

# Wisconsin: 2020 Election Policies & Practices

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## I. Issues of Concern

### A. Late-Arriving Absentee Ballots

Wisconsin, like much of the rest of the country, is already seeing massive absentee voting for November, and the state [expects](#) as many as 2 million people to vote absentee ([60-80%](#) of total voters). As the deadline for receiving absentee ballots is Election Day at 8 PM, thousands of ballots could arrive too late to be counted. In the April presidential primary, **79,000 ballots** [arrived](#) at clerks' offices after election day, according to the Wisconsin Elections Commission. But because a federal court granted a six-day extension for clerks to receive ballots, they were still counted. [2,659](#) absentee ballots were rejected because they were not returned by the deadline, and [5,526](#) ballots were rejected because they were postmarked after the day of the election.

As of November 1 (post-final deadline to request), more than 2 million people have requested absentee ballots, and 1,873,403 [have been returned](#).

### B. Voter and Witness Signature Rules and ID Rules

Rejection of absentee ballots is a major concern for November. In the past, deficiencies in the absentee ballot's certification form, which requires the signature of the voter and a witness, have been responsible for the [majority of rejections](#). But in the April 2020 primary elections, approximately [70%](#)

[of the 23,000](#) votes rejected were scrapped due to signature issues (including missing signatures, missing witness signatures, or missing witness addresses). Of these rejected ballots, [14,042](#) were due to voters or their witnesses failing to sign the absentee ballot envelope.

Wisconsin also has one of the nation's strictest [voter-identification mandates](#). Voters who apply for an absentee ballot online or through the mail must include a photograph for their identification, which requires both equipment and technical sophistication.

Anticipating that these [high rejection rates](#) may cause issues in November, the Wisconsin Elections Commission launched a [public relations campaign](#) to provide better instructions to voters on filling out a ballot, fulfilling the witness requirement, correcting mistakes, and returning the ballot once completed.

### C. Precinct Results on Election Night

Most places in Wisconsin count all of their ballots, including absentees, at the polling place. But in 39 municipalities, including the state's largest city of Milwaukee, ballots can also be counted at a central location rather than at polling places. In those municipalities, initial reports from a precinct [won't include](#) the absentees. Some communities use software that automatically [generates](#) reports that say 100% of a precinct's results are in even though they don't include absentee votes. This could leave the public with the impression that all the votes from that precinct have been counted even though they have not been.

In Milwaukee, absentee ballots can only be [reported](#) once they have all been counted. Given the high number of absentee ballots this year, those results aren't expected until late into the night, or early in the morning on Nov. 4. The elections director in Milwaukee County, which officials say has the potential to be the latest to report, said that results could take until between [3 a.m. and 6 a.m. Wednesday](#).

In order to stem some confusion about the final tally, the Wisconsin Elections Commission [voted](#) unanimously to recommend that counties make clear when posting election results how many absentee ballots are outstanding. This guidance was approved and sent to election clerks on October 20.

## II. Key Dates and Deadlines

- **September 17:** Date absentee ballots were [sent](#) to voters with an absentee application on file (47 days before the federal election).
  - When a request for an absentee ballot is made by mail, the absentee ballot must be mailed to the elector within one day of the request.
- **October 14 at 11:59pm:** Deadline to [register to vote](#) online or by mail.
- **October 20:** First day to [vote early](#) (in-person).
- **October 29 at 5pm:** Deadline to [request](#) absentee ballot by mail for regular and overseas voters.
- **October 30 at 5pm:** Deadline to [register to vote](#) at your clerk's office or other designated location and deadline to [request](#) absentee ballots by-mail for indefinitely confined voters and military voters (not on active duty).
- **November 3:** Election Day and last day absentee ballots will be [counted](#) (ballots received after 8 PM on November 3 will be rejected). Voters can also [register to vote](#) at their polling place if they bring a proof of residence document.
  - Canvassing:
    - Wisconsin state statute provides that inspectors shall proceed to publicly count votes immediately after the polls close, and the canvass shall continue without adjournment until complete. ([s. 7.51](#))
    - The counting of absentee ballots may begin any time after the opening of the polls if the governing body of a municipality has first provided for this by ordinance and informed the state elections commission. ([s. 7.52](#))
    - Deficiencies with the absentee ballot certificate envelope can be cured between when the polls open and when they close (8 PM) on Election Day. ([s. 6.87\(9\), \(6\)](#)).
    - Provisional ballots can be cured by providing the missing information to election inspectors at the polling place before polls close at 8 PM. ([s. 6.97\(3\)\(b\)](#)).
- **November 6:** Deadline for voters who cast a provisional ballot to [provide](#) the required information to the municipal clerk (at 4:00 PM).

