	Neighborhood
Kingswood Park	17 Kingswood Cir	Neighborhood
Lake Edge Park	511 Park Ct	Neighborhood
Lake View Heights Park	1621 Sunfield St	Mini
Lakeland-Schiller Triangle Park	651 Schiller Ct	Mini
Law Park	410 S Blair St	Community
Lerdahl Park	3514 Little Fleur Ln	Mini
Linden Grove Park	1617 Wheeler Rd	Mini
Lost Creek Park	4417 Hey Jude Ln	Mini
Lucia Crest Park	514 N Owen Dr	Neighborhood
Lucy Lincoln Hiestand Park	1506 Prairie Rd	Neighborhood
Manchester Park	3238 Manchester Rd	Neighborhood
Mandan Circle Park	4015 Mandan Cir	Mini
Maple Prairie Park	3117 Prairie Rd	Neighborhood
Marlborough Park	2222 Whenona Dr	Community

[Skip to main content](#)

Marshall Park	2101 Allen Blvd	Community
Mayfair Park	1102 Mendota St	Mini
McClellan Park	701 McClellan Dr	Neighborhood
McCormick Park	702 McCormick Ave	Mini
McFarland Park	5305 Brandenburg Way	Mini
McGinnis Park	9 Crystal Ln	Neighborhood
McPike Park	202 S Ingersoll St	Community
Meadow Ridge Park	4002 Meadow Valley Dr	Neighborhood
Meadowood Park	5800 Thrush Ln	Mini
Merrill Springs Park	5102 Spring Ct	Mini
Midland Park	1005 Midland St	Mini
Midtown Commons Park	1310 Waldorf Blvd	Neighborhood
Mohican Pass Triangle Park	1001 Mohican Pass	Mini
Monona Park	4601 Kay St	Neighborhood
Morrison Park	1451 Morrison St	Mini
Nakoma Park	3801 Cherokee Dr	Neighborhood
Nautilus Point Park	321 Nautilus Dr	Mini
Newbery Park	7834 Lois Lowry Ln	Mini
Newville (Kenneth) Park	1867 Beld St	Mini
Norman Clayton Park	6401 Shoreham Dr	Mini
North Star Park	502 N Star Dr	Community
Northeast Park	5501 Tancho Dr	Community
Northland Manor Park	902 Northland Dr	Neighborhood
O.B. Sherry Park	22 Leon St	Neighborhood
Oak Park Heights Park	641 Hilltop Dr	Mini
Ocean Road Park	910 Ocean Rd	Mini
Odana Hills East Park	4627 Odana Rd	Mini
Odana School Park	678 Segoe Rd	Neighborhood
Olbrich Park	3527 Atwood Ave	Community
Old Middleton Road Park	639 Bordner Dr	Mini
Olin Park	1156 Olin-Turville Ct	Community
Olive Jones Park (Randall School)	1810 Regent St	Mini
Ontario Park	720 Ontario St	Mini
Orchard Ridge Park	5214 Whitcomb Dr	Mini
Orchard Ridge Valley Park	961 Gilbert Rd	Neighborhood
Orlando Bell Park	2274 S Thompson Dr	Neighborhood

[Skip to main content](#)

Orton Park	1103 Spaight St	Mini
Owl Creek Park	23 Horned Owl Ct	Mini
Patriot Park	5333 Congress Ave	Neighborhood
Paunack (A.O.) Park	6399 Bridge Rd	Neighborhood
Peace (Elizabeth Link) Park	452 State St	Mini
Penn Park	2101 Fisher St	Neighborhood
Pilgrim Park	2034 Westbrook Ln	Neighborhood
Portland Park	4210 Portland Pkwy	Mini
Proudfit Park	101 Proudfit St	Mini
Quaker Park	4321 Buckeye Rd	Mini
Quann Park	1802 Quann-Olin Pkwy	Community
Quarry Cove Park	3333 Bradbury Ct	Mini
Raemisch Homestead Park	6909 Chelsea St	Mini
Raymond Ridge Park	2138 Muir Field Rd	Neighborhood
Reger (George) Park	201 Oak St	Mini
Reindahl (Amund) Park	1818 Portage Rd	Community
Rennebohm Park	115 N Eau Claire Ave	Community
Reservoir Park	126 Glenway St	Mini
Reston Heights Park	217 Summertown Dr	Neighborhood
Reynolds Park	810 E Mifflin St	Mini
Richmond Hill Park	6117 Cottontail Trl	Neighborhood
Rimrock Park	2906 Rockwood Dr	Mini
Rutic Park	38 Rustic Pkwy	Neighborhood
Sandburg Park	2818 Independence Ln	Neighborhood
Sandstone Park	3937 Manchester Rd	Neighborhood
Sauk Creek Park	402 N High Point Rd	Neighborhood
Sauk Heights Park	525 Bear Claw Way	Neighborhood
Secret Places Park	6001 Sledding Pkwy	Neighborhood
Segoe Park	502 S Segoe Rd	Mini
Skip to main content Sheridan Triangle Park	1301 Farragut St	Mini
Sherman Village Park	1226 Delaware Blvd	Mini
Sherwood Forest Park	1038 Friar Ln	Mini
Skyview Park	1419 E Skyline Dr	Mini
Slater (William) Park	561 S Segoe Rd	Mini
Spring Harbor Beach Park	1918 Norman Way	Mini
Spring Harbor Park	5218 Lake Mendota Dr	Neighborhood

Stevens Street Park	2710 Stevens St	Mini
Sugar Maple Park	252 Sugar Maple Ln	Mini
Sunridge Park	5901 Piping Rock Rd	Mini
Sunset Park	300 E Sunset Ct	Mini
Swallowtail Park	901 Swallowtail Dr	Mini
Sycamore Park	830 Jana Ln	Community
Tenney Park	1414 E Johnson St	Community
Thousand Oaks Park	9725 Sunny Spring Dr	Neighborhood
Thut Park	2630 Nana Ln	Neighborhood
Town Center Park	6301 Town Center Dr	Mini
Valley Ridge Park	1281 Meadow Sweet Dr	Neighborhood
Veterans Memorial Park	4601 Star Spangled Trl	Neighborhood
Vilas (Henry) Park	1602 Vilas Park Dr	Community
Village Park	6606 Village Park Dr	Mini
Waldorf Park	1736 Waldorf Blvd	Mini
Walnut Grove Park	202 N Westfield Rd	Community
Waltham Park	2617 Waltham Rd	Neighborhood
Warner Park	2930 N Sherman Ave	Community
Washington Manor Park	801 N Oak St	Mini
Waunona Park	5323 Raywood Rd	Neighborhood
Westchester Gardens Park	3330 Basil Dr	Neighborhood
Western Hills Park	2401 S Whitney Way	Mini
Westhaven Trails Park	3020 Cimarron Trl	Neighborhood
Westmorland Park	4114 Tokay Blvd	Neighborhood
Westport Meadows Park	4338 Bielfuss Dr	Mini
Wexford Park	1201 N Westfield Rd	Community
Wheeler Heights Park	4410 Northview Dr	Mini
Whitetail Ridge Park	1818 Anhalt Dr	Neighborhood
Windom Way Park	1920 Windom Way	Mini
Skip to main content Wingra Park & Boat Livery	824 Knickerbocker St	Neighborhood
Wirth Court Park	2801 Saint Paul Ave	Mini
Woodland Hills Park	834 Pebble Beach Dr	Neighborhood
Worthington Park	3102 Worthington Ave	Neighborhood
Yahara Hills Park (South)	Siggelkow Rd	Community

Yahara Hills Park (West)	3901 Savannah Rd	Community
Yahara Place Park	2025 Yahara Pl	Neighborhood
Zoo Park	950 Pontiac Trl	Mini

Contacts

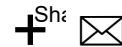
- Maribeth Witzel-Behl, (608) 266-4601, clerk@cityofmadison.com
(<mailto:clerk@cityofmadison.com>)

Agency: [Clerk's Office \(/clerk\)](#), [Parks \(/parks\)](#)

Category: [City Hall \(/city-hall\)](#)

Links

City of Madison Ballot Drop-off Sites (<https://www.cityofmadison.com/clerk/elections-voting/voting/vote-absentee/ballot-drop-off-sites>)



Was this page helpful to you? * required Yes No

Why or why not?

SUBMIT

[Skip to main content](#)

City-County Building

210 Martin Luther King Jr. Blvd
Madison, WI 53703

Madison Municipal Building

215 Martin Luther King Jr. Blvd
Madison, WI 53703

Monday – Friday, 8:00 am – 4:30 pm

WI Relay Service (/civil-rights/programs/disability-rights-services-program/assistive-communication/wisconsin-relay)

Connect with Us



(<https://www.facebook.com/cityofmadison>)



(<http://twitter.com/cityofmadison>)



(<https://www.instagram.com/cityofmadisonwi>)



(<https://www.youtube.com/cityofmadison>)



(<https://my.cityofmadison.com>)

Contact Directory (/contact)

Report a Problem (/reportaproblem)

All Social Media (/outreach)

Services

Make a Payment (/epayment)

Apply for a Job (/jobs)

Property Lookup (/assessor/property)

Refuse & Recycling (<https://www.cityofmadison.com/streets/refuse/collectionlookup.cfm>)

Metro Transit (/metro)

Parking Garages & Lots (/parking-utility/garages-lots)

City Hall

Mayor's Office (/mayor)

City Council (/council)

Meeting Schedule (/clerk/meeting-schedule)

ELECTION RECOUNT PROCEDURES

November 2020



Wisconsin Elections Commission

P.O. Box 7984
Madison, WI 53707-7984

Phone: (608) 261-2028

FAX: (608) 267-0500

Email: elections@wi.gov

Web: <http://elections.wi.gov>

Table of Contents

Procedures for Requesting a Recount	1-3
Who May Request a Recount?	1
How is a Recount Requested?	1
What is a Recount Petition?	1-2
When is a Filing Fee Required?	2
Campaign Finance Note	3
Where Does the Petitioner File a Recount Petition?	3
When Must the Petition Be Filed?	3
What Happens When the Petition is Properly Filed?	4
Procedures for Conducting the Recount	4-13
When Does the Recount Begin?	4
Who Conducts the Recount?	4
Who May Attend the Recount?	4-5
Recount Preparations	5-6
What Does the Board of Canvassers Do?	6
How Does the Board of Canvassers Conduct the Recount?	6-13
After the Recount	14
What Does the Board of Canvassers Do After the Recount?	14
How Does a Candidate or Petitioner Challenge the Results?	14
<hr/>	
Appendix	
Sample Forms	1-6
Recount Petition	1
Recount Petition for Referendum	2
Order for Recount	3
Public Notice of Recount	4
Acceptance of Service	5
Recount Minutes	6
Recount Fee Scenarios	7
Recount Checklists	8-11
Supplies and Materials	8
Paper Ballot	9
Optical Scan	10
Direct Recording Electronic (DRE)/Touch Screen Voting	11
Commission Staff Memorandum: Construction of Wis. Election Stats.	12-15
Directory vs. Mandatory Application of Statutes	12-13
Election Official Error vs. Voter Error	14
Board of Canvassers Discretion	14-15
Public Health Guidance	16

Introduction

Elections are often decided by a few votes. In many cases they are decided by one or two votes out of the several hundred or even several thousand votes that are cast. An election may even end in a tie vote. These circumstances encourage a candidate, typically the one who loses the election, to have all the ballots counted again to assure all legal votes are counted properly, any illegal votes are not counted, and the proper procedures for conducting the election were followed by the election officials.

The process of counting the ballots again is known as a recount. There is no automatic recount. The procedures for requesting and conducting a recount are spelled out in the election laws. A recount is the exclusive remedy to test in court the right of a candidate to hold office based on the number of votes cast at an election.

This manual explains the statutory requirements for requesting a recount, attempts to explain ambiguity in those statutes, expands on the statutory requirements with recommended procedures for conducting a recount, and contains sample forms for use during the recount. Additionally, the Appendix to this manual includes a Commission staff memorandum on the construction of Wisconsin's election statutes which in some cases can influence the advice rendered by Commission staff to board of canvassers conducting a recount. The advice is rendered on a case-by-case basis and is intended to "give effect to the will of the electors" when making decisions during a recount. This memorandum also outlines the discretion board of canvassers may exercise when making decisions during a recount and provides analysis of situations where the board of canvassers considers if an error in the election process was made by a voter or an election official and how that difference impacts the tallying of votes.

This information is prepared by the Wisconsin Elections Commission ("WEC" or "Commission") pursuant to the requirements of [Wis. Stat. § 9.01\(10\)](#). If you have any questions about the recount process, please contact Commission staff through any of the methods below:

Phone: 608-261-2028
Toll Free: 866-VOTE-WIS
Fax: 608-267-0500
Email: elections@wi.gov

Procedures for Requesting a Recount

Who May Request a Recount?

Any individual who voted at a referendum election may request a recount of the referendum results. Only an aggrieved candidate, defined as a candidate for an office whose total votes were within 1% of the winner's vote total when at least 4,000 votes were cast or within 40 votes of the winner's total if fewer than 4,000 votes were cast may request a recount of results for an office. [Wis. Stat. § 9.01\(1\)\(a\)1](#). There is no automatic recount, even if the unofficial results are extremely close.

How is a Recount Requested?

A recount is requested by filing a sworn petition with the filing officer along with the filing fee, if required. For the office of the president, a petition for recount must be filed not earlier than the completion of the canvass and not later than 5 p.m. on the 1st business day following the day on which the WEC receives the last county board of canvassers statement. For all other offices, a petition for recount must be filed not earlier than the completion of the canvass and not later than 5 p.m. on the 3rd business day following the last meeting day of the board of canvassers determining the result for the office/referendum. [Wis. Stat. § 9.01\(1\)\(a\)1](#).

What is a Recount Petition?

A recount petition is a sworn statement requesting that the votes at an election be counted again and setting out the reasons why the ballots should be recounted. A recount petition must be filed with the filing officer along with any applicable fee.

The recount petition must state the following information:

1. The petitioner must specifically request a recount or otherwise clearly indicate they desire a recount of particular election results. See [Wis. Stat. § 9.01\(1\)\(a\)1](#).
2. The petitioner must indicate he or she was an aggrieved candidate for the office in question [Wis. Stat. § 9.01\(1\)\(a\)5](#). If the results of a referendum election are at issue, the petition must state that the petitioner voted on the referendum question. [Wis. Stat. § 9.01\(1\)\(a\)2.a](#).
3. The basis for requesting the recount. This can consist of a general statement that the petitioner believes that a mistake or fraud was committed in a specified ward or municipality in the counting and return of the votes cast for the office; or more specific grounds, such as a particular defect, irregularity, or illegality in the conduct of the election, may be listed in the petition. The petitioner shall state if this information is based on personal knowledge of the petitioner or if the petitioner believes the information to be true based on information received from other sources. [Wis. Stat. § 9.01\(1\)\(a\)2.b](#).
4. The ward or wards to be recounted.¹ If a municipality consists of only one ward, the petition

¹ If a candidate petitions for a recount in part, but not all, of the wards or municipalities within a jurisdiction or district, the opposing candidate may file a petition for a recount in any or all of the remaining wards or municipalities. The latter petition must be filed not later than 5:00 p.m. two days after the board of canvassers completes the first recount. The board of canvassers convenes at 9:00 a.m. on the next business day to count the remaining wards or municipalities. This right also applies to a referendum election. Any elector who voted at the election may petition to recount the remaining wards or municipalities in a referendum election. [Wis. Stat. § 9.01\(4\)](#).

need only list the municipality in which the recount is desired. If all wards in a municipality, county or district are to be recounted, the petition may list the municipality, county or district without specifying each ward to be recounted. The petitioner may also state “all wards” if the petitioner wants the entire election recounted. If no ward specifications are indicated, the filing officer will assume that all wards are included. [Wis. Stat. § 9.01\(1\)\(a\)3](#).

5. A verification signed under oath before a person authorized to administer oaths. The verification must state that the matters contained in the petition are known to the petitioner to be true except for allegations stated on information and belief, which the individual believes to be true. See Sample Recount Petition ([EL-186](#) or [EL-186R](#)).

If a recount petition is not filed in the proper form, or not accompanied by the filing fee (if required) by the filing deadline, the petitioner loses his or her right to a recount of the election. See Wis. Stat. § [9.01\(1\)\(a\)2](#) & [\(ag\)3](#). A sample recount petition ([EL-186](#) or [EL-186R](#)) is available in the Appendix.

After filing the recount petition, the petitioner may amend the petition. This may be done to include information discovered as a result of the facts gathered and determined by the board of canvassers during the recount. If the petitioner wants to amend his or her petition, the petitioner must file a motion to amend the petition with the board of canvassers as soon as possible after the petitioner discovers, or should have reasonably discovered, the new information, and show that the petitioner was unable to include the information in the original petition. [Wis. Stat. § 9.01\(1\)\(a\)4](#).

When is a Filing Fee Required?

Determining if a filing fee is required depends on the total votes cast for the office² and the difference between the total votes cast for the “leading candidate” and the total votes cast for the petitioner. The “leading candidate” is typically the candidate who won the election. However, in an election where more than one candidate is elected to the same office, or in a primary election when two or more candidates are nominated, the “leading candidate” is the person who received the fewest votes, but is still elected or nominated; not the candidate with the most votes. When more than one candidate is elected or nominated, the number and percentage of votes cast is calculated by first dividing the total votes cast by the number of candidates elected or advancing. [Wis. Stat. § 9.01\(1\)\(ag\)5](#). Please see “Recount Fee Scenarios” in the Appendix for an example of how to determine if a filing fee is required.

If 4,000 or fewer votes are cast:

No fee is required if the difference in the total votes cast between the leading candidate and those cast for the petitioner or between the affirmative and negative votes cast at a referendum is less than 10. If the difference is at least 10 votes, a filing fee is required.

If more than 4,000 votes are cast:

No fee is required if the difference between the leading candidate and those cast for the petitioner or between the affirmative and negative votes cast at a referendum is 0.25% or less. If the difference is greater than 0.25%, a filing fee is required.

When a filing fee is required, the cost of the recount should be estimated by the filing officer

² In an election in which more than one office of the same type is to be filled from the same territory, the total votes cast for the office is determined by dividing the total number of votes cast for the office by the number of offices to be filled. The difference between the total votes cast for the leading candidate and the petitioner is divided by the total votes cast for the office to calculate the percentage difference to determine when a fee is required. [Wis. Stat. § 9.01\(1\)\(ag\)5](#).

including the actual cost incurred by the Elections Commission to provide services for performing the recount, and pre-paid by the petitioner in cash or in another form of payment acceptable to the filing officer at the time of filing. [Wis. Stat. § 9.01\(1\)\(ag\)2 and 3](#).

If the recount results in the petitioner being elected or a reversal of the outcome of a referendum or the recount results in a difference in the votes cast that is at or above the threshold for paying the fee, the filing fee shall be refunded to the petitioner within 45 days after the board of canvassers makes its determination in the recount. If the results of the recount do not change the outcome of the election, or the recount results in a difference in the votes cast that is below the threshold for paying the fee, the petitioner shall pay any balance owing toward the actual cost of the recount within 45 days after the filing officer provides the petitioner with a written statement of the amount due. [Wis. Stat. § 9.01\(1\)\(ag\)3m](#).

Campaign Finance Note:

Per Wis. Stat. § 11.1104(9), “Contributions used to pay legal fees and other expenses incurred as a result of a recount under s. 9.01” are not subject to contribution limits. These contributions may be collected from the time of the initial recount petition has been filed until the recount process ends. Legislative campaign committees and political parties are not subject to contribution limits, and can give unlimited amounts to candidate committees however reporting requirements still apply. For information regarding the campaign finance laws, please contact the Wisconsin Ethics Commission (<http://ethics.wi.gov/content/contact-us>).

