Wisconsin's 2020 Primary in the Wake of COVID-19

June 30, 2020

The nation's eyes were on Wisconsin on April 7, 2020, as the state held one of the country's first elections amid COVID-19 pandemic conditions. A flurry of action, including a pair of emergency Supreme Court decisions, preceded the primary. After the state legislature decided not to change the plan for the primary by legislation, Governor Tony Evers unsuccessfully tried to move the primary date through executive authority. Although Wisconsin offers absentee voting without an excuse, not all voters choose this option, and some primary voters did not receive their ballots in time to return it by the deadline. Election officials thus went into primary day expecting significant levels of in-person voting. This report examines the logistical challenges and adaptations made by local election officials during the Wisconsin primary. It also details other challenges, including ongoing litigation and proposed legislation, regarding the state's preparations for elections under pandemic conditions.

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1.   Summary

The Wisconsin primary was held on April 7, 2020—mere days after **Governor Tony Evers** and **Department of Health Services ("DHS") Secretary Andrea Palm** issued a statewide "Safer-at-Home" order on March 25, 2020, in response to a rapidly accelerating COVID-19 outbreak.

Several of Wisconsin's election laws should have made it better-equipped than most states to deal with administering an election during a pandemic. For example, Wisconsin does not require an excuse for a voter to register to vote-by-mail. Wisconsin voters can register online or at polling sites to avoid postal delays, although they do have to meet certain photo ID requirements. Wisconsin also provides for early voting, which voters could use to avoid crowded polling places on Election Day.

Unfortunately, sharp political divides and legal maneuvering severely hindered the state's ability to adapt to pandemic conditions and administer a safe, fair election. Instead, voters and election officials faced almost daily changes to election procedures—even the date of the election itself. **Governor Evers** pushed to postpone the election, while GOP state lawmakers, led by **State Senate majority leader Scott Fizgerald** and **Assembly Speaker Robin Vos,** defended the status quo. On the eve of the election, the **Wisconsin Supreme Court**, similarly divided along party lines, held that the election would go forward as planned. Meanwhile, Democratic and voting rights organizations filed suits in federal court, seeking absentee voting accommodations, including delaying the deadline to submit absentee ballots. While a federal district court initially issued an injunction extending the deadline, the order was reversed by the **U.S. Supreme Court** on the eve of the election.

Election officials also faced logistical challenges, such poll worker shortages, challenges obtaining protective gear and cleaning supplies, and an overwhelming influx of absentee ballot applications. Despite valiant efforts by the **[Wisconsin Elections Commission](#)**—a 6-member bipartisan group appointed by legislative leaders—and local election officials, many voters were stuck standing in long lines outside of limited polling facilities or waiting for absentee ballots that would never arrive.

Voter turnout in Wisconsin's April 7th elections was surprisingly high given the circumstances. Roughly 34% of the Wisconsin electorate [participated in the April 7th election](#), slightly higher than the [31% average voter turnout](#) for all of Wisconsin's primaries since 1984. Although voter turnout was down from 47% of the electorate in spring 2016, levels of voter turnout may have been [unusually high in 2016](#), when both the Democratic and Republican presidential nominations had yet to be decided. Indeed, 34% participation is actually higher than, for example, the 2008 and 2012 primaries, where [35% and 26% of the electorate voted](#), respectively.

Nevertheless, given the political and legal disorder that preceded the Wisconsin primary combined with stories afterward about how some voters contracted the virus on Election Day, Wisconsin has become the object lesson for what state election administrators should avoid in preparing for November. DHS has identified 71 poll workers, national guard members and voters who tested positive for COVID-19, but it could not be certain the cause was in-person voting. However, a study by researchers at UW-Oshkosh and Ball State University, using location data from mobile-devices collected by San Francisco-based SafeGraph, found that counties with more in-person voters per voting location had significantly higher rates of COVID-19 transmission after the election than counties with lower in-person voter density.