## III. Registration

### A. Timeline

Wisconsin voters can [register](#) by mail or online up to 20 days before the election (October 14, 2020). Voters can also register in-person at their municipal clerk's office up until the Friday before the election (October 30, 2020) at 5 p.m, or at their polling place on election day.

### B. Requirements

To register, voters must have a [Proof of Residence](#) document, such as a Wisconsin Driver's License, State ID Card, utilities bill, or bank statement. The Wisconsin Elections Commission's voter registration guide also [states](#) that: "If you have been issued a State of Wisconsin Driver License or ID card that is current and valid, you must provide the number and expiration date" but that "[p]hoto ID is never required when registering to vote."

## IV. Absentee Balloting

### A. Requirements

Regular and overseas voters must request their absentee ballot by October 29 at 5 p.m.

Once Wisconsin voters receive their mail-in ballots, they must fill out the ballot, [sign the ballot in front of a witness](#) who is an adult U.S. citizen, fill out an elector witness certification form, and have the witness sign a certificate that accompanies the ballot. Amid the ongoing COVID-19 pandemic, the Wisconsin Elections Commission has [provided additional guidance](#) for securing a ballot witness while social distancing. The Commission has urged voters to find a family member, mail delivery person, or grocery store employee to serve as a witness. If a certificate is missing the witness's address or signature, the ballot may not be counted.

If a municipal clerk receives an absentee ballot that fails to include all of the information required for the certificate (e.g., address, signature) or a ballot is submitted with no certificate, the clerk may return the ballot to the elector with a new envelope “whenever time permits the elector to correct the defect and return the ballot.” ([Wisconsin Statute Section 6.87\(9\)](#)).

In the 2020 primary, deficiencies related to the absentee ballot certification form [accounted for 60% of ballot rejections](#). Wisconsin does not have regulations regarding signature verification, nor does it require that absentee voters use “secrecy sleeves” (also called an inner envelope or privacy sleeve).

## B. Ballot Collection

Voters [may return](#) their ballot by mail or by dropping it off in an absentee ballot dropbox, at their municipal clerk’s office, or at their polling place. There are [more than 500](#) dropboxes throughout the state. Third-party ballot collection is neither explicitly prohibited nor explicitly protected by Wisconsin state regulations.

Absentee ballots must be received (whether by mail or in-person drop-off) no later than 8:00 PM on Election Day. Ballot tracking service is available statewide via <https://myvote.wi.gov/en-us/TrackMyBallot>.

## C. “Spoiled” Absentee Ballots

Wisconsin Elections Commission Administrator Meagan Wolfe [sent a letter](#) to the state’s nearly 2,000 election clerks and commissions on October 19 in which she warned that the deadline for most absentee voters to cancel or change their ballot or correct a mistake they made was quickly approaching. She noted that “[m]any voters are contacting the Elections Commission regarding spoiling their absentee ballot. Issues include damaged ballots, making an error when voting the ballot (such as filling in the wrong circle or voting for too many candidates), or voters changing their mind after returning their absentee ballots. Absentee voters can request to spoil their absentee ballot and have another ballot issued as long as the appropriate deadline to request the new absentee ballot has not passed.” This deadline is **October 29**. She emphasized that absentee voters cannot spoil their returned absentee ballot at their polling place on Election Day.

## V. Early Voting

Wisconsin voters can vote in person before Election Day beginning on October 20 (two weeks before Election Day) at their local municipal clerk's office or another designated location through a process called [in-person absentee voting](#). Voters who apply for an absentee ballot in their municipal clerk's office or another designated location will vote their ballot immediately in the clerk's office, seal their ballot in the proper envelope, and return it to a member of the clerk's staff. No ballots may be taken out of the clerk's office.

Each city, village and town in Wisconsin is responsible for setting the dates and hours of in-person absentee voting for their municipality. To find the dates and hours for their municipality, voters can contact their municipal clerk using this tool: <https://myvote.wi.gov/en-us/MyMunicipalClerk>.