Where Does the Petitioner File the Recount Petition?

The petitioner files the recount petition with the filing officer with whom nomination papers or a declaration of candidacy are filed for that office. The filing officer for any federal or state office or referendum is the Wisconsin Elections Commission. The filing officer for any county office or referendum is the county clerk. The filing officer for a municipal office or referendum is the municipal clerk or the board of election commissioners. The filing officer for a school board office or referendum is the school district clerk. [Wis. Stat. §§ 8.10\(6\)\(d\), 9.01\(1\)\(ar\)1](#).

When Must the Petition be Filed?

If a municipal or county board of canvassers determines the election results, the time frame for filing is not earlier than the completion of the canvass for the election and not later than 5:00 p.m. on the third business day after the last meeting day of the board of canvassers which determines the election or referendum results. [Wis. Stat. § 9.01\(1\)\(a\)1](#).

If the Wisconsin Elections Commission Chairperson or designee determines the election or referendum result, the petition must be filed no earlier than the last meeting day of the last county board of canvassers to make a statement in the election or referendum and no later than 5:00 p.m. on the third business day after the Wisconsin Elections Commission receives the last statement from the county board of canvassers. [Wis. Stat. § 9.01\(1\)\(a\)1](#).

For an election for President of the United States, the recount petition deadline is the 5:00 p.m. on the first business day after the Wisconsin Elections Commission receives the last statement from a county board of canvassers for the election.

What Happens When the Petition is Properly Filed?

Upon receipt of a valid recount petition, the filing officer shall prepare a public notice of the recount (see Appendix for an example) pursuant to [Wis. Stat. § 19.84](#) describing when and where the recount will be held. The filing officer shall send a copy of the notice to the board of canvassers and deliver a copy of the petition and public notice to all candidates whose names were listed on the ballot for the same office. The Wisconsin Elections Commission recommends that the filing officer also deliver the notice to any registered write-in candidates. In a partisan primary, candidates from all parties for the same office must be notified by the filing officer. A candidate or agent designated by the candidate may personally accept delivery of the copy of the petition. Upon delivery, the candidate or agent shall be required to sign a receipt (see Appendix). If a candidate or agent does not personally accept delivery, the copies shall be given promptly to the sheriff. The sheriff shall promptly serve the copies on the candidates without fee. [Wis. Stat. § 9.01\(2\)](#).

The petitioner and other candidates are encouraged to obtain legal counsel to represent them in any recount proceedings. [Wis. Stat. § 9.01\(3\)](#). The board of canvassers should also make arrangements to obtain legal advice as needed during the recount proceedings. The Commission staff may also be made available via phone during the recount upon request.

Please note that the Wisconsin Elections Commission should be notified of all recounts. In the event of a recount for state or federal office involving more than one county, the boards of canvassers shall consult with the Commission staff in order to ensure that uniform procedures are used to the extent practicable. The Commission staff will make arrangements for a teleconference through the respective county clerks prior to beginning the recount. Candidates will be invited to participate and the teleconference will be open to the public. [Wis. Stat. § 9.01\(10\)](#).

Procedures for Conducting the Recount

When Does the Recount Begin?

The recount begins no earlier than 9 a.m. on the day following delivery of notice to all candidates and no later than 9 a.m. on the day following the last day for filing the recount petition. [Wis. Stat. § 9.01\(1\)\(ar\)3](#). In a recount ordered by the Wisconsin Elections Commission, the board of canvassers shall convene no later than 9 a.m. on the third day following receipt of the order by the county clerk. [Wis. Stat. § 9.01\(1\)\(b\)](#). If the following morning is a Saturday (or holiday) the Wisconsin Elections Commission recommends that the board of canvassers begin the recount on the Saturday (or holiday).

Who Conducts the Recount?

The board of canvassers that determined the original election result conducts the recount, except for state and federal elections. For state and federal elections, the county boards of canvassers for the counties in which the contested votes are cast conduct the recount. The Wisconsin Elections Commission recommends that the board of canvassers be composed of the same people who initially canvassed the election results. However, in the event one of the original members is unavailable when the recount is scheduled to begin, other qualified individuals may be appointed to fill the temporary vacancy. [Wis. Stat. §§ 7.53\(1\)\(b\), \(2\)\(a\), 7.60\(2\)](#). If a member of the board of canvassers is unavailable for the recount, the clerk should be notified immediately and a list of qualified replacements composed before the recount begins. The minutes of the recount should reflect any change in canvass board members and the reason for the substitution.

The board of canvassers may hire tabulators who work at the canvass board's direction and who assist in administering the recount. Tabulators may assist the board of canvassers in conducting the recount, but only members of the board of canvassers are competent to make any determination as to the validity of any vote tabulated. [Wis. Stat. § 9.01\(5\)\(b\)](#). The Wisconsin Elections Commission recommends that where possible, the election inspectors who worked the polls on Election Day serve as tabulators.

Who May Attend the Recount?

Any person may attend the recount. This includes the candidates, their representatives or legal counsel, media representatives, and any other interested persons. [Wis. Stat. § 9.01\(3\)](#). If there are multiple representatives from a single campaign, a single representative shall be identified as the designated primary representative to the board of canvassers. Secondary representatives may ask clarifying questions of recount staff and request that ballots be set aside for further review by the board of canvassers, but any challenges or objections for the record must be made by the designated primary representative. The recount statute does not specifically dictate how many individuals must be allowed to observe a recount, but it is clear that the ballot and materials must be available for candidates and their representatives to view and offer any objections to a ballot being counted. [Wis. Stat. § 9.01\(1\)\(b\)11](#).

The canvass board members and the tabulators are the only persons who may handle and touch the ballots and other election materials. The board of canvassers must, however, allow the candidates and their representatives and/or legal counsel to view and identify the election materials. [Wis. Stat. § 9.01\(1\)\(b\)11](#). Public health guidance should be considered by the board of canvassers when setting up the recount location and observation areas. Social distancing, the use of facecoverings and hand hygiene should all be clearly communicated to individuals that will be attending the recount in person to ensure the safety of everyone involved in recount. (See Public Health Guidance starting on Page 16 of the Appendix to this manual). Any challenges to the procedure established by the board of canvassers regarding observation should be decided by the board and documented in the minutes. The optional use of a live video feed to provide greater transparency and minimize the number of individuals observing in person should also be considered.

The board of canvassers shall exercise reasonable control over the conduct of the recount to assure that the canvassers and tabulators do not experience interference from any person observing the recount. All persons who are not under the supervision of the board of canvassers are considered observers and are subject to the observer [guidelines](#) established by the Wisconsin Elections Commission [in this manual](#) and the board of canvassers. To clearly identify candidate representatives, all observers shall wear badges or nametags identifying themselves and their role (candidate, media, etc.). This procedure allows individuals assisting the board of canvassers to quickly identify candidate representatives who are provided the ability to view and identify ballots and election materials for purposes of raising an objection to the counting of a ballot with the board of canvassers.

The board of canvassers may establish marked observer areas³ and ask that observers remain within those areas unless otherwise permitted by the board of canvassers. If there is not sufficient room for all observers to view the election materials, preference shall be given to candidates or

³ Unlike observation areas in the polling place, recount observations areas are not required to be placed at any specific distance as long as the candidates and their representatives can view and identify the election materials and the observers are not disruptive to the recount process.

their representatives. The use of video or still cameras inside the recount room is permitted unless it is disruptive or interferes with the recount. The board of canvassers may enforce reasonable restrictions on items brought into the recount room such as marking devices, food, or drink.

If any observer engages in disruptive behavior that in the opinion of the board of canvassers threatens the orderly conduct of the recount, the board of canvassers shall issue a warning and if the observer does not cease the offending conduct, order the observer's removal.

Recount Preparations

Unless a court orders otherwise, the board of canvassers may decide to either hand-count or use voting equipment to tabulate the ballots. The board of canvassers may also choose to hand-count certain wards, while using voting equipment to tabulate other wards. [Wis. Stat. § 5.90\(1\)](#). If voting equipment is used, it should be programmed to read and tally only the results for the contest to be recounted. Prior to the recount, the filing officer should consult individually with board of canvass members to inquire how each prefers the ballots be tabulated. Based on that informal polling, the filing officer can prepare for the recount. The formal decision on the tabulation method to be used should be made publicly when the recount begins so as to provide an opportunity for candidates or their representatives to object.

The filing officer administering the recount should ensure that all the supplies and materials needed for the recount have been acquired prior to the start of the recount. The filing officer should also acquire the necessary original election materials for each reporting unit to be recounted. A sample checklist of materials and supplies is available in the Appendix.

If the necessary materials are not on hand when the recount is scheduled to begin, the Wisconsin Elections Commission recommends that the board of canvassers convene by the deadline set by statute, document what materials are missing, what steps have been taken to procure them for the record, and adjourn until the materials are available.⁴ In the event that the board of canvassers has the required materials for some, but not all the wards to be recounted at the time they are scheduled to begin the recount, the board of canvassers may begin the recount with those wards for which it has the required materials while the missing materials are being obtained.

The Wisconsin Elections Commission recommends that the board of canvassers note in the minutes if proper notice of the recount was given to all candidates. Also, the board of canvassers should note if the recount was properly noticed as a public meeting under [Wis. Stat. § 19.84](#).

The filing officer may choose to conduct an administrative review of the recount materials prior to the recount commencing to identify possible errors or anomalies (e.g., reconciliation of poll books). If any such review was conducted by the filing officer prior to the recount, the filing officer shall publicly present a full report to the board of canvassers of any errors or anomalies identified as well as any corrective action taken. The board of canvassers may choose to adopt or reverse any decision made by the filing officer during the administrative pre-recount review.

What Does the Board of Canvassers Do?

The duty of the board of canvassers is to recount the votes cast for the office in question and to correct the errors, if any, that were made at the original determination of the election results. If necessary, the board of canvassers may also issue subpoenas to compel witnesses or documents for

⁴ The Board of Canvassers may not adjourn for more than one day at a time. [Wis. Stat. § 9.01\(1\)\(ar\)3](#).

the recount. The board of canvassers is also required to make a complete written record of the recount. [Wis. Stat. § 9.01\(5\)\(a\)](#).

Each party to a recount must be given an opportunity to object and provide offers of evidence on:

- all objections to the recount itself,
- the composition of the board of canvassers,
- the procedures followed,
- any ballot cast at the election, and
- any other issues presented to the board of canvassers during the recount.

[Wis. Stat. § 9.01\(5\)\(a\)](#).

Any objections or offers of evidence, the canvass board's decisions, and any findings of fact regarding any irregularities discovered during the recount, must be recorded in the written minutes of the recount proceedings. While a court reporter is not required, an audio recorder is recommended to ensure detailed minutes are kept. A sample format for the recount minutes can be found in the Appendix.

How Does the Board Conduct the Recount?

The board of canvassers conducts the recount by following the procedures in Wis. Stat. §§ [5.90](#); [7.50](#); [7.51](#); & [9.01\(1\)\(b\)](#). Please see the Appendix for checklists specific to the use of each type of tabulation method and the Commission staff memorandum on the construction of Wisconsin's election statutes and the discretion a board of canvassers may exercise when making decisions during the recount. These procedures are conducted separately for each municipality and reporting unit within the municipality. The board of canvassers shall announce each reporting unit before beginning the recount process for that reporting unit. Please note that the board of canvassers must keep complete minutes of each step completed, any objections made, any evidence introduced, any findings of fact made, and any decisions of the board of canvassers including the reasoning behind the decision.

1. Reconcile Poll Lists – [Wis. Stat. § 9.01\(1\)\(b\)1](#)

The board reconciles the two poll lists and any supplemental lists to confirm the lists record the same voters, the same total number of electors who voted in the ward or municipality, and that the same supplemental information is noted. The canvassers determine from the poll lists the total number of voters, the number of absentee votes recorded, and identify any irregularities appearing on these lists. The canvassers note in the minutes the total number of persons who voted, how many absentee votes were recorded, and any irregularities found on the poll lists.

2. Review Absentee Ballots and Materials – [Wis. Stat. § 9.01\(1\)\(b\)2](#)

Determine Number of Absentee Voters

The Wisconsin Elections Commission recommends that the board of canvassers determines the number of absentee voters by reviewing the poll lists, the absentee ballot certificate envelopes, the Inspectors' Statement (EL-104), and the absentee ballot log (EL-124).

Examine Written Absentee Applications

The board of canvassers then reviews the written applications for absentee ballots and the list of absentee voters maintained by the municipal clerk. There should be a written application for each absentee ballot envelope except those issued in-person in the clerk's office. In the case of indefinitely confined, a designation on a list prepared by the municipal clerk is sufficient if it indicates that an absentee ballot was delivered to and returned by an absentee voter.

Do not reject an absentee ballot if there is no separate written application.⁵ Because of the variety of reasons that the board of canvassers may not be able to locate a specific written application, and the likelihood that a voter may be improperly disenfranchised, the board of canvassers should not reject an absentee ballot due to the lack of a written application. The board of canvassers records in the minutes the number of written absentee ballot applications on file as well as an explanation of any discrepancy, but any request to reject a ballot on this basis should be determined by a reviewing court rather than the board of canvassers.

Review Rejected Absentee Ballots

The board of canvassers examines the rejected absentee ballot certificate envelopes contained in the brown carrier envelope (EL-102). Rejected absentee ballot certificate envelopes are identified by the election inspectors on election night and marked "rejected." The reason for the rejection should be noted on the Inspectors' Statement (EL-104).

The board of canvassers should make their own determination for each rejected absentee ballot certificate envelope.⁶ Any improperly rejected ballots should be marked and placed into the pool of ballots to be counted. If the number of voters is increased under this procedure the change should be recorded in the minutes. Any errors by election inspectors in rejecting absentee ballots should be documented in the minutes along with the corrective action taken.

Examine Defective Absentee Ballot Envelopes

The board of canvassers examines the used absentee ballot certificate envelopes (EL-122) contained in the white carrier envelope (EL-103). If the board finds any defective⁷ absentee ballot certificate envelope not identified on election night they should be marked as defective, assigned a serial number, set aside, and properly preserved. A notation including a description of the defect should be made in the minutes.

The number of voters determined at the beginning of the recount is reduced by the total number of absentee ballots set aside under this procedure. This adjusted number is noted in the minutes and used whenever the number of voters is referred to during the recount. Do not remove ballots from the pool yet.

3. Examine Ballot Bag or Container – [Wis. Stat. § 9.01\(1\)\(b\)3](#)

The board of canvassers examines the ballot bag or ballot container (EL-101) to determine that it has not been tampered with, opened, or opened and resealed. The board of canvassers should verify that the tamper-evident seal matches the serial number on the Ballot Container

⁵ See Informal Opinion of Staff Attorney Re: Recount of the Town of Walworth Recall Election (11/18/02); but see also [Wis. Stat. § 6.84\(2\)](#); [Walter V. Lee v. David Paulson, 2001 WI App 19](#).

⁶ See [Wis. Stat. § 6.88\(3\)](#) for procedures and guidance on accepting or rejecting absentee ballot certificate envelopes.

⁷ An absentee ballot is defective only if it is not witnessed, the witness did not provide an address, it is not signed by the voter, or if the certificate envelope or the certification language is missing. [Wis. Stat. § 9.01\(1\)\(b\)2](#).

Certification (EL-101) and the Inspectors' Statement (EL-104). The Wisconsin Elections Commission recommends the board of canvassers investigate any irregularities or possible tampering with the ballots and note its findings in the minutes.

4. Reconcile Ballot Count – Wis. Stat. § 9.01(1)(b)4.

❑ *Ballot Count – 4.(a)*

The board of canvassers opens the ballot bag or ballot container and removes the contents. The canvassers or tabulators count the number of ballots in the ballot bag, excluding any ballots that were set aside and not counted by the election inspectors on election night under the provisions of [Wis. Stat. § 7.51\(2\)](#). These “set aside” ballots should have been marked and bundled by the election inspectors on election night.

The board of canvassers reviews all ballots marked rejected, defective, and objected to, to decide whether such ballots were correctly categorized when the ballots were first examined after the election.

❑ *Separate Probable Absentee Ballots – 4.(b)*

The board of canvassers separate all “probable absentee ballots”⁸ from the other ballots. The number of probable absentee ballots should equal the number of properly completed certificate envelopes (as determined by the board of canvassers in step 2 above), the number of absentee ballots recorded on the registration list on election night, and the number of written applications. Any discrepancies should be recorded in the minutes.

❑ *Reconciling the Number of Ballots with the Number of Voters⁹*

If the number of voters is greater than or equal to the number of ballots, skip this step. Only in the situation where the number of ballots exceeds the number of voters should the board of canvassers engage in the following procedure.

If the board of canvassers previously determined that any absentee ballot certificate envelopes were defective, the board of canvassers draws at random, without inspection, from the pool of probable absentee ballots, the number of ballots equal to the number of envelopes that have been determined defective. If the board of canvassers finds more defective absentee ballot envelopes than probable absentee ballots, the board of canvassers shall set aside all probable absentee ballots. The probable absentee ballots shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The board of canvassers notes in the minutes the steps taken under this procedure and the results determined. [Wis. Stat. § 9.01\(1\)\(b\)4.b.](#)

If the number of ballots still exceeds the number of voters, the board of canvassers or the tabulators shall place all the ballots face up to check for blank ballots. Any blank ballots (ballots which have not been marked for any office) shall be marked as to the reason for their removal, set aside and properly preserved. The board of canvassers should record this action in the minutes. [Wis. Stat. § 9.01\(1\)\(b\)4.c.](#)

⁸ The board of canvassers shall presume that a ballot initialed only by the municipal clerk, executive director of the board of election commissioners, deputy clerk or secretary is an absentee ballot. [Wis. Stat. § 9.01\(1\)\(b\)4.b.](#)

⁹ See Appendix pgs. 12-15 for discussion of the Board of Canvassers retaining some discretion to ensure that statutes are applied to “give effect to the will of the electors.”

If the number of ballots still exceeds the number of voters after removing all blank ballots, the board of canvassers shall place all ballots face down to check for initials. Any ballots not properly initialed by two inspectors or any probable absentee ballots not properly initialed by the municipal clerk or deputy clerk are set aside. The board of canvassers must, without inspection, randomly draw from the improperly initialed ballots as many ballots as are necessary to reduce the number of ballots to equal the number of voters determined to have voted on election day less any defective absentee ballot certificate envelopes. Any ballots removed for lack of proper initials shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The board of canvassers should record this action in the minutes. [Wis. Stat. § 9.01\(1\)\(b\)4.d.](#)

If the number of ballots still exceeds the number of voters, the board of canvassers places the remaining ballots in the ballot bag and randomly draws, without inspection, the number of ballots equal to the number of excess ballots.¹⁰ These ballots shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The actions taken under this procedure are recorded in the minutes. [Wis. Stat. § 9.01\(1\)\(b\)4.e.](#)

When the number of ballots equals the number of voters or if the number of voters exceeds the total number of ballots, the board of canvassers returns the ballots to the ballot bag or container and thoroughly mixes the ballots. [Wis. Stat. § 9.01\(1\)\(b\)5.](#)

5. Review Provisional Ballots

The board of canvassers shall examine the Inspectors' Certificate of Provisional Ballots (EL-108), Provisional Ballot Reporting Form (EL-123r), Provisional Ballot Certificate envelopes (EL-123), and Statement of the Municipal Board of Canvassers (EL-106AP) to determine if provisional ballots were correctly processed. The board of canvassers should determine if all ballots for voters providing the required information¹¹ have been included in the original result. The board of canvassers shall record any discrepancies in the minutes. [Wis. Stat. § 6.97.](#)

6. Count the Votes

When counting paper or optical scan ballots, questions often arise concerning the intent of the elector. Election officials have a duty to attempt to determine voter intent and give effect to that intent if it can be determined. Election officials are expected to use common sense to determine the will of an elector based on the marks made by the elector on the ballot. The decisions of the election inspectors may be reviewed by the board of canvassers conducting the recount. Wis. Stat. §§ [7.50](#), [7.51](#), [7.60](#).