We analyze below successful and unsuccessful Election Day innovations and logistics; legal and logistical challenges Wisconsin faced; and a broad assessment of the effects of COVID-19 on the primary election.

Relevant Election Law Summaries (Lawyers Committee for Civil Rights)

Wisconsin Statute	Summary
§ 6.28	*Voter Registration Deadline*: 21 days prior to Election Day. Same-day registration is also permitted on Election Day.
§ 6.85	*Qualifying for Mail-In / Absentee Ballot*: No excuse needed
§ 6.86(1)(b)	*Absentee Application by Mail Deadline*: 5 days prior to Election Day.
§ 6.87(6)	*Absentee Ballot Submission by Mail Deadline*: Received by Election Day.
§ 6.86	*Method for Returning Ballots*: By mail or in-person to the municipal clerk's office.
§ 6.87 § 6.88	*Mail-in Verification*: Voters must certify in the presence of an adult, U.S. citizen witness, that they exhibited the unmarked ballot, marked the ballot, and enclosed and sealed the ballot in the absentee ballot envelope. The witness must also sign the envelope and provide their address. Election authorities review each absentee ballot envelope to determine that the certification is sufficient. If the voter's certification is incomplete, the ballot may be rejected. Election officials may return an incomplete or insufficient absentee ballot to a voter, whenever time permits the voter to correct the defect and return the ballot prior to Election Day.
§ 323.12	*Governor's Emergency Powers*: The governor may suspend the provisions of any administrative rule if the strict compliance with that rule would prevent, hinder, or delay necessary actions to respond to the disaster. In addition, the governor may issue orders as he or she deems necessary for the security of persons and property.

2.   Preliminaries

A. Elections in Play

Wisconsin's April 7, 2020 election covered the national presidential primary, one Wisconsin Supreme Court justice seat, and three Wisconsin Court of Appeals seats. It also covered a variety of other nonpartisan, judicial, and local offices, such as mayoral races in Milwaukee and Appleton. The election results can be found here.

B. Wisconsin Government Response to COVID-19

On March 20, 2020, Governor Evers announced that he did not plan on issuing a shelter-in-place order. At that time, there had been 206 confirmed COVID-19 cases and 3 COVID-19 related deaths in Wisconsin.

Four days later, after the number of confirmed cases had more than doubled to 457, Governor Evers directed state health officials to issue a statewide stay-at-home order. The order, called "Safer-at-Home," went into effect on March 25, and was intended to remain in effect until April 24. The order required people to stay in their homes except to exercise outside or to perform tasks essential to maintain health and safety, such as obtaining medicine, food, and supplies. Only essential businesses and operations, such as medical, grocery, transportation, and other critical infrastructure operations, were allowed to stay open. DHS Secretary Palm instructed people to limit their contact to a total of five individuals during the month-long lockdown.

By April 16, 2020, the number of confirmed COVID-19 cases in Wisconsin had risen to 3,875, with 197 cases resulting in death. Governor Evers directed DHS to extend the Safer-at-Home Order until May 26 and to close all public and private K-12 schools for the rest of the school year.

On May 13, 2020, the Wisconsin Supreme Court struck down the Safer-at-Home Order, stating that Governor Evers and Secretary Palm exceeded their authority when they extended the lockdown period. Responses to COVID-19 would be left to the local county and municipal authorities unless the state legislature approved of statewide rules. Dane County immediately reissued the Safer-at-Home Order, with several other counties following suit, implementing similar or identical provisions.

As of the date of the April 7, 2020 primary election, Wisconsin had 2,578 confirmed cases and 92 COVID-19-related deaths.

C. Delaying the Primary

The sudden increase in COVID-19 cases in late March and early April provoked the government to consider delaying the April 7 elections, with Democratic Governor Evers later urging delay and the Republican-controlled state legislature wanting to keep the election on schedule.