## VI. Election Day

### A. Poll Worker Recruitment and Training

The Wisconsin Elections Commission encourages every eligible citizen to become involved in the election process by becoming an Election Day poll worker (also known as an election inspector).

There are [several different jobs](#) at polling places in Wisconsin, all of which are appointed by municipal clerks:

- Election inspectors help check voters in at the polling place and register them to vote, as well as issuing them ballots. Election inspectors receive training from the municipal clerk or online from the Wisconsin Elections Commission. They must be residents of the county where they will be working.
- The Chief Election Inspector serves as the lead election official at a polling place. In order to become a Chief Election Inspector, you must complete online or in-person baseline training

which lasts about two hours. Chief Election Inspectors must be residents of the town, village or city where they live (in a pinch a Chief Inspector can be from the county).

- Each polling place can have one person appointed as an official Greeter who must be a resident of the county where they serve. Greeters can also help at a polling place by making sure voters are in the correct line and assist with sanitization efforts. Election Registration Officials, or EROs, must be residents of the county in which they serve and help voters registering to vote on Election Day. Both greeters and EROs must take some training before Election Day about the job they will be doing.
- Tabulators assist with ballot counting after the polls close on election day. State law does not make any specific residency requirements of these individuals.
- Some elections may need polling place helpers to keep the polling place organized. Depending on the clerk and the election, you may be able to volunteer to help out at a polling place by making sure voters are in the correct lines, assisting with enforcing social distancing, and making sure the polling place is properly cleaned throughout the day. Citizens who just want to help with these tasks on election day do not need to meet any training or residency requirements.
- Wisconsin law allows qualified high school students to serve as election inspectors. Qualifications include being 16 or 17 years of age, having at least a 3.0 grade point average, and having the written approval of their parent or guardian.

Municipal clerks are [required](#) by state law to provide training. This training provides all of the necessary information and knowledge to be a successful poll worker. (Many municipalities require poll workers to attend a comprehensive training course prior to each Primary election.) Currently, there is no specific prescribed curriculum or length of training provided by the Elections Commission. It is recommended that, at a minimum, election inspectors be instructed on the duties detailed in the Election Day Manual. It is the responsibility of the municipal clerk to ensure that election inspectors have received sufficient training prior to commencement of duties.

Poll workers are [compensated](#) for working at polling places at a rate determined by the appropriate municipal governing body. In some municipalities, they are also compensated for attending any required training sessions. Poll workers may also choose to volunteer their services by filing a written declination of compensation with the municipal clerk.



Wisconsin was [short](#) 700 poll workers prior to their August 2020 elections. To fill the gap, Governor Tony Evers activated the Wisconsin National Guard. On October 29, 2020, only about 200 out of 30,000 poll worker positions were still needed for the November election, but Governor Evers again [activated](#) National Guard troops to make up for the shortage.

## B. Poll Watchers

In Wisconsin, poll watchers are called “election observers,” and [anyone can do it](#), regardless of whether they are observing on behalf of a political party. Observers do not need to be Wisconsin residents, U.S. citizens, or live in the U.S. Observers can go to locations offering early voting, which started Tuesday, Oct. 20, as well as to polling locations and central counts (where absentee ballots are counted in 39 municipalities in Wisconsin) on Election Day.

Those looking to observe need to [bring](#) photo identification and check in with the chief election inspector, the person in charge of the voting site. They will also have to sign in and wear an election observer badge. Observers will then be shown where to sit and will be required to stay in that area.

Under state law, election observers [aren't allowed](#) to interact with voters, view IDs presented by voters, take photos or videos of the polling place, handle an original version of any election documents, or wear and distribute materials promoting a candidate.

## C. Rules on Violence and Intimidation at the Polls

Wisconsin law broadly [defines](#) voter intimidation, stating that “[n]o person may personally or through an agent, by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise at an election.” Further, [the statute](#) explicitly prohibits the use or threat of violence, kidnapping, or any form of force to compel someone to vote a certain way or abstain from voting. The state also has specific laws aimed at minimizing the risk of voter intimidation, including [banning electioneering](#) within 100 feet of polling locations, and allowing police officers to be [present](#) at polling locations at the discretion of the election officials to enforce anti-harassment of voters. Wisconsin state law also authorizes election officials to [warn and remove](#) any individual causing

a disturbance and [moving the polling location](#) if election officials deem it “impossible or inconvenient” to continue holding the election in its original location. The Wisconsin Board of Elections also advertises an anonymous [form](#) to submit any instances of voter intimidation.