Even if an elector has not fully complied with the provisions of the election law, votes should be counted as intended by the elector to the extent that the elector's intent can be determined. Wis. Stat. §§ [5.01\(1\)](#), [7.50\(2\)](#). The Wisconsin Elections Commission has a manual titled "Counting Votes," which is designed to assist election officials in determining voter intent. A copy of the "[Counting Votes](#)" manual is available on the agency website and should be reviewed by the board of canvassers prior to the recount.

The exact steps for tabulating the votes will vary depending on the method or combination of

¹⁰ See Appendix pgs. 12-15 for discussion of the Board of Canvassers retaining some discretion in potential drawdown scenarios to ensure that statutes are applied to "give effect to the will of the electors." One factor considered, is whether an error can be determined and whether the error was committed by the voter or the election official.

¹¹ See [Wis. Stat. § 6.97](#) and [Wis. Admn. Code Ch. EL § 3.04](#).

methods of tabulation selected by the board of canvassers:

1. Hand Count

The Wisconsin Elections Commission recommends that hand counts be conducted using teams of at least two tabulators. These tabulators will double-check each other's work throughout the process to ensure that an accurate count is maintained.

Sort Ballots by Candidate

Each tabulation team should begin by sorting the ballots into stacks: One stack for each candidate (ballots that clearly indicate a vote for a ballot candidate or a valid write-in candidate) and one stack for ballots where no vote may be counted (defective ballots, votes for invalid write-in candidates, etc). Candidate representatives should be given the opportunity to review each ballot as it is sorted, and may request that the tabulators set aside questionable ballots for closer examination and determination of voter intent by the board of canvassers.¹² The board of canvassers may consult with its legal counsel or the Wisconsin Elections Commission staff regarding any questionable ballots. The Wisconsin Elections Commission recommends that any such consultation should be recorded in the minutes.

Create Stacks of a Fixed Number

Set aside the stack of ballots for which no vote can be counted. For each stack of ballots marked for a candidate, each tabulator should create sub-stacks of a fixed number (e.g., 25 ballots) with a remainder stack for any number left over from creating the full-size stacks. Each stack should be double-checked by a second tabulator to ensure the stack contains exactly the number expected.

Tally Stacks to Determine the Total Vote

The board of canvassers then carefully counts the number of stacks for each candidate. The counts should be recorded separately by two individuals on two clearly-labeled tally sheets (EL-105). After all of the counts have been recorded, the two tally sheets should be compared against each other to ensure an accurate count is determined. The recount vote totals are recorded in the minutes.

A reconciliation of the ballots for which no vote could be counted should be recorded in the minutes. This documentation should list the reasons the ballots could not be counted and the number of ballots not counted for each reason.

2. Optical Scan

If an optical scan tabulator is used, the Wisconsin Elections Commission recommends that where possible the tabulator should be programmed to only tally the results for the contest to be recounted. If the tabulator is not reprogrammed to tally only the contest to be recounted, the Wisconsin Elections Commission recommends that the counts for other contests be separated, set aside and preserved. The recounted results for the other contests should not be included in the board of canvassers report of recount results.

Note: The original memory device for the voting equipment from election day cannot be cleared

¹² Please refer to the [Counting Votes Manual](#) on the WEC website for detailed rules and examples of when to count or not count a mark as a vote.

and reprogrammed for use at the recount, so an alternative memory device must be acquired for use at the recount. [Wis. Stat. § 7.23\(1\)\(g\), \(2\)](#).

Examine the optical scan tabulator

The board of canvassers shall make a record of the number of the tamper evident seal, protective counter, or other device, if any, before opening any of the voting equipment. The board of canvassers examines the electronic voting equipment to determine that any other tamper evident seals are intact and match the log maintained by the election inspectors and the municipal clerk. The board of canvassers notes in the minutes any irregularities or possible tampering with the device. Wis. Stat. §§ [5.90\(1\)](#) & [9.01\(1\)\(b\)6](#).

Test the optical scan tabulator

The board of canvassers tests the automatic tabulating equipment to ensure it is programmed correctly for the recount using a pre-audited group of ballots marked to record a predetermined number of valid votes for each candidate or contest choice (test deck). The test deck should include at least one ballot with more selections than permitted (overvote) and for recounts in a partisan primary, at least one ballot with votes in more than one party primary (crossover) in order to test the ability of the tabulator to reject such ballots. The results of the test deck tabulation should be compared to the pre-audited results to ensure accuracy and a record of the test results should be noted in the minutes. Wis. Stat. §§ [5.84\(1\)](#), [5.90\(1\)](#). The board of canvassers may choose to test the tabulator for all reporting units at once and skip this step in subsequent reporting units if using the same memory device for all reporting units.

Compare Duplicate Ballots with Original Ballots

On election day, some ballots cannot be processed by the optical scan tabulator due to overvotes or other defects. When this happens, election officials create a duplicate ballot to honor as much of the elector's intent as possible. The duplicate ballot is then tallied by the equipment and the original is set aside and not counted. Both the duplicate and original ballots should be marked as such and contain identical serial numbers so they can be matched up.

The board of canvassers compares any duplicate ballots with their respective originals to determine the correctness of the duplicates. If any duplicate ballots were remade incorrectly, the board of canvassers should set aside the incorrectly remade duplicate ballot, mark it with the reason for its removal, create a new duplicate ballot, and mark it as such. [Wis. Stat. § 5.90\(1\)](#).

Insert Ballots Into the Optical Scan Tabulator

Each ballot shall be reviewed by the board of canvassers and may be inspected by the candidates or their representatives before being inserted into the tabulator. If it appears the ballot may not be recorded correctly by the tabulator, or if the ballot is objected to, the ballot is set aside to be examined by the board of canvassers for voter intent and counted separately by hand.

Generate Results

The board of canvassers places the optical scan tabulator into post-election mode and generates a results tape for the reporting unit. The board of canvassers adds in any votes counted

separately by hand using new tally sheets and records the total results as part of the revised canvass statement, see Step #9.

If the equipment needs to be used for another reporting unit, the board of canvassers shall ensure that all ballots have been removed from the tabulator and re-secured in ballot bags or containers before proceeding to reset the equipment for use with the next reporting unit.

3. Direct Record Electronic (DRE)

In many polling places across the state direct record electronic (DRE) voting equipment is used in conjunction with paper ballots or optical scan ballots to enable individuals with disabilities to vote privately and independently. As a result, the paper ballots and optical scan ballots should be counted first by following the steps described above, if applicable.

Separate the Voter Verified Paper Audit Trail into Individual Ballots

DRE equipment records votes two separate ways: electronically and on a paper tape that the voter can view to verify the equipment is recording their votes correctly before casting their ballot. In a recount, the board of canvassers is required to use the paper record. [Wis. Stat. § 5.90\(1\)](#). The paper tape consists of a pre-election readiness report, a zero-report showing that no votes are currently in the memory of the machine, individual ballot records, and a closing results report.

To facilitate counting of the individual ballot records and to preserve the confidentiality of an individual's vote, the board of canvassers may cut the paper record to separate the individual voter records and then further cut the paper tape into the individual ballots, which would then be randomized. When cutting the paper tape be careful that only the section of the tape covering election day is used. When separating the tape into individual ballots, watch for "voided" ballots which appear the same as other ballot entries except they will be followed by a "void" entry on the tape. The "void" entry may appear far below the record of votes cast on the tape. These "voided" ballots should not be counted as they were not cast.

As an alternative to cutting the paper tape, the boards of canvassers may retain the paper record in its original format and simply scroll through the tape to count each individual ballot. However, if the tape is not cut, the board of canvassers must take the appropriate precautions to ensure the confidentiality of votes as the entries on the paper record will be in the order that the voters used the equipment.

If due to a paper jam or misprint some individual ballot records are not available, the board of canvassers may consult with the voting equipment vendor to determine if the missing records can be recreated. The board of canvassers may be able to obtain records from the vendor, such as cast ballot records, that will allow them to tally votes from the missing ballot records. Any such tallying should be documented in the recount minutes.

Tally Individual Ballots to Determine the Total Vote

The board of canvassers carefully counts each individual ballot record as recorded on the tape. The counts should be recorded by two individuals on clearly labeled tally sheets (EL-105). After all of the counts have been recorded, the two tally sheets should be compared against each other to ensure an accurate count is determined. The recount vote totals should be compared against the original results as generated by the DRE and any discrepancies shall be recorded in the

minutes.

7. Secure Original Materials

After concluding the recount for a particular reporting unit, the board of canvassers shall gather and account for all original election materials. All ballots shall be placed into a ballot bag or container and resealed. The board of canvassers shall document in the minutes the serial number of any new security seals or tags used.

All election materials should be accounted for before proceeding to the next reporting unit to prevent the accidental mixing of materials from different reporting units.

8. Prepare New Canvass Statement

If any corrections were made to the results, the board of canvassers shall prepare a statement of revised election results using the canvass reporting form (EL-106). [Wis. Stat. § 9.01\(1\)\(b\)9.](#)

After the Recount

What does the board of canvassers do after completing the recount?

- If the recount is for a municipal election, the board of canvassers promptly forwards the results and minutes to the municipal clerk.
- If the recount is for a school board election, the board of canvassers promptly forwards the results and minutes to the school board clerk.
- If the recount is for a county election, the county board of canvassers promptly forwards the results and minutes to the county clerk.
- If the recount is for a state or federal election, the results and minutes of the recount are to be forwarded immediately to the Wisconsin Elections Commission and should be received no later than 13 days after the recount is ordered. [Wis. Stat. § 9.01\(1\)\(ar\)3.](#)

A copy of the minutes of any recount should be sent to the Wisconsin Elections Commission. For federal, state, and county elections, the board of canvassers should also send copies of the minutes to the chief officers of the state or county committee for any registered political party who ran candidates for that office. [Wis. Stat. § 9.01\(5\)\(bm\).](#)

No certificate of election may be issued by the filing officer until the deadline for filing all appeals has passed and the election results are final.

How Does a Candidate or Petitioner Challenge the Recount Results?

The candidate or petitioner has a right to appeal the recount determination in circuit court. The appeal must be filed with the circuit court within five (5) business days of the completion of the recount in all counties concerned. Notice must also be served in person or by certified mail on all other candidates and persons who filed a written notice of appearance before the board of canvassers. If the recount affects a state or federal office or referendum, notice of the appeal must be served on the Wisconsin Elections Commission. See Wis. Stat. §§ [9.01\(6\)](#), [\(7\)](#), [\(8\)](#), & [9](#).

The recount process and the subsequent judicial appeals is the exclusive remedy for testing the right to hold an elective office as the result of an alleged irregularity, defect, or mistake committed

during the voting or canvassing process. [Wis. Stat. § 9.01\(11\)](#).

Conclusion

This information is prepared pursuant to [Wis. Stat. § 9.01\(10\)](#). Petitioners, candidates, and filing officers should seek legal counsel when they are involved in a recount. If you have any questions, concerns, suggestions or recommendations about the recount process, please contact the:

Wisconsin Elections Commission

P.O. Box 7984

Madison, WI 53707-7984

Phone: 608-261-2028 Fax: 608-267-0500

Email: elections@wi.gov

Website: <http://elections.wi.gov>

Appendix

Sample Forms	1-6
Recount Petition	1
Recount Petition for Referendum	2
Order for Recount	3
Public Notice of Recount	4
Acceptance of Service	5
Recount Minutes	6
Recount Fee Scenarios	7
Recount Checklists	8-11
Supplies and Materials	8
Paper Ballot	9
Optical Scan	10
Direct Recording Electronic (DRE)/Touch Screen Voting	11
Commission Staff Memorandum: Construction of Wisconsin Election Statutes	12-15
Directory vs. Mandatory Application of Statutes	12-13
Election Official Error vs. Voter Error	14
Board of Canvassers Discretion	14-15
Public Health Guidance	16

SAMPLE RECOUNT PETITION

In Re: The Election for
(specify office)

Verified Petition
for Recount

Petitioner (name of petitioner) alleges and shows to (specify the clerk or body with whom nomination papers are filed for that office):

1. That Petitioner was a candidate for the office of (specify office) in an election held on (specify_date of election);
2. The Petitioner is an aggrieved party as defined in [Wis. Stat. § 9.01\(1\)\(a\)5](#).
3. That Petitioner is informed and believes that a (mistake or fraud) has been committed in (specify each ward or municipality) in the counting and return of votes cast for the office of (specify office); and/or
4. That Petitioner (is informed and believes) or (knows of his/her own knowledge) that:

(Specify other defects, irregularities or illegalities in the conduct of the election).

Wherefore: Petitioner requests a recount of (specify each ward or municipality in which a recount is desired); each ward need not be specified if a recount is requested for all wards within a jurisdiction).

Dated this _____ day of _____, _____.

Petitioner

I, (name of petitioner), being first duly sworn, on oath, state that the matters contained in the above petition are known to me to be true except for those allegations stated on information and belief, which I believe to be true.

Petitioner

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public (or other person authorized to administer oaths)

My Commission Expires _____
(specify expiration date)

The information on this form is required by Wis. Stat. § 9.01. This form is prescribed by the Wisconsin Elections Commission, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, WI 53707-7984, (608) 261-2028
EL-186 (Rev.4/18)

SAMPLE RECOUNT PETITION FOR REFERENDUM

In Re: The Election for
 (specify referendum)

Verified Petition
 for Recount

Petitioner (name of petitioner) alleges and shows to (specify the clerk or body with whom the referendum was filed):

1. That Petitioner was an elector who voted upon the referendum in the election held on (specify_date of election);
2. That Petitioner is informed and believes that a (mistake or fraud) has been committed in (specify each ward or municipality) in the counting and return of votes cast for the referendum of (specify referendum); and/or
3. That Petitioner (is informed and believes) or (knows of his/her own knowledge) that:

 (Specify other defects, irregularities or illegalities in the conduct of the election).

Wherefore: Petitioner requests a recount of (specify each ward or municipality in which a recount is desired; each ward need not be specified if a recount is requested for all wards within a jurisdiction).

Dated this _____ day of _____, _____.

Petitioner

I, (name of petitioner), being first duly sworn, on oath, state that the matters contained in the above petition are known to me to be true except for those allegations stated on information and belief, which I believe to be true.

Petitioner

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public (or other person authorized to administer oaths)

My Commission Expires _____
(specify expiration date)

The information on this form is required by Wis. Stat. § 9.01. This form is prescribed by the Wisconsin Elections Commission, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, WI 53707-7984, (608) 261-2028
EL-186R (Rev.11/09/16)

SAMPLE ORDER FOR RECOUNT

STATE OF WISCONSIN – (County)

In the matter of:)	
)	ORDER FOR RECOUNT
A Recount of the (Election))	
for (Title of Office))	
for the (District), held)	
on (Date))	

On (Date Recount Petition was filed), a recount petition was filed by (Petitioner’s Name), a candidate for the office of (Office Title) for the (District), at the (Election) held on (Date).

The petition requests a recount of (list specific wards or municipalities) for the office of (Office Title).

The filing officer has reviewed the petition. The petition is sufficient. Any applicable fee has been received and accepted.

Pursuant to Wis. Stat. § 9.01:

IT IS ORDERED THAT:

1. A recount be conducted of all the votes cast for the office of (Office Title) for the (District) at the (Election) held on (Election Date) in (list of specific wards or municipalities).
2. The boards of canvassers convene at (Time) on (Date) at (Location), to begin the recount.
3. The recount be completed by the board of canvassers immediately.
4. The clerk transmit a certified canvass report of the result of the recount and a copy of the minutes of the recount proceedings to the Wisconsin Elections Commission immediately after the completion of the recount.

Dated: _____

(Clerk’s Name)
(Clerk’s Title)

SAMPLE PUBLIC NOTICE

Notice of Recount for the Office of (Office Title) for the (District) in the (Election)

TO: All Candidates On The Ballot For The Office of (Office Title) for the (District) and
Other Interested Persons

FROM: (Clerk)

SUBJECT: Recount of the Votes Cast for the Office of (Office Title) for the (District) in the
(Election)

DATE: (Date)

A recount of the votes cast at the (Election Date) (Election) for the office of (Office Title) for the
(District) will begin at the time and location set forth below:

(Municipality) – 9:00 a.m. on (Date), at (Location).

A copy of the recount petition is attached. This notice is given pursuant to Wis. Stat. § 9.01(2).

You have the right to be present and to be represented by counsel to observe and challenge the votes
cast and the board of canvassers' decisions at the election.

Attachment

Sample Acceptance of Service

MEMORANDUM

DATE: (Date)
TO: (Clerk)
FROM: Candidate for (Office)
SUBJECT: Service of Recount Petition

Pursuant to Wis. Stat. § 9.01(2) on this day, I have personally received delivery of copies of the notice of recount, recount petition, and order for recount for the office of (office) at the (election date) (election name). I agree to waive service and accept delivery.

(Signature of Candidate)

(Print Name)

Sample Recount Minutes

Date of Recount:

County:

Office to be Recounted: *(Include District Number)*

Original Result: *(Candidates' Names and Votes for Each Candidate. If there was a tie, explain how it was broken.)*

Canvass Board Members: *(If substitute, give reason for substitution.)*

Other Personnel: *(Tabulators, Corporation Counsel, Clerical Support)*

Others Present:

Notification: *(Were candidates notified and was public notice given?)*

Electronic Voting Equipment Test Results:

For Each Reporting Unit:

Name of Municipality:

Reporting Unit:

Original Vote Totals for Reporting Unit:

Number of Voters from Registration List:

Number of Absentee Ballot Applications:

Number of Absentee Ballots:

Notes: *(Include a description of any discrepancies, irregularities, errors, problems, objections raised by observers. Record any decision of the board of canvassers. Identify any exhibits by description and number.)*

Recount Vote Totals for Reporting Unit:

Recount Results:

An electronic or hard copy of the minutes from any recount must be sent to:

Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984
elections@wi.gov

Recount Fee Scenarios

Scenario #1: Village President

Candidate	Votes
A	4,500
B	4,410

In this scenario, candidate A would currently be elected to office. If a recount was requested, the fee is determined by first calculating the total votes cast for the office ($4,500+4,410 = 8,910$). The difference between the leading candidate and the petitioner (90 votes) is divided by the total votes cast (8,910) and then multiplied by 100 to get the percentage difference (1.01%).

Candidate B would be required to pay a filing fee as the percentage difference is greater than .25%. However, the vote difference between the leading candidate and the petitioner is more than 1% so the contest is not eligible for a recount.

Scenario #2: School Board (vote for up to 3)

Candidates	Votes
A	3,500
B	3,000
C	2,920
D	2,910
E	2,900
F	2,800

In this scenario, candidates A-C would currently be elected to office. If a recount was requested, the fee is determined by adding up all the votes cast for the office (18,030 total) and dividing it by the number of offices to be filled (3 in this scenario) to get a total of 6,010. The difference between the leading candidate (C, as he or she is the candidate with the lowest number of votes still being elected to office) and the petitioner is divided by 6,010 and multiplied by 100 to get the percentage difference.

So in this case:

- If Candidate D requested a recount, there would be no fee required as the difference is .17%, which is not greater than .25%
- If Candidate E requested a recount, a filing fee would be required as the difference is .33%, which is greater than .25%
- If Candidate F requested a recount, the difference would be 2% so the contest is not eligible for recount.