On March 26, Governor Evers proposed legislation that attempted to make voting more accessible and safe in light of the pandemic, including suspending voter identification requirements, extending the deadline for online voter registration, accepting absentee ballots postmarked by Election Day, and increasing absentee ballot printing. Republicans in the state legislature dismissed the proposed legislation as logistically infeasible. Senate Majority Leader Scott Fitzgerald stated: "Governor Evers just proposed procuring, printing, verifying, and mandating the mailing of millions of ballots within 10 days. Even he knows that's not logistically feasible. The clerks of this state should know this is a complete fantasy. The Legislature on both sides of the aisle has to know this is ridiculous. In pitching this idea, the governor is lying directly to Wisconsinites about this even being remotely possible. Acting like this is doable is a hoax." In a statement on April 1, Evers defended his proposal as a necessary compromise between public health and electoral representation: "The bottom line is that we have to keep folks safe and we have to make sure everyone who wants to vote has the opportunity to make their voice heard."

A week later, on April 4, Governor Evers called for a special session of the state legislature on the question of an all-mail election. The State Assembly and Senate stalled Governor Ever's attempts, however, by gaveling in and out within seconds and recessing until the following Monday—the day before the election.

In response, Governor Evers signed Executive Order 74 on April 6, postponing in-person elections until June 9. Speaker Vos and Senate Majority Leader Fitzgerald immediately released a joint statement indicating that they would challenge Governor Evers's executive order.

As discussed below, just hours after Governor Evers issued Executive Order 74, the Wisconsin Supreme Court struck it down. The primary election took place on April 7, as originally planned.

3.   Challenges Faced in Adapting Election Procedure Under Pandemic Conditions

A. Legal Challenges

Wisconsin faced significant legal challenges in the days leading to the April 7 election, in part because the Wisconsin Statutes lacked clarity as to which political branches have authority to modify election procedures during a pandemic. On the one hand, Section 323.12(4)(b) of the Wisconsin

Statutes gives the governor authority to "issue such orders as he or she deems necessary for the security of persons and property." [Section 252.02](#) further gives the Secretary of the Department of Health Services authority to "forbid public gatherings . . . to control outbreaks and epidemics" and to "authorize and implement all emergency measures necessary to control communicable diseases." On the other hand, because [Section 323.12(4)(d)](#) specifically gives the Governor the authority to suspend *administrative rules*, one possible inference is that the legislature did not intend to give the Governor authority to suspend *statutes*, including those dictating normal election procedures.

This lack of clarity led to political maneuvering in all three branches of government over the adjustment of (1) the election date, and (2) absentee ballot rules and deadlines. In the end, both issues were decided by Supreme Courts—the [Wisconsin](#) and [U.S. Supreme Courts](#), respectively—who are far removed from the institutions responsible for administering elections and were apparently unaware of key logistical constraints. The decisions resulted in a dizzying number of rule changes and logistical nightmares falling into the laps of local officials on the eve of the April 7 election.

1. Adjusting the Election Date:

After Wisconsin legislators refused to discuss delaying the election at the April 4 special session, Governor Evers issued [Executive Order 74](#), delaying the election to June 9. On the eve of the April 7 election, the Wisconsin Supreme Court was tasked with deciding whether or not Governor Evers actually had the authority to unilaterally modify election dates. In a 4-2 decision along party lines, it [decided that Evers did not](#).

The Court found that none of the Constitutional provisions cited in Executive Order No. 74 gave the governor the authority to delay an election. The Court next analyzed [Section 323.12(4)(b)](#) of the Wisconsin Statutes, which states that where the governor has declared an emergency, he/she has the authority to "issue such orders as he or she deems necessary for the security of persons and property." The meaning of this phrase was a matter of first impression for the Wisconsin Supreme Court. The Court ultimately decided, however, that because [Section 323.12(4)(d)](#) specifically gave the governor the authority to suspend *administrative rules*, it should be inferred that the governor did not have authority to suspend *statutes*, such as those dictating election procedures—even during a state of emergency.