The applicability of these statutes on broader issues of voter intimidation through misinformation in Wisconsin is unclear. While [Wisconsin law](#) bans the use of “fraudulent devices or contrivances” to suppress voters, it does not define the term. Further, we found no case law in Wisconsin that sheds light on the subject. This ambiguity is particularly worrisome because such voter intimidation tactics have been repeatedly used in recent years. In 2004, a non-existent “[Milwaukee Black Voters League](#)” distributed flyers in predominantly minority communities that contained false information about the ability to vote and claimed that violating these rules would result in 10 years in prison. In 2010, [billboards](#) appeared in predominantly minority communities that provided no voting information, but rather, advertised the penalties for voter fraud. Unfortunately, the question still remains whether these statutes are sufficient to handle all permutations of voter intimidation.

#### D. Mask Rules

On August 1, 2020, Governor Evers issued an [Emergency Order](#) requiring every individual age five and older to wear a face covering in all enclosed spaces other than private residences when others who are not members of their household are present. While Governor Evers provided for exceptions, polling places were not listed.

The Wisconsin Elections Commission sent a memo to all Wisconsin election officials entitled “[Face Coverings While Voting and Conducting Elections](#)” on July 31, 2020. The memo says “Commission staff have been advised” that only the Legislature can establish voter qualifications, so the Governor’s Executive Order mandating facial coverings in certain situations does not apply to voters. Therefore, face coverings may be strongly encouraged but not required, and no voter should be refused a ballot for lack of wearing a face covering.

The Commission suggests that municipal clerks may establish procedures to allow for voters without face coverings to safely cast a ballot, and that this may involve using designated areas of the polling place for these voters or assigning poll workers with additional PPE to serve these voters.

Poll workers can be required to wear masks. According to the Commission’s memo, “municipalities have the authority to determine and train their poll workers on ‘changes in laws, rules and procedures affecting the performance of their duties.’ Wis. Stat. § 7.15(1)(e)” and “the Governor’s Executive Order requiring face coverings in public applies to poll workers.”

The Commission further instructs that “[i]f face coverings are required, municipal clerks’ training for their poll workers should instruct them that one of the new procedures being implemented for health and safety of both voters and fellow inspectors is that everyone is required to wear a face covering when they work. This change would be considered part of an overall strategy to incorporate public health procedures during the COVID-19 pandemic into previously established election procedures, like wiping down equipment, providing single-use pens, using social distance markings on the floor, or modified line management to keep voters appropriately spaced out.”

Finally, the guidance stipulates that “[i]f necessary, poll workers who refuse to follow procedures and instructions provided by the clerk or chief election inspector would be neglecting their official duties and may be removed from their positions.”

## E. Provisional Ballots

A provisional ballot is a ballot that is marked by a voter but is not counted at the time it is cast. A provisional ballot will be [issued](#) if an individual:

- Is eligible to vote and has a current and valid Wisconsin driver’s license or identification card, but is unable or unwilling to list the number when registering,
- Registered by mail as a first-time Wisconsin voter before April 4, 2014 but did not provide an identifying document establishing proof of residence at the time and is unable to provide the required proof of residence at the polling place,
- Is a registered voter but is unable or unwilling to provide proof of identification.

A provisional ballot will *not* be provided if an individual:

- Goes to the wrong polling place—if this occurs, the voter will be directed to the correct location,

- Attempts to register in person at the polling place and does not provide the required proof of residence.

A provisional ballot will not be counted unless the voter [provides](#) the required information to the poll workers by 8:00 PM on Election Day or to the municipal clerk by 4:00 PM the Friday after the election.

## VII. Post-Election Period

### A. Processing Mail-In Ballots

Absentee ballots must be received by the close of polls on Election Day in order to be counted. Absentee ballots in Wisconsin are carefully collected and securely stored until Election Day, when they are [transported](#) to local polling places, or in some communities, a central counting facility. [Most localities](#) in Wisconsin, including most rural areas and small municipalities, as well as some larger cities such as Madison, intermingle mail-in ballots and in-person ballots at the polling places. Ballot processing and counting procedures at polling place locations are defined by [W.S.A. 6.88](#). All ballots are counted together so that, when the precinct count is released, it contains both in-person and mail-in ballots.