General Checklist of Supplies and Materials Needed for the Recount:

- Paper and Pens (To record the minutes of the recount!)
- Tape Recorder (Optional)
- Speaker Phone (for consultation with WEC staff or counsel)
- Test Deck for Electronic Voting Equipment Test
- New *Tally Sheets* (EL-105)
- New *Canvass Reports* (EL-106)
- Copies of any informational memoranda relating to the election and the recount prepared by the Wisconsin Elections Commission staff and sent to county and municipal clerks.
- Recount checklists and the *Elections Recount Procedures Manual* available from the Wisconsin Elections Commission

Election Materials from Each Reporting Unit:

- All ballots to be recounted, contained in the original ballot bag or ballot container (EL-101), including any provisional ballots processed after Election Day;
- All paper audit trails from direct record electronic (DRE) voting devices;
- All logs of security seals for ballot boxes or electronic voting equipment;
- Both copies of the original poll lists, including any supplemental voter lists;
- All absentee ballot applications (See page 7);
- Any rejected absentee ballots, contained in the original brown carrier envelope (EL-102);
- Any used absentee ballot certificate envelopes, contained in the white carrier envelope (EL-103);
- The original Inspectors' Statement (EL-104);
- The MBOC Record of Activity (EL-104P) created during the processing of provisional ballots, if any;
- The original tally sheets (EL-105) and any results tapes generated by electronic voting and tabulating devices;
- The original canvass report of the election results (EL-106);
- The amended canvass report of the election results created after any provisional ballots were tabulated (EL-106P);
- Any provisional ballot documentation (EL-108 & EL-123);
- The absentee ballot log (EL-124); and
- The test deck for any electronic voting equipment.

Recount Checklist

Hand Counted Paper Ballots

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- Compare and reconcile poll lists.
- Absentee ballot review: number, applications, rejected, defective envelopes.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EL-104) and Ballot Container Certification (EL-101).
- Ballot count.
 - Review ballots marked "rejected," "defective," or "objected to."
 - Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
 - Reconcile the number of ballots with the number of voters.
 - Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.*)
- Review provisional ballots.
- Hand count paper ballots.
 - Sort ballots by candidate.
 - Create stacks of a fixed number.
 - Tally the stacks using duplicate original tally sheets (EL-105).
- Add in any votes counted separately by other methods.
- Secure the original election materials.
- Prepare canvass statement.
- Prepare minutes for each reporting unit and attach completed checklist to minutes.

Recount Checklist

Optical Scan Voting Equipment

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- Compare and reconcile poll lists.
- Absentee ballot review: number, applications, rejected, defective envelopes.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EL-104) and Ballot Container Certification (EL-101).
- Ballot count.
 - Review ballots marked "rejected," "defective," or "objected to."
 - Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
 - Reconcile the number of ballots with the number of voters.
 - Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.*)
- Review provisional ballots.
- Verify voting equipment tamper evident serial number seal number written on Inspectors' Statement (EL-104) contains Chief Inspector's initials for pre-election and post-election verification.
- Test the automatic tabulator (*The Board of Canvassers may choose to test the tabulator for all reporting units at once and skip this step in subsequent reporting units if using the same memory device for all reporting units.*)
- Compare duplicate ballots with original ballots.
- Feed ballots into the optical scan tabulator.
- Generate results.
- Add in any votes counted separately by other methods.
- Secure the original election materials.
- Prepare canvass statement.
- Prepare minutes for each reporting unit and attach checklist to minutes.

Recount Checklist

Direct Recording Electronic (DRE)/Touch Screen Voting Equipment

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- Compare and reconcile poll lists.
- Absentee ballot review: number, applications, rejected, defective envelopes.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EL-104) and Ballot Container Certification (EL-101).
- Ballot count.
 - Review ballots marked "rejected," "defective," or "objected to."
 - Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
 - Reconcile the number of ballots with the number of voters.
 - Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.*)
- Review provisional ballots.
- Verify voting equipment tamper evident serial number seal number written on Inspectors' Statement (EL-104) contains Chief Inspector's initials for pre-election and post-election verification.
- Separate voter-verified paper audit trail into individual ballots (may be skipped if canvass board members take appropriate precautions to ensure the confidentiality of individual electors' votes)
- Hand count permanent paper record of votes generated by DRE and record on duplicate tally sheets (EL-105).
- Add in any votes counted by other methods.
- Secure the original election materials.
- Prepare canvass statement.
- Prepare minutes for each reporting unit and attach checklist to minutes.

WISCONSIN ELECTIONS COMMISSION

212 EAST WASHINGTON AVENUE, 3RD FLOOR
POST OFFICE BOX 7984
MADISON, WI 53707-7984
(608) 261-2028
ELECTIONS@WI.GOV
ELECTIONS.WI.GOV



COMMISSIONERS

BEVERLY R. GILL
JULIE M. GLANCEY
ANN S. JACOBS
JODI JENSEN
DEAN KNUDSON
MARK L. THOMSEN, CHAIR

INTERIM ADMINISTRATOR MEAGAN WOLFE

MEMORANDUM

DATE: For the May 24, 2018 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Interim Administrator

Prepared and Presented by:
Michael Haas, Staff Counsel
Nathan Judnic, Senior Elections Specialist

SUBJECT: Commission Recount Manual

The information contained in the Commission's Recount Manual is prepared pursuant to Wis. Stat. § 9.10(10) to ensure that uniform procedures for boards of canvassers conducting recounts are followed when possible. The purpose of the Recount Manual, and other manuals and guidance documents prepared by the Commission staff, is to help explain statutory requirements, offer guidance on ambiguous provisions of the statutes, if necessary, and when needed, expand upon statutory requirements with recommended best practices and procedures.

Unlike laws governing other topic areas, the construction and application of election laws is somewhat unique.

5.01 **Scope. (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.

Wis. Stat. § 5.01(1). The Legislature's decision to construct Wisconsin's election statutes in this manner affects how the courts have interpreted these statutes which in turn influences advice provided by Commission staff when fact specific scenarios are presented, usually on a case by case basis. The construction of statutes to "give effect to the will of the electors" has resulted in three general concepts which provide the framework for advice rendered by Commission staff: 1) directory vs. mandatory application of election statutes, 2) election official error vs. voter error, and 3) board of canvassers decision-making discretion.

Directory vs. Mandatory Application of Statutes to "give effect to the will of the electors"

Based on Wis. Stat. § 5.01(1) (and its identical predecessor statute), Wisconsin courts view the election statutes with an eye towards a voter's ballot being counted as cast when possible, versus a ballot being set aside and not counted if the will of the elector can be determined, even if a statute directs – but does not mandate – a ballot to be set aside in certain circumstances. Especially during a recount, this construct can be important in reviewing ballots that may or may not have been issued, cast or counted in compliance with every specific step of the election statutes. The consistent application of this concept is illustrated by the following statements of the Wisconsin Supreme Court:

The difference between mandatory and directory provisions of election statutes lies in the consequences of nonobservance: An act done in violation of a mandatory provision is void, whereas

an act done in violation of a directory provision, while improper, may nevertheless be valid. Deviations from directory provisions of election statutes are usually termed ‘irregularities,’ and, as has been showing in the preceding subdivision, such irregularities do not vitiate an election. Statutes giving directions as to the mode and manner of conducting elections will be construed by the courts as directory, unless a noncompliance with their terms is expressly declared to be fatal, or will change or render doubtful the result, as where the statute merely provides that certain things shall be done in a given manner and time without declaring that conformity to such provisions is essential to the validity of the election. *Sommerfeld v. Board of Canvassers*, 269 Wis. 299, 69 N.W.2d 235 (1955), *Olson v. Lindberg*, 2 Wis.2d 229, 85 N.W.2d 775 (1957).

In keeping with sec. 5.011, Stats. (which is now sec. 5.01(1)), this court has quite consistently construed the provisions of election statutes as directory rather than mandatory so as to preserve the will of the elector. *Grandinjan v. Boho*, 29 Wis.2d 674, 139 N.W.2d 557 (1966).

...We have held that the word ‘shall’ can be construed to mean ‘may.’ *George Williams College v. Williams Bay*, 242 Wis. 311, 7 N.W.2d 891 (1943).

In passing upon statutes regulating absentee voting, the court should look to the whole and every part of the election laws, the intent of the entire plan, the reasons and spirit for their adoption, and try and give effect to every portion thereof. *Sommerfeld*, 269 Wis.2d at 238.

The Court has consistently sought to preserve the will of the electors by construing election provisions as directory if there has been substantial compliance with their terms. *Grandinjan*, 29 Wis.2d at 682.

Throughout the statutes with reference to elections the intent of the legislature is apparent. It is to encourage and assist qualified electors to cast their ballots for candidates of their choice. To prevent fraud the legislature in some instance has specifically stated that there must be strict compliance with a statute or a ballot cannot be counted. In so far as we have been called upon to construe that statutes we have held that where the legislature has provided in explicit language that absentee ballots shall not be counted unless certain provisions of the statute are complied with, compliance with those provisions is mandatory. Where it has not done so expressly and in clear language we have held that provisions regulating absentee voting are directory, and that strict compliance therewith is not required. *Petition of Anderson*, 12 Wis.2d 530, 533 (1961).

See also additional cases in which the Court has determined that election statutes shall be interpreted as directory and not mandatory as to give effect to the will of the electors: *State ex rel. Tank v. Anderson*, 191 Wis. 538, 211 N.W. 938 (1927), *State ex rel. Bancroft v. Stumpf*, 21 Wis. 586 (1867), *Ollman v. Kowalewski*, 238 Wis. 574, 300 N.W. 183 (1941), *State ex rel. Graves v. Wiegand*, 212 Wis. 286, 249 N.W. 537 (1933), *State ex rel. Oaks v. Brown*, 211 Wis. 571, 249 N.W. 50 (1933), *Lanser v. Koconis*, 62 Wis.2d 86, 214 N.W.2d 425 (1974), *McNally v. Tollander*, 302 N.W.2d 440, 100 Wis.2d 490 (1981).

One area of the election statutes that the Legislature has determined should be read as mandatory, are some provisions related to the absentee voting process – Wis. Stat. §§ 6.86, 6.87(3) to (7) - and how absentee ballots should be treated at a recount – Wis. Stat. § 9.01 (1)(b)2. and 4. See Wis. Stat. § 6.84(1) and (2). In those instances, for example, when an absentee ballot certificate envelope is unsigned by the voter or the witness, those ballots cannot be counted. If absentee ballots were originally counted by the local board of canvassers in contravention of the absentee ballot procedures, those ballots during a recount “may not be included in the certified result of any election.” This is the basis for separating probable absentee ballots from regularly cast ballots during a recount – the mandatory versus directory treatment of ballots cast in contravention of an absentee procedure contained in §§ 6.86 or 6.87(3) to (7).

With the noted exception above for certain absentee ballot procedures, the Commission staff (as well as the former State Elections Board staff and the former Government Accountability Board staff) provides guidance that is intended to give effect to the will of the electors which may apply a directory reading of the statutes, given a specific-fact scenario. This may happen when, for example, a question is received as to whether a drawdown should occur when the election officials can identify the issue, it was no fault of the voter that more ballots exist than voters, the total number of ballots issued at a polling place reconciles with the total number of voters (but not within the reporting unit, meaning incorrect ballots were likely issued), and there is no evidence of any fraud or malfeasance. In such cases Commission staff often advise that a draw down is not the best practice, although the final decision is

up to the board of canvassers. Drawing down requires the removal of a ballot, or ballots, at random and is generally viewed as a last resort option because the result will likely disenfranchise a random voter – something that the Legislature was arguably trying to avoid by inserting the language contained in Wis. Stat. § 5.01(1).

Election Official Error vs. Voter Error

Another line of cases which factors into advice provided by Commission staff, especially during a recount, concerns the identity of the individual that committed an error. The error is magnified when it results in the number of voters and ballots failing to reconcile which could trigger a random draw down of ballots prior to the counting of ballots at the recount. The question becomes whether a voter and their properly cast ballot should be subject to random removal and potential disenfranchisement if an error was committed by an election official and not the voter. Removing ballots through the draw down procedure when an election official issued a voter the wrong ballot or failed to initial a ballot does not seem to agree with the Legislature’s construction of election statutes set forth in Wis. Stat. § 5.01(1) and caselaw below.

The Wisconsin Supreme Court has stated:

...The voter’s constitutional right to vote cannot be baffled by latent official failure or defect.
Ollmann, 238 Wis. at 579.

In *State ex rel. Symmonds v. Barnett*, 182 Wis. 114, 195 N.W. 707 (1923), the ballot of certain voters were not counted, because the voter’s names did not appear on the voter registration list. These voters were, however, duly registered voters who had voted in the preceding primary election. Only the failure of the registration board to update the registration list explained the omission of their names. This Court ordered that votes of these voters must be counted, stating: As a general rule a voter is not to be deprived of his constitutional right of suffrage through the failure of election officers to perform their duty, where the elector himself is not delinquent in the duty which the law imposes on him. *State ex rel. Wood v. Baker*, 38 Wis. 171 (1875); *Barnett*, 182 Wis. at 127.

Because the right to vote is so central to our system of government, this Court has consistently sought to protect its free exercise. *McNally v. Tollander*, 302 N.W.2d 440, 100 Wis.2d 490 (1981). In the *Ollmann* case, ballots were initialed by only one election official, rather than being initialed by two election officials per the statutory requirement. The Wisconsin Supreme Court held that the ballots with only one set of initials were properly counted, stating that: “The voter would not knowingly be doing wrong. And not to count his vote for no fault of his own would deprive him of his constitutional right to vote...A statute purporting so to operate would be void, rather than the ballots.” *McNally*, 100 Wis.2d at 502 citing *Ollmann*.

When questions are asked by local officials regarding how to treat a ballot, especially in recount situations, who made the error is a factor that is considered when rendering advice based on the decisions issued in these cases. Without considering this factor, election officials with ill intentions could potentially manipulate election results by purposefully committing errors (issue wrong ballots, fail to apply required election official notations to the ballot), knowing that ballots will automatically be drawn down or a new election potentially ordered if errors are discovered and the statute requiring a draw down is applied in a mandatory fashion without considering the source of error.

In such cases, where it is clear that an error has been committed by an election official, the voter is not at fault and there is no evidence of fraud or malfeasance, Commission staff often advise that a draw down is not the best practice, although the final decision is up to the board of canvassers. Drawing down requires the removal of a ballot, or ballots, at random and is generally viewed as a last resort option because the result will likely disenfranchise a random voter – something that the Legislature was arguably trying to avoid by inserting the language contained in Wis. Stat. § 5.01(1).

Board of Canvassers Discretion

Despite advice provided by Commission staff when asked by a board of canvassers, ultimately that statutory body retains the authority and discretion to make decisions it deems appropriate. Statutes specifically provide the board of canvassers the authority to count and recount ballots and correct errors that may have occurred during the initial canvassing of ballots and certification of results. See Wis. Stat. §§ 7.51, 7.52, 7.53, 7.60 and 9.01(1) and (5). The board of canvassers is comprised of an odd number of individuals and takes into account party balance when

possible in its composition. Courts rely on the determination and reasoning of the board of canvass when determining if a decision on appeal was properly decided and gave effect to the will of the electorate. See *DeBroux v. Board of Canvassers for the City of Appleton* (Three Cases), 557 N.W.2d 423, 206 Wis.2d 321 (Wis. App., 1996) (“As the SEB notes in its brief, the statutory scheme for a recount ‘places a premium’ on the Board’s judgment to give effect to the will of the electorate.”)

The Commission’s procedures set forth in the Recount Manual, as well as the advice provided when a local election official or member of the board of canvassers asks a specific question on the treatment of a ballot, many times in the context of a recount, strives to be consistent with the intent of the election statutes and the supporting caselaw.

While the draw down procedure for example, is effective at creating ballot and voter totals that reconcile, it is not an effective tool for determining and removing the exact offending ballot or ballots, which caused the number of ballots to not match the number of voters. Rather than recommend a procedure that will likely disenfranchise a random voter due to an error made by an election official, the Commission staff’s approach has been to advise a board of canvassers that they have some discretion to avoid a draw down if they can identify an explanation as to why the discrepancy occurred, considering the factors discussed above.

Ultimately, the decision of the board of canvassers is what is challenged in court, not the advice rendered by the Commission staff. The Commission staff, however, believes the board of canvassers should be provided with advice that considers the cases discussing the “directory vs. mandatory” application of election statutes as well as considering who made the error that has generated the question in the first place. Any decisions made should consider “the will of the electors, if that will can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.”

DATE: For the November 18, 2020 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe Richard Rydecki
Administrator Deputy Administrator

SUBJECT: Public Health Guidance for Recount Proceedings

In preparation for a statewide recount Wisconsin Elections Commission (WEC) staff has worked with a public health professional from the Wisconsin Department of Health Services to develop suggested procedures for counties to apply to recount planning and setup efforts. These procedures follow the same concepts we have stressed throughout the 2020 elections that have been conducted during the COVID-19 pandemic. Public health considerations such as hand hygiene, face coverings, social distancing and COVID-19 symptom screenings should be incorporated into any recount setup. New considerations must be made to account for how recounts differ from administering voting at polling places or during the in-person absentee period.

Conducting a recount requires a significant number of people to be present in the same room or facility, including Board of Canvass members, tabulators, candidate representatives, public observers and other staff to assist with administrative and security-related tasks. The recount timeline also requires participants to be present in enclosed areas for long periods of time until the recount is complete. State law requires any recount to be completed within 13 days of the issuance of the recount order and several counties have expressed they will need the majority of that time to complete all required procedures before the deadline. In addition, a recount requires tabulators and Board of Canvass members to work within close proximity of one another and allows candidate representatives to be close enough to review each ballot before it is tabulated. All of these factors were presented to the public health official who assisted with the development of this guidance and have been considered in the procedures outlined below.

Space Considerations

In order to keep all participants and observers spaced out appropriately during the recount, counties have had to consider securing a larger space during their planning process. Additional space provides the ability to space out tables where tabulators are working while still allowing for multiple reporting units or municipalities to be recounted at the same time. WEC staff has discussed this option on several calls with county clerks in preparation for the recount and many indicated they identified and reserved larger spaces to conduct the recount.

The use of a larger space was confirmed as a recommended option by DHS as the larger space will allow for increased airflow that prevent aerosols from building up throughout the day. Any practices that increase the percentage of outdoor air in the recount space are recommended, such as opening windows and propping open doors, if possible. You may be able to work with the vendor or owner of the recount space to increase total airflow supply to occupied spaces, if possible. This can be done by disabling or changing the settings of demand-control ventilation (DCV) controls that reduce air supply based on temperature or occupancy.

Because of the prolonged nature of the recount, county officials may also consider the use of UV sanitation lights and additional ventilation, such as fans, where practicable. Some of these additional efforts may help to combat accumulation of aerosol particles. However, care should be taken in regard to where these items are utilized. For example, additional fans would not be appropriate directed at a table of paper, election materials, but a portable UV

light may be.

Setup Considerations

The recount space should be set up so that there is adequate space between all participants and observers but allows for transparency and efficiency throughout the process. Signs, tape marks, or other visual cues such as decals or colored tape should be used on the floor, placed six feet apart, to keep the recount area organized and to ensure space between all parties when physical barriers are not possible.

Tabulators are required to work in pairs when hand counting ballots and candidate representatives have the ability to review (but not touch) ballots before they are tabulated. For those that must work closely together, it is recommended some physical barriers (e.g., plexiglass shields) are used to provide protection between participants. These barriers can be the tabletop shields that many municipal clerks used on election day at polling places or in their offices during in-person absentee voting. Counties can coordinate with their municipal clerks to borrow excess shields that can be used during the recount.