In any event, under the Wisconsin Supreme Court's ruling, the election was set to proceed on April 7, as originally planned.

2. Parties Turn to Courts to Adjust Absentee Ballot Rules

Meanwhile, the Democratic National Committee, Democratic Party of Wisconsin, League of Women Voters, and others filed suits for injunctions in federal court. The suits requested a variety of

absentee voting accommodations, such as more time to request and submit absentee ballots, and exemptions from Wisconsin's ID and witness certification requirements.

The district court judge consolidated the suits and granted a temporary injunction (1) extending the deadline for the clerk's office to receive absentee ballots to April 13; (2) extending the deadline for receipt of absentee ballot requests to April 3; and (3) ordering election officials to waive the witness signature requirement if voters enclosed an explanation of why they were unable to obtain one. The district court reasoned that ruling otherwise would likely violate constitutional voting rights because the distribution of mail ballots was highly backlogged, and many voters would not receive their ballots in time to vote. The district court also issued a second injunction prohibiting members of the Elections Commission and election inspectors from releasing polling results before April 13, so that results would not be announced before all valid ballots had been received.

In a 5-4 decision, the U.S. Supreme Court delivered an emergency ruling staying enforcement of (in effect, reversing) the lower court's order to the extent it required the State of Wisconsin to count absentee ballots postmarked after April 7, 2020. The Court reasoned that "[e]xtending the date by which ballots may be cast by voters—not just received by the municipal clerks but cast by voters—for an additional six days after the scheduled election day fundamentally alters the nature of the election."

Ultimately, the Supreme Court held that in order to be counted, a voter's absentee ballot must be either (i) postmarked by April 7 and received by April 13, or (ii) hand-delivered to a polling place by April 7.

B. Logistical Challenges

Although the Wisconsin Elections Commission sets some election policies and procedures, most election administration decisions are made at the local level, by 1,853 municipal clerks and 72 county clerks across the state. Some urban jurisdictions have robust, high-tech operations, while other, more rural jurisdictions are run by a single volunteer.

Wisconsin's decentralized election system confronted the challenge of adapting to the dangers posed by the COVID-19 pandemic and rapidly changing mandates from state officials. Despite election officials' efforts to prepare for a safe election in the midst of the COVID-19 pandemic, political maneuvering, rapidly changing rules, shortages of supplies and poll workers, and a bottleneck in the absentee ballot system resulted in an election experience that has been widely criticized.

1. In Person Polling

a. Staffing Polling Places

With many of its traditional, senior citizen volunteers unwilling to risk their health or otherwise unable to serve, Wisconsin faced a shortage of 7,000 poll workers statewide. Ultimately,

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Governor Evers took the unprecedented action of [mobilizing](#) 2,400 members of the Wisconsin National Guard to serve as poll workers in 71 out of 72 Wisconsin counties. The citizen-soldiers dressed in plainclothes and mostly served the counties in which they reside. [Brigadier General Robyn J. Blader](#), Wisconsin's Assistant Adjutant General for Readiness and Training, organized and coordinated the mobilization, calling, training, and deploying of the guardsmen and women in less than 48 hours.

In spite of National Guard reinforcements, many jurisdictions across the state had to reduce the number of polling locations due to a shortage of available poll workers. Below are [some figures](#) from some of the largest jurisdictions in Wisconsin:

- Milwaukee City opened 5 of 180 of its usual polling locations
- Green Bay City opened 2 of 31
- Kenosha County opened 10 of 22
- Dane County opened 66 of 92

Some of the reduction in polling locations can be attributed to local election officials' decisions to move from smaller polling locations to larger facilities better suited for social distancing, such as high school gymnasiums or empty department stores.