Other localities, such as [Milwaukee](#), Kenosha, Waukesha, and Janesville, process mail-in ballots at a central counting location, following state law [Wis. Stat. § 7.52](#). [Thirty-nine municipalities](#) this year will process mail-in ballots at a “Central Count Absentee Ballot Site.” A municipal board of absentee ballot canvassers, [composed of](#) the municipal clerk (or a qualified elector designated by the clerk) and two other qualified electors of the municipality appointed by the clerk, will convene at a public location any time after the opening of the polls and before 10:00 PM on Election Day to process and count the absentee ballots for the municipality. The board of absentee ballot canvassers will follow the [same procedures](#) as those used at the polling place when processing, counting, and securing absentee ballots. Just like at regular polling places, [election observers](#) from political parties and other organizations may observe the processing and counting of absentee ballots at these designated sites. Wis. Stat. [§ 7.41](#).

Wisconsin waits until [after the polls open](#) on Election Day to begin processing mail-in ballots. Processing is the act of verifying the identity of the voter who returned the mail-in ballot. There are multiple steps to processing a ballot before counting begins. The election inspectors [must ensure that](#):

1. The voter's certification has been properly executed,
2. The voter is a qualified elector of the ward or election district,
3. The voter has not yet voted in the election,
4. The ballot has been endorsed by the issuing clerk,
5. The voter has enclosed proof of residence, if required under Wis. Stat. § [6.34](#), and such proof matches the name and address on file (if not enclosed, the ballot is marked as provisional), and
6. The voter's name does not appear on the poll list as ineligible to vote by reason of a felony conviction. If the voter does have a felony conviction, the inspectors will challenge the ballot as provided in Wis. Stat. § [6.92](#).

If the election inspector or board of absentee ballot canvassers find no reason to reject the absentee ballot, they mark the elector's name on a poll list and [deposit](#) the voter's ballot into the proper ballot box. But inspectors will [reject](#) a ballot if they find one of the following issues:

1. A certification is insufficient: the ballot envelope has no voter signature, no witness signature, no witness address, both special voting deputies failed to sign, and / or no certification language;
2. The applicant is not a qualified elector in the ward or election district;
3. The ballot envelope is open or has been opened and resealed;
4. The ballot envelope contains more than one ballot of any one kind;
5. The certificate is missing for a military or overseas elector who received an absentee ballot by fax or email; or
6. There is proof that an absentee ballot has been submitted for a voter who has since died.

When an absentee ballot is rejected, an inspector [will](#) endorse the rejected ballot on the back, writing "rejected (giving the reason)." They will then reinsert the rejected ballot into the certificate envelope and securely seal the ballot in the envelope inside an envelope marked for rejected absentee ballots. [The inspectors then](#) endorse the "rejected ballots" envelope with a statement of the ward or election district and date of the election, signed by the chief inspector and one of the inspectors

representing each of the two major political parties (or every member of the board of absentee ballot canvassers), and return the envelope to the municipal clerk in the same manner as official ballots voted at the election. Ballots rejected because of issues with certification, such as no voter signature, [may be returned](#) to voters on Election Day to provide them the opportunity to cure the certification defects [before the polls close](#) at 8:00 PM. But notice and cure practices across Wisconsin [vary widely](#). In some counties, election officials make an effort to [call every voter](#) whose ballot does not meet witness requirements and help them fix the ballot. Despite the rule that ballots may not be processed before Election Day, county clerks may [inspect the outside](#) of a mail-in ballot as soon as it is received to notify a voter of a missing signature. In other counties, only a small number of ballots that failed to meet the witness requirements [made it](#) to the eventual count.

While the processing of absentee ballots will begin at 7:00 AM on Election Day, no ballots may be counted until the polls close at 8:00 PM.

## B. Canvassing Rules

Vote counting at polling places is [performed](#) by the election inspectors (Wisconsin's term for poll workers). Each polling place generally has [seven](#) inspectors, though more can be appointed. The governing body of a municipality may also appoint [tabulators](#) to assist election inspectors in the counting of votes after polls close.