Tables used for the recount should be arranged in a way that ensures adequate distance between participants and observers. The number of people assigned to each table should also be limited. Arrange chairs in seating areas by turning, draping (covering chair with tape or fabric so seats cannot be used), spacing, or removing chairs to maintain social distancing. Identifying chairs that should not be used will be essential if rooms are used during the recount that have permanent seating, such as county board meeting rooms.

Designated candidate representatives should be able to review a ballot during the recount proceedings. This will require the implementation of a system for the representative to safely examine the ballot without violating social distancing standards. Clear tabletop barriers can be used for this purpose, but other methods may be used depending on the set up and needs of each recount site.

Additional observers, beyond the party representatives who need to be allowed access to see voting materials, may be asked to remain in an area designated by the county officials that accounts for social distancing. Current public health guidance is that a six-foot distance should be maintained meaning that non-party representative observers should expect that they will be asked to stay at least six feet from recount workers and other observers.

Screening Questions

All individuals entering the recount facility or room should be screened to determine if they are exhibiting symptoms of COVID-19. Symptomatic individuals should not be allowed to participate in or observe the recount proceedings until they are free from symptoms. These questions were developed with the assistance of public health officials from the Wisconsin Department of Health Services.

1. Have you come in contact with a person known or suspected to have COVID-19?
2. Have you had a fever or chills in the last 24 hours?
3. Have you had a cough in the last 24 hours?
4. Have you had any shortness of breath or difficulty breathing in the last 24 hours?
5. Have you had any unexplained muscle or body aches in the last 24 hours?
6. Have you experienced a loss of taste or smell within the last 24 hours?
7. Have you had a sore throat within the last 24 hours?

If you answered “yes” to any of the seven questions, you should not participate in or observe at the recount today.

Face Coverings

Face coverings should be required of all people inside the recount space to help prevent the spread of COVID-19 among participants. Larger spaces and workstations that are spread out to account for social distancing will help minimize potential transmission of the virus but recount procedures still require tabulators and observers to be in close

proximity to one another and face coverings should be required to increase the safety of all involved in the recount. The Executive Order requiring face coverings is still in effect while legal challenges to that order are settled by the courts and other counties may have local public health orders that also require face coverings. The Board of Canvassers conducting the recount should clearly communicate with those attending the recount about social distancing, face coverings and hand hygiene health guidance prior to the start of the recount to ensure all individuals participating are aware of the role they play in keeping the location safe. It is recommended that County Clerks have additional disposable face coverings available for tabulators and observers who do not have their own upon arrival at the recount facility.

Hand Hygiene and Surface Cleaning

Strict hand hygiene and surface cleaning procedures should also be incorporated into the protocols at recount sites to minimize potential surface transmission of the virus. These procedures are familiar to election officials and have been recommended since the onset of the pandemic earlier this year. Participants and observers should be required to wash or sanitize their hands upon entry to the recount facility. In addition, tabulators should wash or sanitize their hands regularly throughout the day. If gloves are used, recount participants should take care when removing those gloves so as to not contaminate their bare hands in the process. After gloves have been removed, hands should be washed or sanitized to minimize the chance for COVID-19 transmission.

Surfaces such as tables and voting equipment should also be disinfected regularly throughout the day. Information on recommendations for election specific cleaning and disinfection are available on the Centers for Disease Control and Prevention webpage. In addition, approved cleaning procedures provided by your voting equipment vendor should be used to clean any voting equipment at regular intervals during the day. Best practices for cleaning different models of voting equipment can be found here: <https://elections.wi.gov/node/6723>.

STATE OF WISCONSIN

IN RE: THE 2020 ELECTION FOR PRESIDENT AND VICE PRESIDENT OF THE
UNITED STATES

AFFIDAVIT OF LORI OPITZ

STATE OF WISCONSIN)
) SS.
COUNTY OF WAUKESHA)

I, Lori Opitz, being first duly sworn on oath, state as follows:

1. I am an adult resident of the Town of Hartford, Washington County, Wisconsin and a qualified elector in the State of Wisconsin.
2. I am also the Clerk of the Town of Oconomowoc and, in such capacity, I administer elections in the Village, including the in person absentee ballot voting period under Wis. Stat. § 6.86(1)(b).
3. For the November 2020 General Election, and any and all elections that I have administered, I have always required a written application from each elector prior to issuance of any absentee ballots, including during the in person ballot voting period, as required by Wis. Stat. § 6.86(1)(ar).
4. When an elector would come in to the office and ask to vote an absentee ballot in person, I would take their photo identification and cross check it against the electronic MyVote system. If the elector had not previously submitted a request for an absentee ballot via My Vote, I would require them to complete a written application using form EL-121 prior to giving them a ballot.

[signature page follows]

Dated at this 20th day of November, 2020.

Lori Opitz
Lori Opitz

Subscribed to and sworn before me
this 20th day of November, 2020

Wendy Gulley
Notary Public, State of Wisconsin
My Commission: is permanent

000000-0120\29356407.v1

STATE OF WISCONSIN

IN RE: THE 2020 ELECTION FOR PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES

AFFIDAVIT OF JORDAN MOSKOWITZ

STATE OF WISCONSIN)
COUNTY OF DANE) SS.

I, Jordan Moskowitz, being first duly sworn on oath, state as follows:

- 1. I am an adult resident of Wisconsin. I am also a representative of President Donald J. Trump and Vice-President Michael R. Pence and their respective campaigns for the purposes of this recount.
2. I previously submitted an Affidavit with an attached exhibit containing all of the electors who cast absentee ballots in Dane County ("Dane County Absentees").
3. Attached hereto as Exhibit #1 is a subset of the Dane County Absentees. I sorted the Dane County Absentees by App Type (a category in that All Absentee List) and Date of Request (a category in that All Absentee List).
4. Exhibit #1 lists 23,954 individuals. Exhibit #2 lists a total of 15,102 individuals, and of that total, there were 8,907 added after March 25, 2020.
5. Attached as Exhibit #3 is a line graph that illustrates data in graphic form from Exhibit #2. It shows the breakdown of the Indefinitely Confined Requests by the Day the request was made.
6. Attached as Exhibit #4 is an exhibit that illustrates the Cumulative number of Indefinitely Confined Requests outstanding (i.e. the sum of all outstanding requests on file on a given

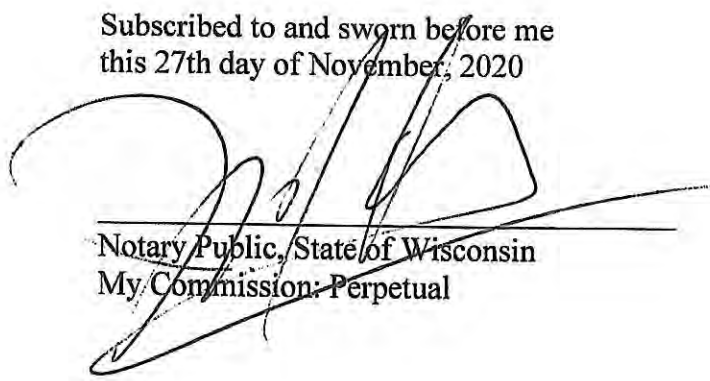
day). It takes Exhibit #2 and shows the total number of outstanding requests for Indefinitely Confined Status on that day.

7. Attached hereto as Exhibit #5 is a printed copy of a Wisconsin Supreme Court Order of March 31, 2020. That Order notes, that a March 25, 2020 Facebook post by Scott McDonell, Dane County Clerk was made that “indicated, inter alia, that all Dane County voters could declare themselves to be “indefinitely confined” under Wis. Stat. 6.86(2) due to illness solely because of the Wisconsin Department of Health Services Emergency Order #12....” [In footnote #1 “Petitioners note that the Milwaukee County Clerk issued nearly identical advice.”]
8. Attached hereto as Exhibit #6 is a Facebook post dated March 27 from Scott McDonell I obtained at the address shown on that Exhibit.

Dated at this 27th day of November, 2020.

Name:  _____

Subscribed to and sworn before me
this 27th day of November, 2020



Notary Public, State of Wisconsin
My Commission: Perpetual

Exhibit 1

SPREADSHEET

EXHIBIT 2

SPREADSHEET

EXHIBIT 3

DANE COUNTY

INDEFINITELY CONFINED REQUESTS PER DAY

JORDAN MOSKOWITZ AFFIDAVIT 11/27/20 (AS DESCRIBED IN ¶ 3)

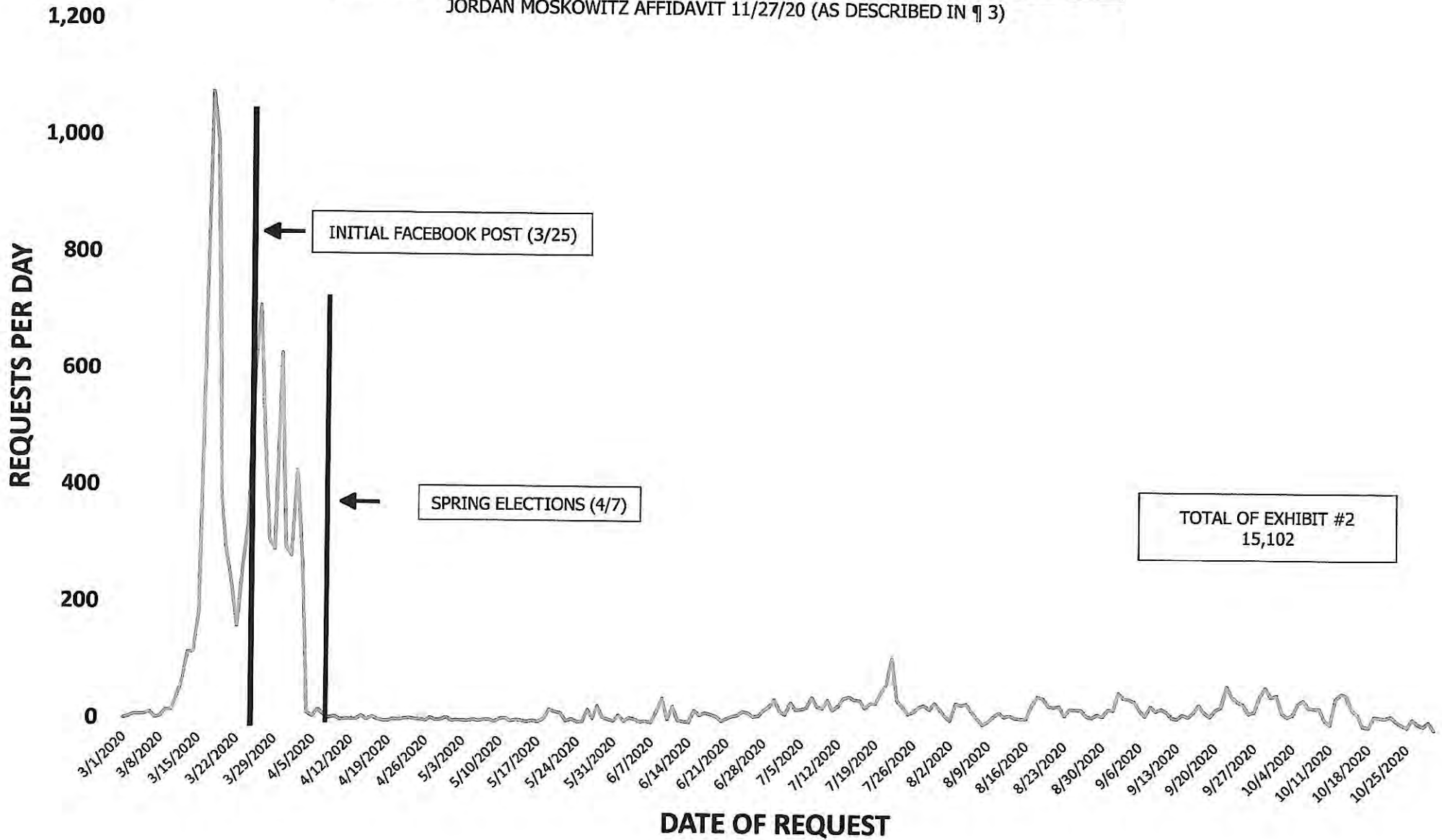


EXHIBIT 4

DANE COUNTY

CUMULATIVE INDEFINITELY CONFINED REQUESTS

JORDAN MOSKOWITZ AFFIDAVIT 11/27/20 (AS DESCRIBED IN ¶ 3)

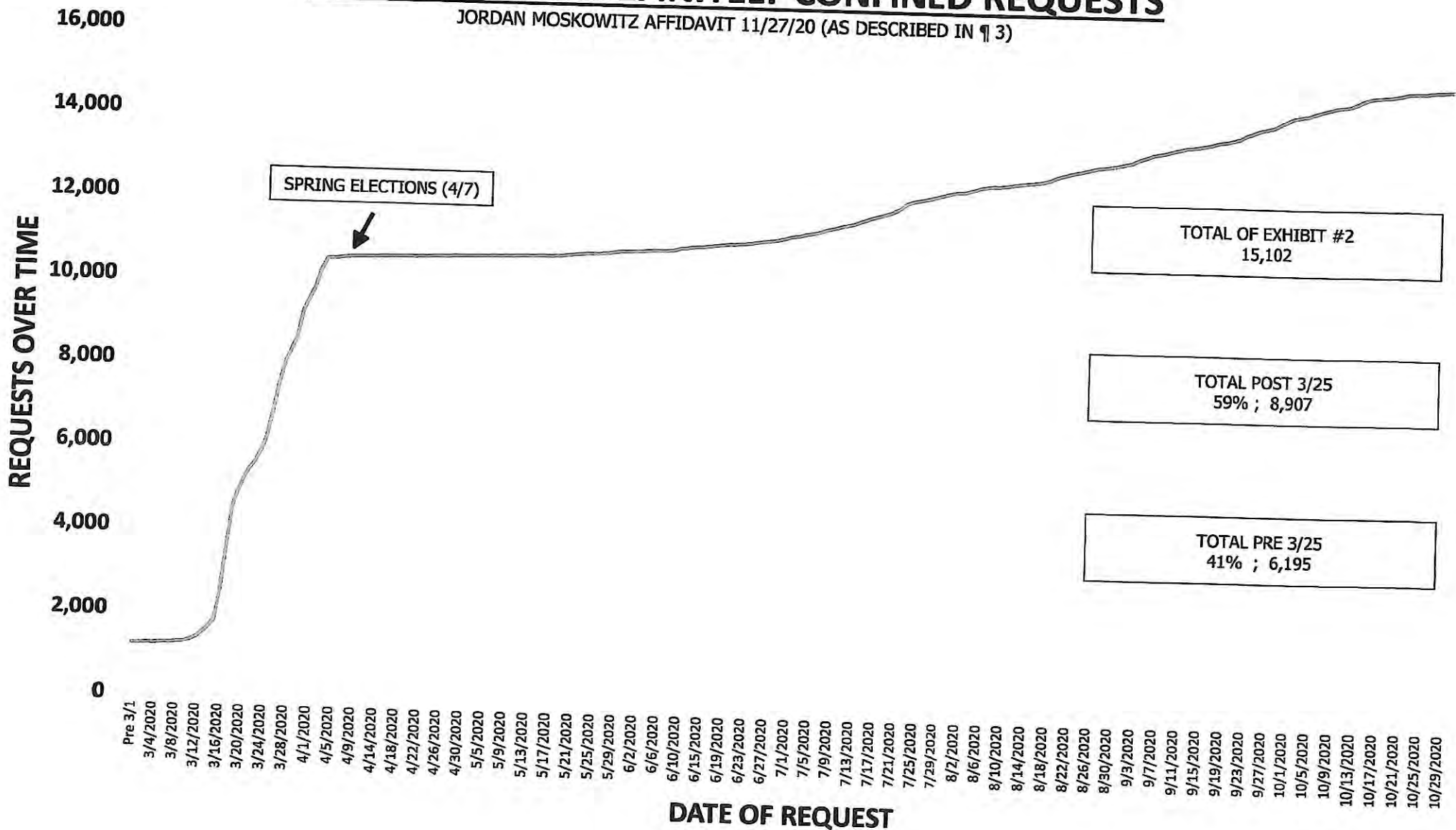


EXHIBIT 5



OFFICE OF THE CLERK

Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WI 53701-1688

TELEPHONE (608) 266-1880
FACSIMILE (608) 267-0640
Web Site: www.wicourts.gov

To:

March 31, 2020

David R. Gault
Marcia A. MacKenzie
Dane County Corporation Counsel
Room 419
210 Martin Luther King Jr. Blvd.
Madison, WI 53703-3345

Eric M. McLeod
Lane E. B. Ruhland
Husch Blackwell LLP
P.O. Box 1379
Madison, WI 53701-1379

Lisa M. Lawless
Husch Blackwell, LLP
555 E. Wells St., Ste. 1900
Milwaukee, WI 53202-3819

Misha Tseytlin
Kevin M. LeRoy
Troutman Sanders LLP
1 N. Wacker Dr., Ste. 2905
Chicago, IL 60606

You are hereby notified that the Court has entered the following order:

2020AP557-OA

Jefferson v. Dane County

On March 27, 2020, petitioners, Mark Jefferson and the Republican Party of Wisconsin, filed a petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70, a supporting legal memorandum, and a motion for temporary injunctive relief. On that same date, the court ordered the named respondents, Dane County and Scott McDonell, in his official capacity as Dane County Clerk, to file a response to the original action petition and the motion for temporary injunctive relief by 1:00 on March 30, 2020. The court has reviewed the filings of the parties and now addresses the motion for temporary injunctive relief.

When we have considered whether to grant temporary injunctive relief, we have required a movant to show (1) a reasonable probability of success on the merits; (2) a lack of an adequate remedy at law; (3) that the movant will suffer irreparable harm in the absence of an injunction; and (4) that a balancing of the equities favors issuing the injunction. See, e.g., Pure Milk Products Coop. v. National Farmers Org., 90 Wis. 2d 781, 800, 280 N.W.2d 691 (1979); Werner v. A.L. Grootemaat & Sons, Inc., 80 Wis. 2d 513, 520, 259 N.W.2d 310 (1977). The decision whether to grant an injunction is a discretionary one, although injunctions are not to be issued lightly. Werner, 80 Wis. 2d at 520.

The temporary injunction the petitioners seek would order respondent, Scott McDonell, the Dane County Clerk, to remove a March 25, 2020 Facebook post in which he indicated, inter alia, that all Dane County voters could declare themselves to be "indefinitely confined" under Wis. Stat. § 6.86(2) due to illness solely because of the Wisconsin Department of Health Services Emergency Order #12 (the Safer at Home Order) and difficulties in presenting or uploading a valid proof of identification, thereby avoiding the legal requirement to present or upload a copy of the voter's proof of identification when requesting an absentee ballot.¹ The petitioners further ask this court to order respondent McDonell and respondent Dane County to issue new statements setting forth the statutory interpretation proposed by the petitioners.

Although respondents do not represent that McDonell's original March 25, 2020 post has been removed, they argue that McDonell's later posting renders the petitioners' motion moot because McDonell has now posted the Wisconsin Elections Commission's (WEC) guidance on his Facebook page. They also argue that the petitioners' petition and motion for temporary relief cannot go forward in this court because they have not exhausted their administrative remedies by first filing a complaint with the WEC under Wis. Stat. § 5.06(1) and (2).

McDonell's March 25, 2020, advice was legally incorrect. In addition, McDonell's subsequent Facebook posting does not preclude McDonell's future posting of the same erroneous advice. Furthermore, his erroneous March 25, 2020 Facebook posting continues distribution on the internet.