Regardless, a reduced number of polling locations presented logistical challenges to poll workers and voters, many of whom had to travel across municipalities and potentially wait in long lines in order to cast ballots. Some voters waited in line for four hours, and some were [unable to cast a vote until after midnight](#).

Perhaps equally troubling, the reduction in polling places varied significantly by county, leading to unequal treatment of voters in different areas. While Madison reduced their polling places from 92 to 66, [Milwaukee reduced](#) polling places from 180 to just five. The average wait time for in-person voting in Milwaukee was between 90 minutes and two hours, with some voters [waiting as long as 2.5 hours](#). In the Milwaukee suburb of Waukesha, [there was only one polling place](#). In Green Bay, 31 polling places were reduced to two, and there was a reported [three-hours wait time](#) to vote.

b. Polling Place Safety

Election officials were also presented with the logistical challenge of keeping voters safe, as reduced polling locations and limitations on the number of voters allowed in polling locations at any one time presented concerns about large crowds gathering outside polling places.

Social distancing:

[Across the state](#), poll workers used tape, rope, cones, and more to ensure voters maintained a six-foot distance from one another in line, and limited the number of voters inside the polling place at any given time. To further accommodate social distancing guidelines, some jurisdictions organized

larger alternatives to usual polling locations. The City of Green Bay, for example, [relocated](#) its 31 small polling locations to two spacious high school gymnasiums. Similarly, the City of Oconomowoc [moved their polling station](#) to a former Kmart building with warehouse-like dimensions. The City of Neenah held its election in a 90,000-square-foot [empty department store](#).

Poll Worker Protections:

The degree of protections provided to poll workers varied greatly by location. Dane County, which includes the city of Madison, instructed officials to pre-screen all poll workers for COVID-19 symptoms and instructed poll workers to [refrain from asking voters to remove their face masks](#) when checking photo ID. In Ashland, workers were provided masks and instructed voters to be six feet apart.

The City of Madison [enlisted](#) the City Engineering Division to construct plexi-glass barriers to divide voters from poll-workers in its 66 polling stations. Smaller municipalities with fewer resources had to take more creative approaches: Dean Kaufert, mayor of Neenah, Wisconsin, [designed plexi-glass barriers himself](#) and asked a single city maintenance worker to create the 26 barriers that were used at Neenah's polling locations.

On the other hand, one poll worker told the BBC that she and other volunteers were [not even supplied with masks](#).

Disinfection:

Across many locations, poll workers sanitized and disinfected voting machines, provided hand sanitizer and fresh pens to each voter, and wore personal protective equipment ("PPE"). In Fitchburg, for example, workers were instructed to [wipe down equipment every 15 minutes](#).

To address widespread shortages in PPE and cleaning supplies, the Wisconsin Elections Committee used a [state airplane to fly emergency supplies](#), such as alcohol wipes, hand sanitizer, and disposable pens, to local polling places.

Still, polling locations varied greatly in terms of the degree and type of protections provided. Melody McCurtis, a Milwaukee resident, alleged in a [lawsuit against the Washington Elections Commission](#), that the location where she voted "did not provide voters with personal protective equipment" and that "voting equipment did not appear to be sanitary."

Curbside Voting:

Some local jurisdictions, such as Milwaukee, Burlington, and Madison, arranged for "curbside voting," where [poll workers wearing protective face shields](#) retrieved ballots from voter's cars. Some Milwaukee polling places [offered curbside early voting](#), while the City of Burlington [used a drive-through polling place system](#) in lieu of all in-person voting. Madison offered curbside voting for those who could not enter polling places due to illness or disability.

In some locations, drive-through polling worked. But in Milwaukee, some voters waited [over two hours](#) in car lines that ["became unwieldy."](#) And in Beloit, a man who voted curbside [reported that](#) "people seemed confused by the whole process, on both sides of the clipboard."