Immediately after the polls close, the inspectors proceed to canvass all votes received at the polling place. The canvass, whether conducted at the polling place or at a central counting location, must continue without adjournment until the canvass of all ballots cast and received on or before Election Day is completed and the results are reported (Wis. Stat. [7.51\(1\)](#)).

The process of counting ballots is detailed in the [Wisconsin Election Day Manual](#) (2020), which includes detailed procedures for hand-counted paper ballots, optical scan ballots, and Direct Recording Electronic Voting Equipment (DRE). For example, the hand-counted ballot procedure follows [these basic steps](#) (“Counting Ballots”):

1. If there are multiple ballot boxes, open boxes one at a time.
2. Count the ballots in each box (without examining them) to determine the total number.

3. Determine if the number of ballots is equal to the number of voters. (If not, and there is no alternative reason for the ballot overage, election officials [randomly withdraw](#) the number of ballots equal to the excess number of ballots and set those aside. All ballots so removed may not be counted but shall be specially marked as having been removed by the inspectors on original canvass due to an excess number of ballots, set aside and preserved.)
4. Count and record the votes on two separate Tally Sheets. Reconcile the tally sheets when the counting for each office is complete.
5. Announce the results of the votes cast at the polling place and prepare all election materials for delivery to the municipal clerk.

Wisconsin law does not specify the manner for actually counting paper ballots. The Election Commission [recommends](#) a process in which one election official reads each ballot, a second official observes, and two other election officials mark the votes on tally sheets, which are then compared for accuracy at the end of counting.

However, [most](#) Wisconsin polling locations use optical scanning devices or voting machines, which record the votes and drop the marked ballots into a locked container. For locations using Direct Recording Electronic Voting Equipment (DRE), the counting process is straightforward. All votes, including write-in votes, are [automatically tabulated](#) by the DRE equipment. After the polls close, election workers [print out a tape](#) which lists the tabulated vote totals. Inspectors [then](#) record the serial numbers on the security seals and secure a copy of the results (plus the memory cards, unless they remain sealed in the machines) in a sealed envelope bearing the signatures of the chief election inspector and two additional inspectors across the seal. The machine-produced record of the total votes cast for each candidate is [presumed correct](#), unless an error in the record is clearly apparent or unless a candidate at the election requests that the machine be viewed. Voting machines provide [three](#) redundancies: the original ballots in their secured container, the print-out tape from the machine, and the electronic memory device from the machine.

In addition to following the procedures for the Direct Recording Electronic (DRE) equipment, locations which use optical scanning devices must be aware of additional procedures to tabulate ballots that were not legible to the machine. For example, a ballot rejected by the machine must be examined by two election officials from different political parties to determine the cause for rejection. The officials can then make a duplicate ballot to correct the problem (see “Remaking

Ballots” in the [WEC Election Day Manual](#)). For some machines, write-in ballots must be tabulated by hand, which may require an edit to the printed results if, for instance, an elector fills in an oval next to a candidate’s name and also writes in a candidate for that office, but fails to complete that oval. Write-in votes, even if the arrow/oval is not completed, [are counted instead](#) of the vote for the candidate on the ballot if the write-in is a registered candidate. Therefore, the returns may need to be amended to reflect the correct number of votes.

### C. Grounds for Disqualification of Ballots

The Wisconsin Elections Commission (WEC) offers [extensive instructions](#) for counting irregular ballots in accordance with Wis. Stat. § [7.50\(2\)](#). When a voter has marked a ballot in a way that does not clearly indicate their voting objective, such as when an elector has overvoted an office on the ballot, the election inspectors must attempt to determine the voter’s intention. All inspectors must be part of the determination process, and the majority must agree that the voter’s intention can or cannot be determined. Rules for counting [write-in votes](#) also prioritize voter intent—for example, an irregular write-in vote may be counted if the intent of the voter can be determined, even if a name is misspelled. A ballot that is damaged, overvoted, or otherwise unclear as to voter intent is called a “[defective](#)” ballot. Whenever a ballot is found to be defective, cast by a [challenged elector](#), or rejected (e.g. for missing a signature), the ballot must be identified with a number and set aside, and a notation about the rejected ballot must be made on the [Inspectors’ Statement](#).