Accordingly, we conclude that clarification of the purpose and proper use of the indefinitely confined status pursuant to Wis. Stat. § 6.86(2) as well as a temporary injunction are warranted.

In regard to clarification, the WEC has met and has issued guidance on the proper use of indefinitely confined status under Wis. Stat. § 6.86(2) in its March 29, 2020 publication, "Guidance for Indefinitely Confined Electors COVID-19." The WEC guidance states as follows:

1. Designation of indefinitely confined status is for each individual voter to make based upon their current circumstances. It does not require permanent or total inability to travel outside of the residence. The designation is appropriate for electors who are indefinitely confined because of age, physical illness or infirmity or are disabled for an indefinite period.
2. Indefinitely confined status shall not be used by electors simply as a means to avoid the photo ID requirement without regard to whether they are indefinitely confined because of age, physical illness or infirmity, or disability.

We conclude that the WEC's guidance quoted above provides the clarification on the purpose and proper use of the indefinitely confined status that is required at this time.

We further determine that the petitioners have demonstrated a reasonable probability of success on the merits, at least with respect to certain statements in McDonell's March 25th

¹ Petitioners note that the Milwaukee County Clerk issued nearly identical advice.

Facebook post. Voters may be misled to exercise their right to vote in ways that are inconsistent with Wis. Stat. § 6.86(2). Namely, McDonell appeared to assert that all voters are automatically, indefinitely confined solely due to the emergency and the Safer at Home Order and that voters could therefore declare themselves to be indefinitely confined when requesting an absentee ballot, which would allow them to skip the step of presenting or uploading a valid proof of identification. Indeed, we do not see how the respondents could prevail with an argument that such statements in the March 25th post constitute an accurate statement of the relevant statutory provisions.

NOW THEREFORE, IT IS ORDERED that the petitioners' motion for temporary injunctive relief is granted and we order McDonell to refrain from posting advice as the County Clerk for Dane County inconsistent with the above quote from the WEC guidance.

DANIEL KELLY, J., did not participate.

Sheila T. Reiff
Clerk of Supreme Court

EXHIBIT 6

LINK: <https://www.facebook.com/1253430194/posts/10216043337616921/?d=n>



Scott McDonell

March 27

Below is the legal advise from the Wisconsin Election Commission (WEC) which I agree with completely on voter's declaring themselves indefinitely confined due to the pandemic. There will need to be a review of the voter rolls after the election. Statue requires that once you are no longer indefinitely confined you must notify your municipal clerk in order to be removed from the list.

Indefinitely Confined Absentee Applications

WEC staff has received numerous questions from clerks about the increase in voters requesting absentee ballots as indefinitely confined. Wisconsin Statutes provide the option for a voter to self-certify whether they meet the definition of indefinitely confined. The statutory definition of "age, illness, infirmity or disability" does not require any voter to meet a threshold for qualification and indefinitely confined status need not be permanent. A voter with a broken leg or one recovering from surgery may be temporarily indefinitely confined and may use that status when voting during that period of time.

We understand the concern over the use of indefinitely confined status and do not condone abuse of that option as it is an invaluable accommodation for many voters in Wisconsin. During the current public health crisis, many voters of a certain age or in at-risk populations may meet that standard of indefinitely confined until the crisis abates. We have told clerks if they do not believe a voter understood the declaration they made when requesting an absentee ballot, they can contact the voter for confirmation of their status. They should do so using appropriate discretion as voters are still entitled to privacy concerning their medical and disability status. Any request for confirmation of indefinitely confined status should not be accusatory in nature.

There may be a need to do some review of the absentee voting rolls after this election to confirm voters who met the definition of indefinitely confined during the public health crisis would like to continue that status. WEC staff has already discussed this possibility and may be able to provide resources to assist clerks with these efforts.

16

2 Shares

Share

STATE OF WISCONSIN

IN RE: THE 2020 ELECTION FOR PRESIDENT AND VICE PRESIDENT OF THE
UNITED STATES

AFFIDAVIT OF JORDAN MOSKOWITZ


STATE OF WISCONSIN)
) SS.
COUNTY OF DANE)

I, Jordan Moskowitz, being first duly sworn on oath, state as follows:

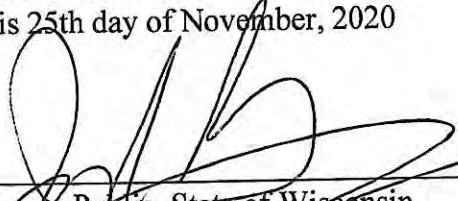
1. I am an adult resident of Wisconsin. I am also a representative of President Donald J. Trump and Vice-President Michael R. Pence and their respective campaigns for the purposes of this recount.
2. I previously submitted an Affidavit with an attached exhibit containing all of the electors who cast absentee ballots in Milwaukee County (“Milwaukee County Absentees”). The data included in the spreadsheet was compiled by the various municipal clerks and then provided to the Wisconsin Elections Commission. The data is both a public record under Wis. Stat. § 19.31, *et seq.* and within the scope of election related materials to which any candidate is guaranteed access by Wis. Stat. §§ 7.54 and 9.01(1)(b)11.
3. Attached hereto as Exhibit #1 is a subset of the Milwaukee County Absentees. I sorted the Milwaukee County Absentees by App Type (a category in that All Absentee List) and Date of Request (a category in that All Absentee List). The App Type chosen was “Indefinite”, a term used to describe all those claiming Indefinite Confinement status under the Wisconsin Statutes for the November 3, 2020 election. Attached hereto as Exhibit #2 is a subset of Exhibit #1. In Exhibit #2 I removed all persons identified as having not returned a ballot, those shown as voting through a Special Voting Deputy or Appointed Agent in the Delivery Method, those shown as having a ID on file, and those where it was noted in the comments section that the ballot was spoiled or otherwise was not cast.
4. Exhibit #1 lists 51,060 individuals. Exhibit #2 lists a total of 31,396 individuals, and of that total, there were 19,488 added after March 25, 2020.
5. Attached hereto as Exhibit 3 is a printed copy of a Wisconsin Supreme Court Order of March 31, 2020. That Order notes, that a March 25, 2020 Facebook post by Scott McDonell, Dane County Clerk was made that “indicated, inter alia, that all Dane County voters could declare themselves to be “indefinitely confined” under Wis. Stat. 6.86(2) due to illness solely because of the Wisconsin Department of Health Services Emergency

Order #12...." [In footnote #1 "Petitioners note that the Milwaukee County Clerk issued nearly identical advice."]

Dated at this 25 day of November, 2020.


Name: _____

Subscribed to and sworn before me
this 25th day of November, 2020



Notary Public, State of Wisconsin
My Commission: 12/2/2021

STATE OF WISCONSIN

IN RE: THE 2020 ELECTION FOR PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES

AFFIDAVIT OF KYLE J. HUDSON

STATE OF WISCONSIN)
) SS.
)

I, Kyle J. Hudson, being first duly sworn on oath, state as follows:

- 1. I am an adult resident of Wisconsin. I am also a representative of President Donald J. Trump and Vice-President Michael R. Pence and their respective campaigns for the purposes of this recount.
2. Attached to this affidavit as Exhibits A through G is publicly available information about certain individuals. Each of these electors is listed as being Indefinitely Confined and appear in both Exhibit 1 and 2 of the Jordan Moskowitz Affidavit of November 27, 2020.
A. Attached hereto as Exhibit A is a true and correct copy of a computer-generated social media post of Jaedn Stauffacher, a resident of Madison, WI, downloaded from Facebook. The social media post shows Jaedn Stauffacher celebrating his birthday on September 27, 2020.
B. Attached hereto as Exhibit B is a true and correct copy of a computer-generated social media post of Ciarra Myers, a resident of Madison, WI, downloaded from Facebook. The social media post is a video from Ciarra Myers wedding reception on July 14, 2020.
C. Attached hereto as Exhibit C Tanya Brown, a resident of Madison, WI downloaded from Facebook. The social media post shows Tanya Brown works a nurse and her public profile picture is quoted as saying, "I'm a Nurse, I cannot stay home!" on April 6, 2020.
D. Attached hereto as Exhibit D is a true and correct copy of a computer-generated social media post of Allen Jeannette, a resident of Madison, WI downloaded from Facebook. The social media post shows Allen Jeannette eating out at Shake Shack on October 10, 2020.

E. Attached hereto as Exhibit E is a true and correct copy of a computer-generated social media post of Jonah Zamzow-Schmidt, a resident of Madison, WI downloaded from Facebook. The social media post shows a video media file showing the spray painting of murals on State Street taken by Jonah Zamzow-Schmidt.

F. Attached hereto as Exhibit F is a true and correct copy of a computer-generated social media posts of Albert Kaimo Poliarco, a resident of Madison, WI downloaded from Facebook. The social media posts show three different video media files of protests in downtown Madison on November 7, 2020.

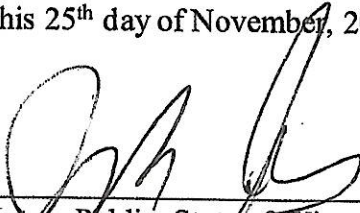
G. Attached hereto as Exhibit G is a true and correct copy of a computer-generated social media post of Christina Beeler, a resident of Madison, WI downloaded from Facebook. The social media posts show Christina Beeler attended a wedding on September 8, 2020, and going for a hike on November 10, 2020.

[signature page follows]

Dated at this 25th day of November, 2020


Name: _____

Subscribed to and sworn before me
This 25th day of November, 2020



Notary Public, State of Wisconsin
My Commission: Perpetual

EXHIBIT

A

Jaedn Stauffacher

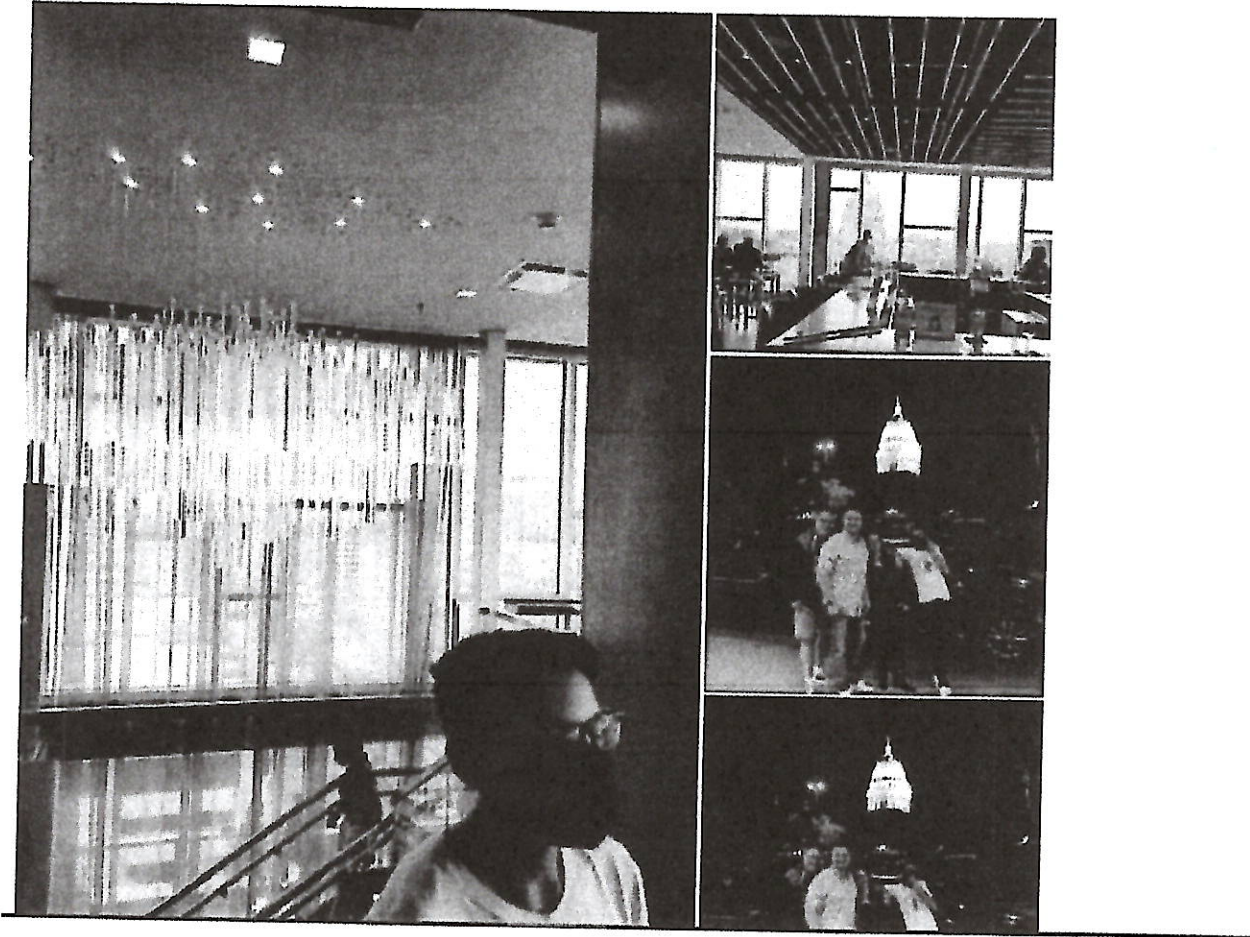
<https://www.facebook.com/NewGenerationJesus>



Jaedn Stauffacher is with Jake Stauffacher and 2 others at **Eno Vino Downtown.** ...

September 27 · Madison · 🌐

Celebrated my 30th birthday with family.

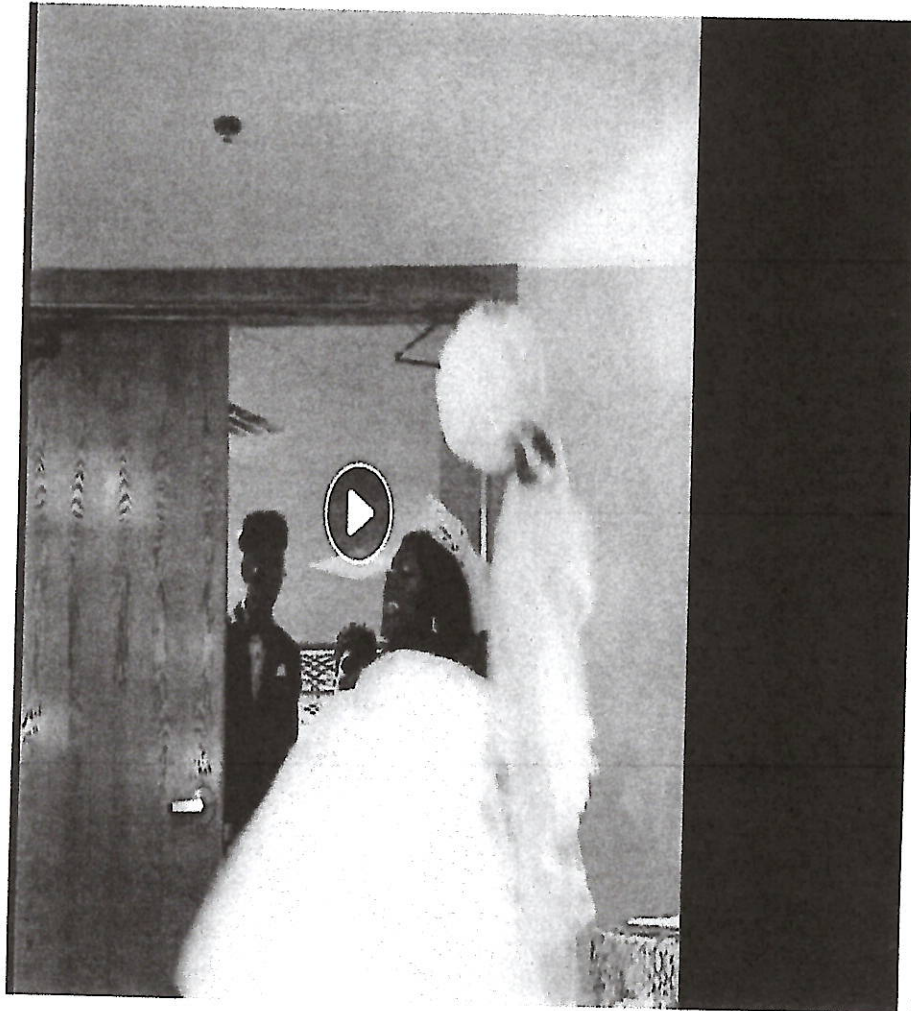



EXHIBIT

B

Ciarra Myers

<https://www.facebook.com/100004045724070/videos/2118597944951709/>



 Cierra Myers is with Lgp Dawsky Wawsky. ...

July 14 · 🌐

Our walk-in was most definitely turn up Lgp Dawsky Wawsky

 110

19 Comments


 Like

 Share

Up Next

 Highway to Hell (from Countdown, 1979) · B... AC/DC  5 weeks ago · 294.2K Views

 When Arya Killed the Night King | Game of... HBO Caribbean  29 weeks ago · 1.2M Views

 Rich Bitch · By Die Antwoord (Official... DIE ANTWOORD  5 weeks ago · 1.4M Views

 Scotch Eggs | Gordon Ramsay  379

Comments


See All 

EXHIBIT

C

Tonya Brown

<https://www.facebook.com/photo?fbid=1726991484110647&set=a.338836016259541>




#ICannotStayAtHome,
I'mANurse!



Tonya Brown
April 6 · 🌐


👁️ 12 8 Comments 2


➦ Share


View 2 more comments


 Rose McDermott
A BIG thank you! 🍷
33w

 Deb Kurth

33w

 Mary Jo Hoffmann
stay safe
33w

 Carol Runde
Thank you, stay safe! 🍷
33w

 Jean Ann Sysko
You two are so cute
33w

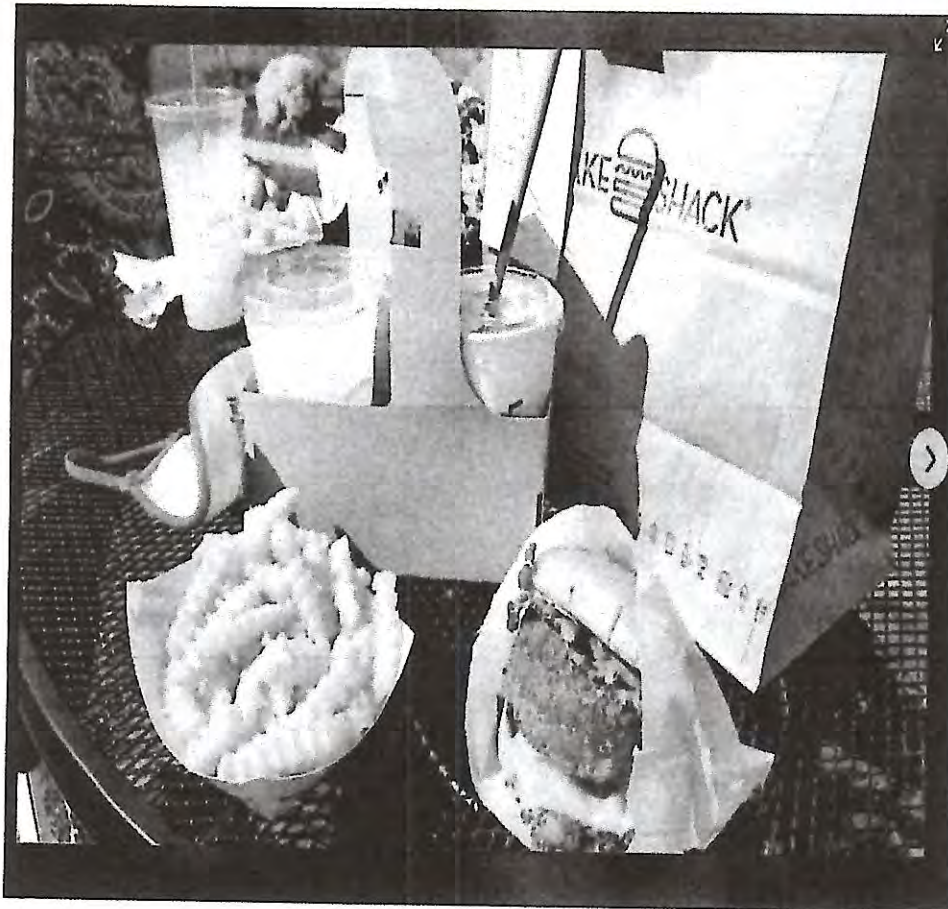
 Ellen Temperly
Be safe! And a great nurse, I'm sure

EXHIBIT

D

Allen Jeanette

<https://www.facebook.com/photo?fbid=10164204689400246&set=a.10150826051470246>



Allen Jeanette
October 10 · Madison · 🌐
Trying out Shake Shack
— with Brenda Shackelford Jeannette at Shake Shack (Hilldale Center).