2. Mail-in Ballot

Absentee ballot requests skyrocketed across Wisconsin starting in mid-March. Prior to 2020, no more than 10% of Wisconsin voters voted by mail. In April 2020, 70% of votes were by mail.

Much of this increase can be attributed to voters' concerns about contracting the virus in a polling place, as well as to Governor Evers's [Safer-at-Home](#) Order, which went into effect on March 25th. Additionally, many counties and municipalities urged voters to request absentee ballots via mailed letters and social media posts. Two Milwaukee suburbs, Whitefish Bay and Bayside, even [mailed absentee ballot applications](#) with return envelopes to all registered voters in their townships. As a result, 60% of registered voters in Whitefish Bay and 59% of registered voters in Bayside voted by mail.

Historically high demand for absentee ballots added unexpected complications that threatened to disenfranchise many voters. The spike in demand aggravated already logistically challenging tasks including ensuring that all absentee ballots were delivered on time and that the requirements for mail-in voting were communicated effectively.

a. Applying for a Mail-in Ballot

The deadline [for voting by mail](#) in the April 7 election was April 3. Voters had two options for applying to vote absentee:

- (1) Print an [absentee ballot request form](#) from the Wisconsin Elections Commission website and send it to the [appropriate municipal clerk](#) via mail, email, or fax.
- (2) Apply to vote absentee [online](#) at the myvote.wi.gov website

Absentee ballot requests had to include an [acceptable form of photo ID](#), such as a driver's license or passport. Voters were therefore required to upload a copy of a valid ID using a smartphone, or to copy their ID and mail it in. Many voters, particularly senior citizens and those with low incomes, [struggled to obtain access to the technology](#) required to follow these instructions.

Once the voter received and completed his or her ballot, Wisconsin also required a witness to sign the ballot confirming that the voter who requested the ballot is the voter who used the ballot. Recognizing that the Safer-at-Home Order might make this requirement difficult for those living alone, the Wisconsin Elections Commission [released the following guidance,](#) recommending that voters living alone enlist the assistance of individuals incidentally delivering supplies or assistance to the voter (paraphrased here):

1. Voter retrieves their ballot from the mail, making sure to first wash or sanitize their hands and not to cough on the balloting materials.
2. Voter opens their absentee materials envelope and places the certificate envelope—the portion of the ballot the witness signs—outside their door, in a mailbox, etc. where a person who is providing supplies or services can access it, ideally 24 hours before the witness handles it.
3. When someone arrives to provide the voter with supplies or services, Voter should ask them to be a witness for their ballot.
4. After both people wash or sanitize their hands, Voter marks their ballot in view of the witness with a physical barrier (e.g., a window) between them or by video chat.
5. The witness signs the absentee certificate envelope and provides their required information. The witness then leaves the signed certificate on the door step, in a mailbox, etc. for Voter to retrieve.

Although the federal district court judge initially decided that absentee voters did not need a witness signature if they included a note explaining why they were unable to obtain one, the Seventh Circuit stayed the district court's order two days later. Unfortunately, state and local officials did not effectively communicate this to all voters. Madison election officials, for example, were forced to throw out at least 142 absentee ballots in which voters had included a note, thinking that they would be excused from the witness signature requirement.

b. Overwhelming Clerks' Offices and the Postal System

The increase in absentee ballot requests strained the vote-by-mail supply chain, as many jurisdictions did not have sufficient envelopes to mail absentee ballots to voters. Although the Wisconsin Elections Commission helped local authorities find vendors who could print and produce additional absentee ballots and envelopes on short notice, many jurisdictions still struggled to find printers who could print enough ballots on the proper paper stock.

Vote-by-mail deadlines also put unrealistic time pressures on election officials and the postal service. Even under normal circumstances, Wisconsin law allows voters to request an absentee ballot up until the Thursday before the election—as a result of a court ruling, in the April election, voters could even submit their applications a day later. This only allowed four days for all of the following steps to take place:

- elections officials process the request and put the ballot in the mail;
- the Postal Service delivers the ballot;
- the voter completes the ballot in the presence of a witness—including the cumbersome witness signature process described above for those living alone; and
- the Postal Service returns the ballot to the clerk's office.