### D. Certifying the Vote

Vote totals in Wisconsin are [triple-checked](#). Election results from municipalities are not official until they have been double-checked by the county and [certified](#) by the bipartisan Wisconsin Elections Commission. The tally from election inspectors on election night is the *unofficial* election result; the official results of the elections are [not finalized until later](#) (see “Post Election Activities”). To certify the vote, each official board of canvassers must meet to complete the official canvass of their respective offices (at the municipal, county, state, or other level). The canvass statement is the [official](#) determination of the outcome of the election. The election is not complete and no recount can be requested until the canvass has been completed (Wis. Stats. §§ [7.53\(4\)](#), [9.01\(1\)\(a\)](#)).



The canvass for the presidential race takes place at the [county level](#). Immediately following the county canvass, the county clerk [delivers](#) to the Wisconsin Elections Commission (“WEC”) the certified statements from the county board of canvassers, with the election returns recorded by ward. County canvassers must certify their results to the Wisconsin Elections Commission by [November 17, 2020](#), 14 days after the election (Wis. Stat. § 7.60(5)). The WEC must certify the statewide results by [December 1, 2020](#) (Wis. Stat. § 7.70(3)(a)).

## E. Recount Procedures

Candidates and electors may petition for a [recount](#) until 5:00 PM on the third business day following certification by the official board of canvassers. As soon as this deadline for filing a petition for a recount has passed, the municipal clerk issues a [Certificate of Election](#) to each person elected to any municipal office. When a valid petition for a recount is filed, the municipal clerk must wait to issue the certificate of election for the office in question 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. § [7.53\(4\)](#)).

## F. What Can We Expect on Election Night?

Wisconsin [does not](#) have an official statewide Election Night reporting system. Wis. Stat. § [7.60\(1\)](#) stipulates that clerks must post all returns, by ward or reporting unit (a reporting unit may [comprise](#) one ward or a group of wards—municipalities with a population of 35,000 or more must report election results by individual ward), on an internet site maintained by the county no later than two hours after receiving the returns. Election officials [do not have](#) an ongoing requirement to continuously update local results after they are posted on election night, though most counties will update and post the results of the ballots canvassed by the county after they have been certified. Some counties (such as [Adams County](#)) post results via Google Drive folders linked from their county website, while others report results directly on their websites. The Wisconsin Elections Commission advises voters to refer to this [list](#) of Wisconsin County election websites on election night to find

unofficial results from Wisconsin's 72 County Clerks or [to look for](#) reporting by local news outlets, which aggregate and report statewide results.

Because absentee ballots cannot be counted until Election Day and these ballots [take longer](#) to count (because officials must take them out of their envelopes, unfold them and feed them into counting machines, as well as address errors as they occur, such as when ballots can't be read by the machines because of the way they were folded), it is possible that the results of the 2020 election will [not be known for days](#). In addition, in some counties, such as Milwaukee, absentee ballot drop boxes [will be open](#) until 8:00 PM; if a significant number of voters return their ballots throughout the day on Election Day, this could further delay their processing and counting. However, Governor Evers has said he expects to know the results on election night, or by the day after at the latest.

Most places in Wisconsin count all of their ballots, including absentees, at the polling place. But in 39 municipalities, including the state's largest city of Milwaukee, ballots can also be counted at a central location rather than at polling places. In those municipalities, initial reports from a precinct [won't include](#) the absentees. Some communities use software that automatically [generates](#) reports that say 100% of a precinct's results are in even though they don't include absentee votes. This could leave the public with the impression that all the votes from that precinct have been counted even though they haven't been.

In Milwaukee, absentee ballots can only be [reported](#) once they have all been counted. Given the high number of absentee ballots this year, those results aren't expected until late into the night, or early in the morning on Nov. 4. The elections director in Milwaukee County, which officials say has the potential to be the latest to report, said that results could take until between [3 a.m. and 6 a.m. Wednesday](#).

In order to stem some confusion about the final tally, the Wisconsin Elections Commission [voted](#) unanimously to recommend that counties make clear when posting election results how many absentee ballots are outstanding. This guidance was approved and sent to election clerks on October 20.

# Appendix

## A. Primaries

Wisconsin held primary elections in both April and August of 2020. The April presidential primary saw long lines and mass delays in some cities and clerks overwhelmed by the flood of absentee ballot requests. While absentee ballots [made up](#) no more than 6% of all ballots counted in the 2016 and 2018 Wisconsin general elections, in the April 2020 primary—as a result of Gov. Evers’ stay-at-home order—the portion jumped to more than 60%. Slightly more than 23,000 of these absentee ballots were [rejected](#), mostly because those voters or their witnesses missed at least one line on a form. This figure is nearly equivalent to President Trump’s 2016 margin of victory in Wisconsin of 22,748 votes.