👍❤️ 55 26 Comments
👍 Like 💬 Comment ➦ Share

View 5 more comments

Laurie Howell
I have heard they are good.
Like · Reply · Go 🗨️ 1

Kristin Johnson
How was it? Any gluten-free options?
Like · Reply · Go 🗨️ 1
↳ **Kristin Johnson replied · 2 Replies**

Cylest Brooks
Their chicken sandwich is amazing. Now my mouth is watering.
Like · Reply · Go 🗨️ 1
↳ **Cylest Brooks replied · 2 Replies**

Denise Folker Fenrick
One of my favorite burger joints!
Like · Reply · Go 🗨️ 1

Write a comment... 🗨️ 📷 📍 📧 📧

EXHIBIT

E

Jonah Zamzow-Schmidt



Jonah Zamzow-Schmidt
July 26 · 🌐

Erika on state. Defacing murals. What a piece of shit.

👤👤👤 110 171 Comments

👍 Like 💬 Comment ➦ Share

Up Next

-  **Shallow** · By Lady Gaga, Bradley Coope...
Lady Gaga · 17 weeks ago · 1.8M Views
-  **Scotch Eggs** | Gordon Ramsay
Gordon Ramsay · 14 weeks ago · 2.8M Views
-  **Let There Be Rock** (Apollo Theatre,...
AC/DC · 5 weeks ago · 323K Views
-  **The greatest scene in film history**
Lord of the Rings · 5 weeks ago · 1.9M Views

Comments See All

👤 Write a comment... 🗨️ 🤔 📷 📺 🗑️

2:50 PM

EXHIBIT F

Albert Kaimo Poliarco

<https://www.facebook.com/1290416602/videos/10218593677495056/>

<https://www.facebook.com/1290416602/videos/10218593661734662/>



Al Poliarco
November 7 at 4:44 PM · 🌐







👤 10

👍 Like 💬 Comment ➦ Share

Up Next

-  **When the Seasons Change (Official... Five Finger Death Punch** 
a week ago · 968.3K Views
-  **Ralphie May on Protesters**
Ralphie May 
12 weeks ago · 2.41M Views
-  **Lamb With Fried Bread | Gordon Ramsay**
Gordon Ramsay 
22 weeks ago · 5.21M Views
-  **FAKE WOKE ACTIVISM NO ONE ASKED FOR...**
The Andrew Schulz 
20 weeks ago · 1.1M Views
-  **Girl In A Country Song** ...

Comments See All

 Write a comment...     



Al Poliarco
Facebook · November 7 at 4:44 PM · 🌐

👤 2

👍 Like 💬 Comment ➦ Share

Up Next

-  **WATCH: NY Business Owners Kick Out...**
Ben Shapiro 
October 29, 2017 · 1.1M Views
-  **The Real Reason These Celebs Refused To D...**
Looper 
November 6, 2017 · 1.1M Views
-  **WHAT A FANTASTIC HOBBIT SCENE**
Lord of the Rings
November 6, 2017 · 1.1M Views
-  **Troy: Achilles vs Brongtius**
The Best Parts
November 6, 2017 · 1.1M Views
-  **All About That Bass** ...

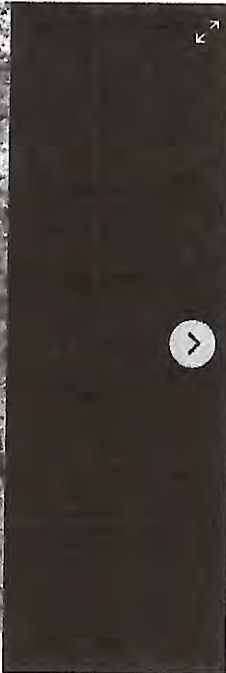
Comments See All


EXHIBIT G

Christina Beeler

<https://www.facebook.com/photo?fbid=10164373749625078&set=a.10151122325575078>

<https://www.facebook.com/photo?fbid=10164643690175078&set=a.10150275012430078>



 Christina Beeler
November 10 at 9:49 AM · 🌐

👤 2

➦ Share



 Christina Beeler
September 8 · 🌐

Goofin'

👤 32

➦ Share

 Nikiti Culpitt
Squirrel moment lol
11w

OFFICIAL ABSENTEE BALLOT APPLICATION/CERTIFICATION

(Official Use Only) The voter has met or is exempt from the photo ID requirement. Municipal or Deputy Clerk initial here:

Note: With certain exceptions, an elector who mails or personally delivers an absentee ballot to the municipal clerk at an election is not permitted to vote in person at the same election on Election Day. Wis. Stat. §6.86(6).

Voter: Please complete steps **1** through **5** below, in the presence of your witness.

1 Place your voted ballot inside the envelope and seal it. Do not use tape or glue.

2 Complete the section below if not completed by the clerk.
Provide your VOTING address.

Date of Election (month, day, year) _____ County _____

Municipality (check type and list name) Town Village City of _____

Voter's Name (Last, First, Middle) including suffix *(Please print legibly)* _____

Street Address—Provide house number and street name or fire number and street name. OR _____

If your rural address does not include a house number/fire number and street name, provide rural route number and box no.

City _____ WI _____ Zip Code _____

Official use only: Ward # _____ District (if applicable) _____ Voted in clerk's office

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.

= = = = =
IN RE: 2020 PRESIDENTIAL ELECTION RECOUNT
= = = = =

Madison, Wisconsin
November 29, 2020

Reporters: Jessica Bolanos

Page 2

E X H I B I T S

BOARD EXHIBITS

No.	Description	Identified
Exh. 2	List of indefinitely confined by county	6
Exh. 3	Sample letter that went out statewide	6

(Original exhibits retained by Dane County Board of Canvassers.)

Page 4

1 (Board Exhibit Nos. 2 and 3 marked
2 for identification.)
3 MR. McDONELL: Okay, everyone. It's 10:00.
4 I'll call the meeting of the Board of Canvass to
5 order. We have a little bit of -- of business to
6 do first. We're going to continue to -- as we've
7 been going along, we've been reconciling our
8 numbers. So -- but we -- we need to do
9 yesterday's numbers and make sure that they make
10 sense to us before we certify the results.
11 Once we finish that, those will get
12 scanned along with the others, and then we can get
13 a total change in the -- the difference between
14 the canvass and the recount certified, but that'll
15 take a few minutes as well.
16 So I just want to make a note that
17 when -- when -- for example, for the -- the
18 minutes of each ward or each precinct, we will be
19 posting that to the agenda in Legistar. So that
20 will all be publicly available to you guys and
21 anyone watching in the next few days. And then,
22 again, all the inspector statements we'll attach.
23 All the materials that we're using to -- for
24 this -- to get this number, we'll attach and will
25 be publicly available. So we're in just a little

Page 3

TRANSCRIPT OF 2020 PRESIDENTIAL
ELECTION RECOUNT, taken before Jessica Bolanos,
notary public in and for the State of Wisconsin, at
the offices of Monona Terrace,
1 John Nolen Drive, City of Madison, County of Dane,
and State of Wisconsin, on the 29th day of November
2020, commencing at 10:00 a.m.

A P P E A R A N C E S

ATTORNEYS FOR JOE BIDEN AND KAMALA HARRIS:
Diane M. Welsh, Christa Westerberg

ATTORNEYS FOR DONALD J. TRUMP AND MIKE PENCE:
Sophia Papandreas Tjotjos, Megan Revis Frederick,
Wren Williams

ATTORNEY FOR THE BOARD OF CANVASS:
Marcia MacKenzie

BOARD OF CANVASS MEMBERS:
Scott McDonell (Chair), Allen Arntsen, Joyce Waldrop

Page 5

1 bit of a hurry up and wait for a little while. So
2 we'll let you know when we're ready to get to
3 certification. Okay?
4 (Recess)
5 MR. McDONELL: Okay. All right, everybody.
6 We're ready to start moving along here. We do
7 have some administrative things to -- to clean up
8 for just a minute. We have been able to reconcile
9 our numbers by precinct. That's what we were just
10 finishing up from yesterday here today.
11 I did add two exhibits from myself to
12 the record. One is a letter that was sent by a
13 Madison city clerk after the April election, I
14 believe in May, to all indefinitely
15 confined -- indefinitely confined voters to
16 confirm their status. And I -- that was actually
17 sent out by the Election Commission to all clerks
18 statewide, and I believe one of the things I'll
19 follow up on is to see whether every community in
20 Dane County did the same as Madison. I believe
21 they did.
22 So I mentioned that in a previous
23 discussion on the record, and I -- I just wanted
24 to have this, the actual document to -- to
25 correspond to what I had said at a previous Board

Page 6

1 of Canvass meeting.
 2 And then I also included the total
 3 numbers from 2016 and 2020 indefinitely confined
 4 voters by county, and I -- it was because I had
 5 also referenced earlier that the number of
 6 indefinitely confined voters had gone up
 7 dramatically for four years in every county in the
 8 state. So that, I just want to -- that's publicly
 9 available data from the Election Commission, but I
 10 just wanted to have it on the record.
 11 We're about to -- we're ready to sign
 12 off on the numbers. I wanted to -- I know that,
 13 Diane, you wanted to say something briefly.
 14 Wren, you guys as well.
 15 MR. WILLIAMS: Real quick, Scott. What were
 16 the exhibit numbers that you had for those?
 17 MR. ARNTSEN: 2 and 3. Board 2 and 3.
 18 MR. MCDONELL: Board 2 is the list of
 19 indefinitely confined by county. Board 3 is a
 20 sample letter that went out statewide, but -- and
 21 specifically, I know it went out in Madison.
 22 MR. WILLIAMS: Thank you.
 23 MR. McDONELL: And, Diane, I apologize. If
 24 you want to use a mic -- or you guys can have the
 25 same opportunity. I know you guys spoke at the

Page 8

1 left them up to Scott McDonell if they weren't
 2 being resolved, and we think that helped to smooth
 3 things over and keep things going. So we really
 4 appreciate that that was the agreement.
 5 And I think that was -- you know, at the
 6 end of the day last night, we were surprised to
 7 receive 155 pages of handwritten notes that make
 8 allegations that were never before presented to me
 9 as lead counsel for the Biden team. So it was
 10 just kind of troubling to see that, because had
 11 there been any problems, we certainly could have
 12 been working on addressing them.
 13 And -- but, again, overall, I think the
 14 process was transparent, especially considering
 15 that we have a pandemic in Dane County and
 16 Wisconsin, and I appreciate the wisdom of the
 17 Board in -- in fulfilling its duties. Thank you.
 18 MR. McDONELL: All right. Thank you. You
 19 good?
 20 MR. WILLIAMS: Yes.
 21 MR. McDONELL: Okay. Thank you, guys.
 22 Okay. Let me -- I'm just going to say a
 23 few comments, and then I'll let you guys have the
 24 updated numbers. Sophia, they're slightly
 25 different than what you saw. So I just want to

Page 7

1 end yesterday, but I think Diane wanted to say
 2 some more remarks. So you're welcome to. Then
 3 we'll wrap up.
 4 MS. WELSH: Good morning. I'm Diane Welsh.
 5 With me is Christa Westerberg. We're with
 6 Pines Bach, LLP, here in Madison, Wisconsin.
 7 We want -- like the Trump team, we wanted to take
 8 this opportunity to thank the Board, to thank all
 9 of the clerks and tabulators who ensured that this
 10 was a good process. We especially appreciate the
 11 patience that was demonstrated in educating
 12 observers and attorneys about how election law
 13 works in Wisconsin and Dane County, and we
 14 appreciate the transparent process.
 15 Christa and I are both Dane County
 16 voters. So we really appreciate the dedication
 17 that everyone demonstrated here. I want to thank
 18 Biden volunteers, staff, and attorneys for
 19 dedicating their time. I want to thank
 20 Christ Troupis and Lou Esposito and Wren Williams
 21 and the others on the Trump team.
 22 You know, early on on the first day, we
 23 had an agreement to alert each other if there were
 24 problems among staff or volunteers and -- so that
 25 problems could be addressed immediately, or we

Page 9

1 make sure we're all on the same page, and we'll
 2 make it publicly available.
 3 MS. TJOTJOS: Okay.
 4 MR. McDONELL: First, I just want to thank,
 5 you know, my staff, in particular, Patty Anderson
 6 and Rachel Rodriguez and how -- what a fabulous
 7 job they did this week; the managers who we
 8 recruited. Some of the them were municipal clerks
 9 and chief inspectors. I mean, without them, this
 10 would have gone on much longer and been much more
 11 difficult.
 12 And I know County staff was here,
 13 especially the first week, just putting in
 14 incredible hours. The first few days putting
 15 incredible hours in for IT, our corporation
 16 counsel, HR to make sure all the tabulators could
 17 get paid, and the Monona Terrace staff also just
 18 worked a lot of hours to make sure this went well.
 19 I think this setup worked well, and I'm glad we
 20 picked it, and I appreciate all their efforts.
 21 I appreciate the -- the Board of
 22 Canvass. This was hard on -- on Joyce and Allen
 23 and myself. I -- I think the last few days were
 24 much easier, and I really appreciate how smoothly
 25 things went. The first few days were hard in

Page 10

1 particular. So the fact that we're all still
 2 alive is a testament to each other.
 3 And I do want to shout out to the -- the
 4 municipal clerks in Dane County who came in and
 5 did their work. The tabulators, the observers,
 6 I -- I want to say that I really appreciated the
 7 complements the last few days in particular I got
 8 from observers, Trump observers and Biden
 9 observers, about the process and how much they
 10 were able to learn and how transparent it was.
 11 Those were comments that I heard. Maybe there
 12 were other ones, but, you know, I appreciate that
 13 a lot.
 14 And I -- the attorneys -- and I
 15 appreciate what Diane said today and what -- what
 16 you guys said yesterday. I thought everyone was
 17 extremely professional and helpful. You know, we
 18 not only -- we were constantly giving each other
 19 ideas on how this could run better, and we
 20 implemented those. And honestly, if the last two
 21 days had been the same the whole time, we would
 22 have -- we wouldn't be here now. It would have
 23 gone -- but -- it would have gone much faster, but
 24 that's how it goes. You learn as you go, and
 25 everybody learns; the tabulators, the observers,

Page 12

1 So I think we need to think about this
 2 as a -- a -- whether that is equal protection
 3 under the Constitution. Those voters aren't being
 4 protected if that were true, that -- that the same
 5 action in one county as another, one vote gets
 6 tossed, the other doesn't. I think that that's
 7 disturbing.
 8 But I want to reiterate that I'm
 9 grateful to all of your for making sure this work
 10 went smoothly, and your professionalism was -- it
 11 was very much appreciated. And I will say that
 12 for anybody who needs me to say that after this.
 13 And I think it was really a success. This recount
 14 was a success, and I appreciate all of you.
 15 Now, moving to the certification, I'll
 16 just read out for everyone on the spreadsheet so
 17 it's easier. On the county canvass, Biden
 18 received 260,185 votes. That's what we sent to
 19 the State. And the recount, that number is now in
 20 Dane County 260,094 votes. That's a 91 vote
 21 reduction in Biden/Harris.
 22 The Trump/Pence county canvass number
 23 was 78,800. That number is now 78,754. That's a
 24 reduction of 46 votes. So the total difference
 25 between those two numbers is 45. The -- so

Page 11

1 all of us.
 2 Where was I? Yeah, you know, what --
 3 for me, what this recount showed was that there
 4 was absolutely no evidence of voter fraud in this
 5 election, even after looking at over 300,000
 6 ballots, over 254,000 envelopes. Really, the
 7 incredible level of transparency should provide
 8 reassurance to the public that the election was
 9 run properly and accurately and there was no
 10 corruption.
 11 What we have really is more of a policy
 12 argument about the wisdom of the indefinitely
 13 confined statute or advice that may have been
 14 given to the Election Commission.
 15 You know, one that -- what bothered me
 16 during this process is that really only Dane and
 17 Milwaukee County were subject to this recount.
 18 Those disagreements are true statewide. So as an
 19 example, if a clerk cured an address, as they were
 20 instructed to for a witness on an absentee ballot
 21 envelope, that was true in Ashland. That was true
 22 in Brown County. There was true everywhere,
 23 Waukesha; and, yet, only the votes of Dane County
 24 and Milwaukee were targeted for drawdown or to be
 25 not counted.

Page 13

1 the -- we have signed the certification to that
 2 effect, and we're ready to transmit it to the
 3 State. So our business as the Board of Canvass is
 4 concluded. Thank you, guys. Appreciate it.
 5 (Applause)
 6 (Adjourning at 10:32 a.m.)
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

AFFIDAVIT OF CLAIRE WOODALL-VOGG

STATE OF WISCONSIN)
) SS
MILWAUKEE COUNTY)

Claire Woodall-Vogg, being first duly sworn upon oath, deposes and states as follows:

1. I am the Executive Director of the City of Milwaukee Election Commission (“MEC”).

2. I led the MEC’s operations in connection with the November 3, 2020 election, including our office’s handling of the absentee balloting process.

3. Presumably as a result of the COVID-19 pandemic, our office processed an unprecedented amount of absentee ballot requests in the Spring Election conducted on April 7, 2020, the Fall Primary conducted on August 11, 2020, and the General Election conducted on November 3, 2020.

4. When our office received returned absentee ballots, we reviewed the envelopes to confirm that they included the required voter signature, witness signature and witness address.

5. If an absentee ballot envelope was missing a voter signature or a witness signature, we returned the envelope to the voter with instructions to add the missing signature(s) and return the corrected envelope no later than 8:00p.m. on Election Day.

6. If an absentee ballot envelope included the signatures of the voter and witness, but was missing some or all of the witness’ address, we followed the October 18, 2016 Wisconsin Election Commission (“WEC”) Guidance Memorandum addressed to all Wisconsin County and Municipal Clerks as well as the City and County of Milwaukee

Elections Commissions. In that Memo, the WEC instructed 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 ballot envelope.” (Emphasis in original.)

7. The WEC Guidance is reinforced by the WEC Election Administration Manual at page 99, which states: “Clerks may add a missing witness address using whatever means are available. Clerks should initial next to the added witness address.”

8. Since receiving the WEC Memo in October 2016, the MEC has consistently adhered to the following process for completing missing witness address information on an absentee ballot envelope certification:

- a. If the only missing item was the municipality, and we confirmed that the street address was located in the City of Milwaukee, we added the municipality.
- b. If the street address was not in the City of Milwaukee but we could confirm the municipality from available governmental databases, we added the municipality.
- c. If there was not a full street address but the witness signature was legible, we consulted the WisVote database or the Tax Assessor’s database to determine the address of the witness. If there was only one person by the witness’s name, we would add the address. If more than one person went by that name, we would call the voter to ask the identity and address of the witness.
- d. If the witness signature was not legible, we would call the voter to acquire the missing information. If the voter could provide the missing information,

we added it to the envelope. If the voter could not, we informed the voter that the absentee ballot would not be processed unless the information could be provided and offered to send the envelope back to the voter to add the missing information.