Reid Magney, spokesperson for the Wisconsin Elections Commission, noted that when the laws setting absentee ballot deadlines were originally passed, ballots would only have to travel from a voter's house to the local post office to the local clerk's office. Since then, changes to USPS infrastructure mean that now each stage of mailing ballots require an extra step, travelling to a sorting center in Milwaukee or St. Paul before reaching their ultimate destination. In other words, completing this process for absentee ballot applications submitted on or near the application deadline would have been a herculean task, even under normal circumstances.

As a result, a significant portion of absentee voter applicants did not receive their ballots before the April 7 deadline. Preliminary data suggest that more than 12,000 applicants statewide did not receive their ballot before Election Day. Election officials in Oshkosh and Appleton came under fire after discovering three bins full of undelivered absentee ballots in a mail processing center after Election Day had passed. In the week leading up to the election, the village of Fox Point was reportedly receiving 100-150 undelivered and unopened ballots from the post office each day, without any explanation as to why they had not been delivered. Close to three million absentee ballot applications were filed prior to April 7, but no more than 85% of these applicants ultimately returned a valid ballot. In the cities of Milwaukee and Madison, 82.6% and 84.6% of absentee ballot applicants returned a valid ballot, respectively.

Although voters could eliminate a step by receiving their absentee ballot by email, the voter would then need to print out this emailed ballot, fill it out, and use his/her own envelope and postage to mail it to the local election headquarters. While this relieves the burden on election officials in procuring mailing supplies, it requires that voters obtain access to a printer, envelope and postage—a difficult task for many of those sheltering in place.

To reduce some strain on the postal service, Dane County election officials used library book return boxes as absentee ballot drop-off bins. Secure ballot drop-boxes can cost around $4,000, so this conversion saved Dane County money in addition to being a quick solution to the influx of absentee ballots. This option was not available in all jurisdictions, however—and, in any event, would still require voters to venture outside their homes during the pandemic.

c. Postmark Issues

The Supreme Court's ruling that only ballots postmarked by April 7 be counted spawned additional communication and logistical issues.

Because the deadline for absentee voting was in flux up until the eve of the election, Wisconsin voters had minimal time to learn of this change and to mail their ballots by the deadline. According to the Washington Post, at least 4,500 ballots that were received after April 7th and would have counted under the lower court's ruling were thrown out.

Moreover, the USPS does not always stamp mail with dated postmarks. According to USPS, postmarks typically are not required for certain types of mail, such as those bearing a permit, meter or precanceled stamp for postage.

The Elections Commission met the afternoon of April 10, 2020 to discuss how to count absentee ballots whose postmarks were missing, illegible, or did not include a date. Even this step was met with political gridlock—Democrats on the commission wanted a method of counting that would include more absentee ballots without date stamps, while Republicans wanted a method that would include fewer. The Elections Commission ultimately decided very little, and left to each municipality to determine whether ballots were postmarked timely.

Local election officials responded with a wide variety of interpretations. Some counties, such as Fond du Lac, Green Bay, Oshkosh, Sheboygan, and Wausau, did not count any ballots without postmarks if they were received after April 7. Some counties, such as Appleton, counted ballots without postmarks received on or before April 8, based on the assumption that ballots received on April 8 would have been mailed by April 7. Still other counties, such as Manitowoc, Milwaukee, and Wisconsin Rapids counted any ballots without postmarks as long as they were received by the Supreme Court's April 13, received-by deadline. It is unclear how many ballots were rejected for postmark issues in total, but the Washington Post suggests that there may have been thousands.

4.   Next Steps

A. Wisconsin Elections Commission

The Wisconsin Elections Commission has announced at least three steps it will take to create a smoother election process for the November 2020 elections.