Wisconsin’s second statewide primaries in August 2020 reportedly ran more smoothly than in April, with few reported issues. The state’s biggest cities increased the number of polling places available for the August primary after experiencing major lines and mass delays in April: officials in Milwaukee [increased](#) the number of voting locations from five in April to 168 in August (roughly 95% of its regular sites); Madison added 23 new polling places since April [for a total of 89](#); and Green Bay offered [17 sites](#), up from two in the spring presidential primary. However, the number of people who voted in August represents a fraction of what’s expected in November; since 2000, August primary turnout has ranged from about 10% to 25%, while presidential elections in that same time frame have drawn at least two-thirds of the state’s voters.

## B. Litigation

### *Democratic National Committee v. Bostelmann*

Under state law, absentee ballots are due in local clerks’ offices by 8 p.m. on election night. But Democrats and allied groups sued to extend the deadline after the April presidential primary saw long lines, fewer polling places, a shortage of poll workers and thousands of ballots mailed days after the election.

U.S. District Judge William Conley ruled last month that any ballots that arrive in clerks' offices by Nov. 9 will be counted, as long as they are postmarked by Nov. 3. In that ruling, Conley noted the heavy absentee load and the possibility it could overwhelm election officials and the postal service.

The 7th Circuit Court judges initially upheld Conley's ruling on Sept. 29, rejecting the Republicans' standing to intervene. After the Wisconsin Supreme Court affirmed that standing, the same three-judge panel blocked Judge Conley's extension.

Democrats appealed to the United States Supreme Court on Oct. 13 and 14. On October 26, the Court [denied](#) the Democrats' application to vacate the stay, cementing Election Day at 8 PM as the deadline to receive absentee ballots.

### [Zignego v. Wisconsin Elections Commission](#)

This case hinges on whether voters who were identified as potentially having moved should be removed from the voter registration database. The Wisconsin Institute for Law and Liberty, a conservative law firm, argued that the state elections commission broke the law when it did not remove voters from the rolls who did not respond within 30 days to a mailing last year indicating they had been identified as someone who potentially moved.

The commission wanted to wait until after the presidential election before removing anyone because of inaccuracies found while previously attempting to identify voters who may have moved.

Because voters who moved were concentrated in more Democratic areas of the state, liberals argued that the lawsuit was meant to lower turnout on their side. Republicans countered that it was about reducing the likelihood of voter fraud and making sure that people who moved are not able to vote from their previous addresses.

A circuit court judge ruled last year that the voters must be removed immediately, but a state appeals court overturned that in February. The case was heard before the Wisconsin Supreme Court on September 29, 2020.

No voters have been deactivated while the yearlong legal fight continues. Even if voters have their registration deactivated, they can register again later or on Election Day when they show up at the polls.

### *Jefferson v. Dane County*

The Republican Party of Wisconsin asked the state supreme court to rule that voters cannot use COVID-19 as a basis for declaring a photo ID exception that applies to voters who are “indefinitely confined.”

Typically, voters must show photo ID before obtaining an absentee ballot. However, there are exceptions, including one that applies to those who are “indefinitely confined” to their homes because they are ill, infirm, elderly, or disabled.

The clerks for Dane and Milwaukee counties, ahead of the April 7 election, informed voters that, because of the COVID-19 pandemic and the statewide Safer at Home order, they could request an application for an absentee ballot on the basis of indefinite confinement and would not be required to show photo ID if not able to provide one.

The lawsuit alleges that many voters did indeed request absentee ballots as “indefinitely confined,” and obtained absentee ballots without providing a photo ID, “even though they were not themselves physically ill, infirm, elderly, or disabled.”

In response, on March 29, the Wisconsin Election Board (WEB) adopted guidance to note that 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, infirmity or disability.”

But the clerks, in public statements, asserted that the WEB guidance was not contrary to their position that voters could elect an “indefinitely confined” status to request an absentee ballot if they could not obtain a valid photo ID because of the pandemic. This case was heard by the Wisconsin Supreme Court on September 29, 2020.