9. All added information was done using a red pen, so that it was transparent that the MEC had added the information.

10. We have not received any complaints about the process from any candidate or any voter.

11. Our office's goal is to ensure that every registered Milwaukee voter can successfully cast a ballot in every election.

12. Absentee ballot applications are maintained in any variety of media, depending upon the original source of the application.

13. At the beginning of the calendar year 2020, there were approximately 6,000 absentee ballot applications on file with the MEC from indefinitely confined electors.

14. By about mid-March of 2020, the MEC received additional absentee ballot applications by written application (Form EL-121) and via the website MyVote.wi.gov, numbering approximately 79,000. For applications made during this timeframe, if the application was made on a written Form EL-121, the MEC would maintain the paper record. If the application was made on MyVote.wi.gov, the MEC would receive an e-mail confirmation of the request. Of those applications, if the application was for someone identified as an indefinitely confined voter, or by someone who had already filed proof of ID on file, the MEC would take no additional action to create a paper record. For other applications made on MyVote.wi.gov, the MEC would receive an e-mail confirmation and would additionally print copies of the application and ID. These were separated, due to differing record retention schedules, and stored in the City Records Bureau.


15. Since the April 7, 2020 election, the MEC received additional absentee ballot applications by written application (From EL-121) and via the website MyVote.wi.gov, numbering approximately 50,000. For applications made during that timeframe, the request was made on a written Form EL-121, and the MEC would maintain the paper record. If the application was made on MyVote.wi.gov, the MEC would receive an e-mail confirmation of the request and took no additional action to create paper records.

16. There is no separate absentee ballot request when a person votes in person absentee pursuant to Wis. Stat. § 6.86(1)(ar). The absentee ballot certificate envelope serves as the absentee ballot request when a person votes in person absentee. Election Administration Manual p. 91.

17. The Absentee Ballot Log (EL-124) and WisVote.wi.gov are also used to track absentee ballot requests and the issuance of absentee ballots. Election Administration Manual p. 98.

18. The MEC has at all times followed the WEC's Guidance for Indefinitely Confined Electors issued on March 29, 2020.

Dated: November 23, 2020



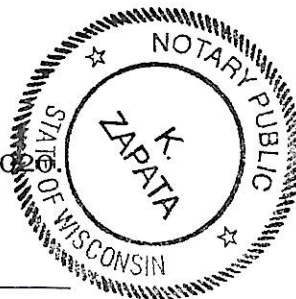
Claire Woodall-Vogg

STATE OF WISCONSIN
County of Milwaukee

Sworn to before me this 23rd day of November, 2020



Notary Signature



My commission expires 06-09-2024, or is permanent.

AFFIDAVIT OF KYLE HUDSON

STATE OF WISCONSIN)
) ss
COUNTY OF DANE)

1. My name is Kyle Hudson. I am over the age of 18. All the facts stated herein are true and based on my personal knowledge.

2. I have personal knowledge of the Dane County Recount and the exhibits entered, and the objections made, in such Recount.

3. I have also reviewed the transcript from the Dane County Recount and, in particular, the number of absentee ballot certifications or envelopes objected to in Dane County, which are still in possession the boards of canvasser.

4. In Dane County, based on my review of the transcripts, the following number of absentee ballot certifications or envelopes were objected to:

- a. Red ink and/or changes made by Clerk to certification – 129
- b. Incomplete envelope and/or signature missing – 2,533
- c. No initials of Clerk on In-Person Voter – 265
- d. Ballots without appropriate initials – 375

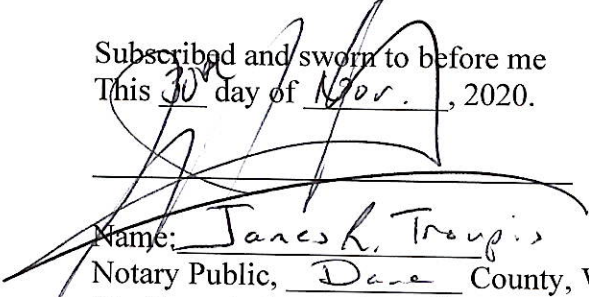
5. I declare under penalty of perjury pursuant to that the forgoing is true and correct to the best of my knowledge.

Executed on the 30th day of November, 2020



Kyle Hudson

Subscribed and sworn to before me
This 30 day of Nov., 2020.

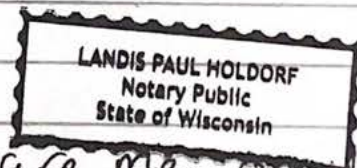

Name: James H. Traupis
Notary Public, Dane County, WI
My Commission expires Perpetual

To Whom it May Concern:

Prior to the April 2020 election, my wife and I moved to the Town of Westport in Dane County. I had never voted there previously so contacted the Town Clerk for information on registering. Since I had just renewed my drivers license it was not on file w/ the Town of Westport.

I was told by the clerk (per phone conversation) that I could receive a Mail in Ballot by signing into their site online and indicating that I was "Indefinitely Confined". By doing this I would not have to provide an ID to receive a ballot. I followed these instructions and received a ballot in the mail in a few days. I was further told this would mean that I would automatically receive ballots by mail for all future elections without needing to request them.

State of WI
County of Dane



Signed and Sworn before me on 11/27/2020
by Charles D. Cook Charles D. Cook

Landis Holdorf Landis Holdorf
My Commission expires on 8/3/2022

104

AFFIDAVIT OF JOSEPH VOILAND

STATE OF WISCONSIN)
) ss
COUNTY OF MILWAUKEE)

1. My name is Joseph Voiland. I am over the age of 18. All the facts stated herein are true and based on my personal knowledge.

2. I have personal knowledge of the Milwaukee County Recount and the exhibits entered, and the objections made, in such Recount.

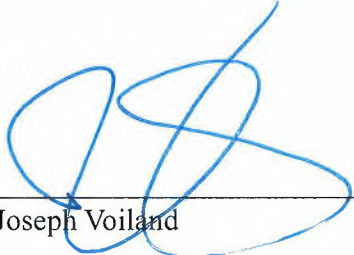
3. I have also reviewed the transcripts from the Milwaukee County Recount and, in particular, the number of absentee ballot certifications or envelopes objected to in Milwaukee County, which are still in possession of the respective boards of canvassers.

4. In Milwaukee County, based on my review of the record, the following number of absentee ballot certifications or envelopes were objected to:

- a. Red ink and/or changes made by Clerk to certification – 2193
- b. No witness – 15
- c. No date – 7

5. I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Executed on the 30th day of November, 2020



Joseph Voiland

Subscribed and sworn to before me
This 30 day of November, 2020.

Karen J. Brandt

Name: Karen J. Brandt
Notary Public, Milwaukee County, WI
My Commission expires 11/3/21



AFFIDAVIT OF JOSEPH VOILAND

STATE OF WISCONSIN)
) ss
COUNTY OF MILWAUKEE)

1. My name is Joseph Voiland. I am over the age of 18. All the facts stated herein are true and based on my personal knowledge.

2. I have personal knowledge of the Milwaukee County Recount and the exhibits entered, and the objections made, in such Recount.

3. I have also reviewed the transcripts from the Milwaukee County Recount and, in particular, the number of absentee ballot certifications or envelopes objected to in Milwaukee County, which are still in possession of the respective boards of canvassers.

4. In Milwaukee County, based on my review of the record, the number of absentee ballot certifications or envelopes objected to with red ink and/or changes made by the Clerk is 2193.

5. During the recount on November 24, 2020 Claire Woodall-Vogg submitted an affidavit and the Commission admitted it into the record, noting that it would later “announce what exhibit number that affidavit will be.” Transcript, November 24, 2020 at pg. 15:16 to pg. 16:12. A copy of that affidavit is attached hereto as Exhibit A.

6. The Commission later released its Master Exhibit List and failed to include Ms. Woodall-Vogg’s affidavit. The Commission’s Master Exhibit List also includes the objected to applications in the City of Oak Creek as Exhibits 814-819. At the time the

Commission finally adjourned on November 27, 2020 the Commission had yet to complete the tallies for Exhibits 814-819. Therefore, the total number in paragraph 4 of 2193 is necessarily larger because it does not include the City of Oak Creek's numbers.

7. I wrote to the Commission on multiple occasions about the above issues and received no response. A copy of those communications are attached to this affidavit as Exhibit B.

8. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on the 30th day of November, 2020

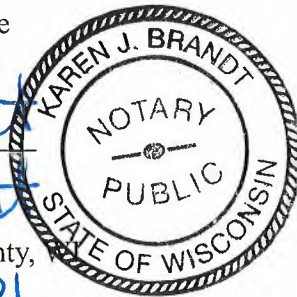


Joseph Voiland

Subscribed and sworn to before me
This 30 day of November, 2020.

Karen J. Brandt

Name: Karen J. Brandt
Notary Public, Milwaukee County,
My Commission expires 11/3/21



Elections Commissions. In that Memo, the WEC instructed 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 ballot envelope.” (Emphasis in original.)

7. The WEC Guidance is reinforced by the WEC Election Administration Manual at page 99, which states: “Clerks may add a missing witness address using whatever means are available. Clerks should initial next to the added witness address.”

8. Since receiving the WEC Memo in October 2016, the MEC has consistently adhered to the following process for completing missing witness address information on an absentee ballot envelope certification:

- a. If the only missing item was the municipality, and we confirmed that the street address was located in the City of Milwaukee, we added the municipality.
- b. If the street address was not in the City of Milwaukee but we could confirm the municipality from available governmental databases, we added the municipality.
- c. If there was not a full street address but the witness signature was legible, we consulted the WisVote database or the Tax Assessor’s database to determine the address of the witness. If there was only one person by the witness’s name, we would add the address. If more than one person went by that name, we would call the voter to ask the identity and address of the witness.
- d. If the witness signature was not legible, we would call the voter to acquire the missing information. If the voter could provide the missing information,

we added it to the envelope. If the voter could not, we informed the voter that the absentee ballot would not be processed unless the information could be provided and offered to send the envelope back to the voter to add the missing information.

9. All added information was done using a red pen, so that it was transparent that the MEC had added the information.

10. We have not received any complaints about the process from any candidate or any voter.

11. Our office's goal is to ensure that every registered Milwaukee voter can successfully cast a ballot in every election.

12. Absentee ballot applications are maintained in any variety of media, depending upon the original source of the application.

13. At the beginning of the calendar year 2020, there were approximately 6,000 absentee ballot applications on file with the MEC from indefinitely confined electors.

14. By about mid-March of 2020, the MEC received additional absentee ballot applications by written application (Form EL-121) and via the website MyVote.wi.gov, numbering approximately 79,000. For applications made during this timeframe, if the application was made on a written Form EL-121, the MEC would maintain the paper record. If the application was made on MyVote.wi.gov, the MEC would receive an e-mail confirmation of the request. Of those applications, if the application was for someone identified as an indefinitely confined voter, or by someone who had already filed proof of ID on file, the MEC would take no additional action to create a paper record. For other applications made on MyVote.wi.gov, the MEC would receive an e-mail confirmation and would additionally print copies of the application and ID. These were separated, due to differing record retention schedules, and stored in the City Records Bureau.

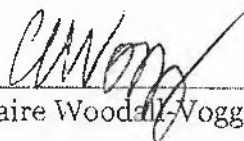
15. Since the April 7, 2020 election, the MEC received additional absentee ballot applications by written application (From EL-121) and via the website MyVote.wi.gov, numbering approximately 50,000. For applications made during that timeframe, the request was made on a written Form EL-121, and the MEC would maintain the paper record. If the application was made on MyVote.wi.gov, the MEC would receive an e-mail confirmation of the request and took no additional action to create paper records.

16. There is no separate absentee ballot request when a person votes in person absentee pursuant to Wis. Stat. § 6.86(1)(ar). The absentee ballot certificate envelope serves as the absentee ballot request when a person votes in person absentee. Election Administration Manual p. 91.

17. The Absentee Ballot Log (EL-124) and WisVote.wi.gov are also used to track absentee ballot requests and the issuance of absentee ballots. Election Administration Manual p. 98.

18. The MEC has at all times followed the WEC's Guidance for Indefinitely Confined Electors issued on March 29, 2020.

Dated: November 23, 2020



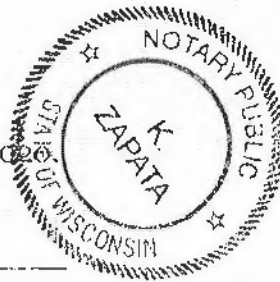
Claire Woodall-Vogg

STATE OF WISCONSIN
County of Milwaukee

Sworn to before me this 23rd day of November, 2020



Notary Signature



My commission expires 06-09-2024, or is permanent.

Joseph W. Voiland

262.343.5397

November 28, 2020

Milwaukee County Election Commission
and Milwaukee County Clerk George L. Christenson
Milwaukee County Courthouse - Room 105
901 North 9th Street
Milwaukee, WI 53233

Dear Commissioners and Clerk Christenson:

Immediately prior to the Commission's adjournment late yesterday, the Commission released the List of Exhibits incident to the 2020 Presidential Recount in Milwaukee County. On the record, this document was referred to as the "Master Exhibit List."

I note that the List is missing the Affidavit of Claire Woodall-Vogg, Executive Director of the City of Milwaukee Election Commission.

On November 24, Ms. Woodall-Vogg Affidavit submitted her affidavit, and the Commission admitted her affidavit into the record, noting that it would later "announce what exhibit number that affidavit will be." Transcript, November 24, 2020, at pg. 15:16 to pg. 16:12.

Accordingly, we ask that you assign the Woodall-Vogg Affidavit an exhibit number and that you issue an updated List of Exhibits.

Sincerely,

Joseph W. Voiland

for Donald J. Trump and Michael R. Pence

cc Margaret Daun, Milwaukee County Corporation Counsel
Stefan Dostanic, Deputy County Clerk
Attorney James R. Troupis
Attorney Stewart Karge
Attorney Christopher Meuler
Attorney Chris Trebatoski
Attorney Michelle Umberger

EXHIBIT
B

Joseph W. Voiland

262.343.5397

November 30, 2020

Milwaukee County Election Commission
and Milwaukee County Clerk George L. Christenson
Milwaukee County Courthouse - Room 105
901 North 9th Street
Milwaukee, WI 53233

Dear Commissioners and Clerk Christenson:

I write to follow up on my November 28, 2020 letter to you. First, I have not received a response to that letter. Second, I alert you to additional information missing from the Master Exhibit List you issued immediately prior to adjourning on Friday afternoon.

The Master Exhibit List is missing page number 9. Further, Exhibits 814 through 819 are shown on the Master Exhibit list at pages 21-22, but those exhibits remain missing. A number of other exhibits appear to be missing, but to be certain which are actually missing you will first need to provide a complete Master Exhibit List, including page number 9.

We requested the missing page 9 from the official court reporter retained by the Commission, Samantha J. Shallue of Brown & Jones Reporting. She, too, is missing page 9. Attached is her message confirming that she is missing page 9 of the List as well.

I ask that you have all these materials available no later than Noon today for pickup at the courthouse.

Sincerely,

Joseph W. Voiland

for Donald J. Trump and Michael R. Pence

cc Margaret Daun, Milwaukee County Corporation Counsel
Stefan Dostanic, Deputy County Clerk
Michelle Hawley, Deputy Director Milwaukee County Election Comm'n
Attorney James R. Troupis
Attorney Stewart Karge
Attorney Christopher Meuler
Attorney Chris Trebatoski
Attorney Michelle Umberger

From: Samantha Shallue <sjshallue@yahoo.com>
Subject: Re: Final Transcript
Date: November 30, 2020 at 7:43:13 AM CST
To: Joe Voiland <jwvoiland@yahoo.com>, Alexandra Schweitzer <alischweitzer128@icloud.com>
Cc: Joe Voiland <jwvoiland@yahoo.com>, Brown & Jones Reporting <schedule@brownjones.com>

I can, but mine also is missing Page 9. The original exhibit with the identification sticker is with Michelle Hawley. I can send what I have, but I fear it's identical to Attorney Schweitzer's.

Samantha J. Shallue, RPR
Brown & Jones Reporting

Sent from Yahoo Mail for iPhone

On Monday, November 30, 2020, 7:33 AM, Joe Voiland <jwvoiland@yahoo.com> wrote:

Thank you Samantha. Do you have the Exhibit List you can send? It's the 22 page document released on Friday.

On Mon, Nov 30, 2020 at 7:07 AM, Samantha Shallue <sjshallue@yahoo.com> wrote:

Morning!

Unfortunately, I am of no use. All original exhibits, since there was 820 of them, were retained by Michelle Hawley, Deputy Director for the Milwaukee County Election Commission. I would suggest contacting her.

Samantha J. Shallue, RPR
Brown & Jones Reporting

Sent from Yahoo Mail for iPhone

On Sunday, November 29, 2020, 11:55 PM, Alexandra Schweitzer
<alischweitzer128@icloud.com> wrote:

Hi Samantha,

I am wondering if you can send me an electronic copy of 2020 General Election Recount List of Exhibits the was submitted into exhibit on November 27. If you are unable to send the entire exhibit I really need page 9, if you could forward that.

Can I also have copies of exhibit numbers 814-819, which are the exhibits for Oak Creek

Thanks,

~Ali Schweitzer
414-617-3720

On Nov 27, 2020, at 8:22 PM, Samantha Shallue
<sjsshallue@yahoo.com> wrote:

Evening!

Attached hereto is the final transcript from the Presidential Recount from today, November 27th, 2020.

Samantha J. Shallue, RPR
Brown & Jones Reporting
<Election Recount 11272020.zip>

**CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § 809.19(13)**

I hereby certify that:

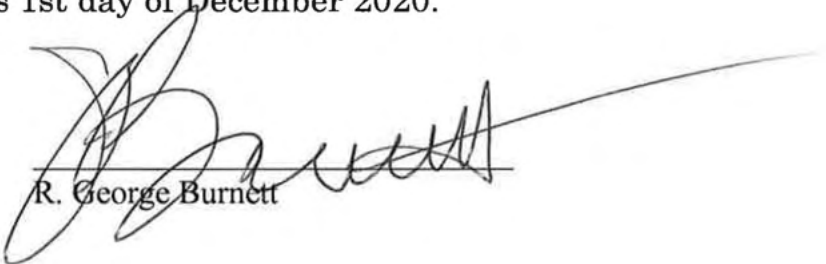
I have submitted an electronic copy of this appendix, which complies with the requirements of Wis. Stat. § 809.19(13).

I further certify that:

This electronic appendix is identical in content to the printed form of the appendix filed as of this date.

A copy of this certificate has been served with the paper copies of this appendix filed with the court and served on all opposing parties.

Dated this 1st day of December 2020.


R. George Burnett

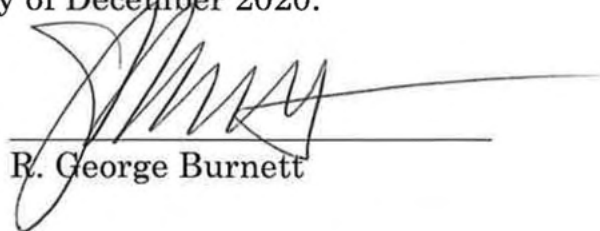
APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with Wis. Stat. § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 1st day of December 2020.



R. George Burnett