First, on May 29, 2020, the Wisconsin Election Commission approved spending $7.2 million, including $4.1 million in grants to local election officials and voters, to help prepare for the Fall 2020 elections. Wisconsin will obtain the $7.2 million from the federal government, under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. The grants are intended to help local voting officials deal with unexpected expenses, such as postage and envelopes needed to respond to increased demand for absentee voting, cleaning supplies, protective equipment, and additional staff. The Wisconsin Elections Commission also intends to provide disinfecting supplies and PPE to local election officials for future elections, as it did during the April 7, 2020 election.

Second, the Wisconsin Elections Commission will send an informational mailing to registered voters explaining their voting options in the upcoming election, as well as an absentee ballot request form and return envelope. It will not, however, mail absentee ballots to all registered voters. Local

election authorities, such as [Milwaukee](#) and [Racine](#), have devised similar voter education and absentee ballot request form distribution plans.

Third, the Wisconsin Elections Commission [announced](#) that it will start using USPS "Intelligent Mail Barcodes"—essentially mail delivery tracking numbers—for absentee ballot envelopes.

B. Legislation

In response to the chaos of the April 7 election, State Representatives Joel Kitchens (Republican) and Staush Gruszynski (Democrat) [introduced a bipartisan bill](#) proposing several changes to election administration during an emergency, [including](#):

- Encouraging mail-in voting

- Sending an absentee ballot application to every registered voter who does not have an application on file

- Requiring municipalities to administer at least one polling place per 12,000 adult citizens who live in that municipality

- Requiring absentee ballots be delivered to a polling place or municipal clerk no later than 8 p.m. on Election Day. If the Wisconsin Elections Committee extends the absentee ballot request deadline, the deadline to return the ballot may be extend to 4 p.m. on the Friday following the election

- Giving the Wisconsin Elections Committee authority to waive the witness signature requirement

C. Lawsuits

On April 30, 2020, plaintiffs in the original consolidated federal case [amended their complaint](#), seeking the same modifications to election policy but adding information regarding the administration and aftermath of the April 7 election. Their complaint requests that the court declare certain election statutes unconstitutional, and enter an injunction:

- Preventing election officials from rejecting ballots postmarked on or before Election Day arriving at the clerk's office within 10 days after Election Day;

- Preventing application of photo ID and proof of residency requirements until the COVID-19 crisis is over;

- Extending the deadline for voter registration before each of the remaining 2020 elections; and

- Requiring defendants to "develop and implement plans to coordinate available state, local, and private resources to ensure that all voters throughout the State are able to cast early in-person absentee ballots and to vote in-person on Election Day in a safe and secure manner."

Further, on May 18, 2020, advocates for voters with disabilities and minority voters filed another federal lawsuit asking for various improvements to voting system, including hiring more poll workers, sending absentee ballot applications to every voter, upgrading voter registration systems to handle increased volume of online voter registration and absentee ballot requests, installing absentee ballot drop boxes in every community, working with USPS to ensure timely delivery, notifying voters of problems with their absentee ballots to give them an opportunity to fix, public education campaigns about how to vote, counting absentee ballots for up to a week after the election if they don't have a postmark, and waiving the photo ID requirement for absentee voters who are immunocompromised. On June 8, 2020, the Republican National Committee, Wisconsin Republican Party, and GOP-controlled state Legislature moved to intervene to oppose the suit. Defendants moved to dismiss the case, but their motion was denied.

5.   Additional Resources

- Wisconsin Elections Commission's April 7, 2020 Absentee Voting Report

- Ballotpedia's Summary of Wisconsin's April 7, 2020 election

- https://elections.wi.gov/news: Latest official updates from the Wisconsin Elections Commission

- https://myvote.wi.gov/en-US/: Wisconsin Elections Commission voter information website

- Vote.org's summary of Wisconsin voting procedures