



Wisconsin Elections Commission

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April 30, 2026

STATE OF WISCONSIN WISCONSIN ELECTIONS COMMISSION

In re the investigation of:

City of Madison Municipal Clerk
Dane County Clerk
Madison Municipal Board of Canvassers
Dane County Board of Canvassers
("Madison and Dane County Election Officials")

Investigation No. 2026 - 0001

ORDER PURSUANT TO WIS. STAT. § 5.06(6)

Pursuant to Wis. Stat. § 5.06(6), and the vote of the Wisconsin Elections Commission ("the Commission") taken on April 30, 2026, the following is the Commission's final order issued in the investigation into the City of Madison Clerk Lydia McComas ("City Clerk"), the Dane County Clerk Scott McDonell ("County Clerk"), the Madison Municipal Board of Canvassers ("MBOC"), and the Dane County Board of Canvassers ("CBOC").

On April 30, 2026, the Commission voted on its own motion pursuant to Wis. Stat. § 5.06(4) to investigate and determine whether the City Clerk, County Clerk, MBOC, and CBOC failed to comply with the law or abused the discretion vested in them or proposes to do so.

On April 30, 2026, the Commission conducted and completed its investigation into whether during the April 7, 2026, Spring Election the City Clerk, County Clerk, MBOC, and CBOC incorrectly counted 23 absentee ballots that were delivered to their polling places after 8 p.m. on Election Day. The Commission reviewed the notice, agenda, and meeting minutes from the MBOC and CBOC, a letter from the City Clerk to the CBOC describing in greater detail the reasoning and the procedure for counting the ballots, and correspondence from the Madison City Attorney and WEC staff.

On April 30, 2026, the Commission summarily decided this matter after completing the investigation it deemed to be appropriate, and hereby issues this order against the City Clerk, the County Clerk, the MBOC, and the CBOC. Wis. Stat. § 5.06(6).

Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Don M. Millis | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Order

The Commission issues this order pursuant to Wis. Stat. § 5.06(6) against the City Clerk, the County Clerk, the MBOC, and the CBOC. This order is effective immediately. Wis. Stat. § 5.06(6). **PART ONE** of this order is applicable to each one of the Madison and Dane County Election Officials named in this order. **PART TWO** is specifically applicable to the CBOC. **PART THREE** is specifically applicable to the MBOC.

PART ONE of this order is applicable to the City Clerk, the County Clerk, the MBOC, and the CBOC, and pertains to the correct interpretation of Wis. Stat. § 6.87(6). Absentee ballots must be returned so they can be “delivered to the polling place no later than 8 p.m. on election day.” Wis. Stat. § 6.87(6). Any ballot not mailed or delivered as provided in § 6.87(6) “may not be counted.” Wis. Stat. § 6.87(6). The provisions of § 6.87(6) “shall be construed as mandatory. Ballots cast in contravention of [§ 6.87(6)] may not be counted...[and] may not be included in the certified result of any election.” Wis. Stat. § 6.84(2).

The City Clerk, the County Clerk, the MBOC, or the CBOC are ordered to conform their conduct to the interpretation of § 6.87(6) in this Order, as well as the interpretation in the Commission’s decision letter issued April 30, 2026. Wis. Stat. § 5.06(6). They are restrained from taking any action inconsistent with this interpretation of the law in future elections and meetings of the MBOC or CBOC. Wis. Stat. § 5.06(6).

PART TWO, of this order is further applicable to the CBOC, and constitutes an order to correct actions and decisions that are inconsistent with the interpretation of the law in **PART ONE** of this order. Wis. Stat. § 5.06(6). The CBOC voted 2-1 to “affirm the decision of the City of Madison Municipal Board of Canvassers to count the late arriving absentee ballots.” The CBOC is ordered to reconvene to correct this action because it is inconsistent with the law. In order for the Chair of the Commission to have sufficient time to prepare to certify the results of the April 7 election by May 15, the CBOC is ordered to reconvene no later than Tuesday, May 5, 2026.

When it reconvenes, the CBOC is further ordered to return the results to the MBOC for corrections consistent with the order in **PART ONE**. The canvass must then adjourn and reconvene once the MBOC takes action as described in **PART THREE** to update its canvass results accordingly. Once the County and State results have been finalized after the MBOC returns the canvass materials to the CBOC, the County shall update the canvass materials for the state canvass and send those materials to the Commission.

PART THREE, of this order is further applicable to the MBOC, and constitutes an order to correct actions and decisions that are inconsistent with the interpretation of law in **PART ONE** of this order. Wis. Stat. § 5.06(6).

PART THREE of this order requires the City Clerk to conform her conduct to the law regarding the statutory deadline to deliver absentee ballots to their polling places on Election Day as described in this order and accompanying letter, including the training of election officials. The MBOC voted unanimously to “include 23 ballots [that arrived after 8 pm due to clerk error] in certification count.” The MBOC is ordered to reconvene to correct this action because it is inconsistent with the law. In order for the Chair of the Commission to have sufficient time to

prepare to certify the results of the April 7 election by May 15, the MBOC is ordered to reconvene no later than Wednesday, May 6, 2026.

When it reconvenes, MBOC is further ordered to examine the 23 unlawfully counted absentee ballots in question, and adjust the federal, state, local, and school board returns to subtract the votes cast for those offices on the 23 ballots. The MBOC is ordered to submit updated canvass statements to the Commission, along with minutes from its reconvened meeting, no later than 24 hours after the adjournment of its meeting.

Right to Appeal – Circuit Court

This order constitutes the Commission’s resolution of the investigation launched pursuant to Wis. Stat. § 5.06(4). Any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision. Wis. Stat. § 5.06(8).

If any party should have questions about this letter or the Commission’s decision, please feel free to contact the commission at 608-266-8005 or elections@wi.gov.

Sincerely,
WISCONSIN ELECTIONS COMMISSION



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Investigation No. 2026 - 0001

DECISION PURSUANT TO WIS. STAT. § 5.06(6)

Pursuant to Wis. Stat. § 5.06(6), and the vote of the Wisconsin Elections Commission ("the Commission") taken on April 30, 2026, the following is the Commission's final decision issued in the investigation into the Clerk City of Madison Clerk Lydia McComas ("City Clerk"), the Dane County Clerk Scott McDonell ("County Clerk"), the Madison Municipal Board of Canvassers ("MBOC"), and the Dane County Board of Canvassers ("CBOC").

Introduction

During the week of the April 7, 2026, Spring Election, the Wisconsin Elections Commission ("the Commission") was made aware of a situation regarding the correct counting of absentee ballots in the City of Madison. In the City of Madison, election inspectors opened and counted 23 absentee ballots even though they were delivered to their respective polling places after 8 p.m. The Municipal Board of Canvassers and County Board of Canvassers affirmed the decisions of the local election inspectors.

The Chair of the Commission is required to canvass the results of the April 7 Spring Election, and certify the state-level contests, no later than May 15. Wis. Stat. ss. 7.70(3)(a). At the April 30, 2026, public meeting, the Commission voted to investigate and make determinations about whether local election officials in Madison and Dane County took actions that were contrary to law or abused their discretion. Wis. Stat. §. 5.06(4) and (6).

Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Don M. Millis | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
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Part One:
Procedural Background

On April 30, 2026, the Commission voted on its own motion pursuant to Wis. Stat. § 5.06(4) to investigate and determine whether the City Clerk, County Clerk, MBOC, and CBOC failed to comply with the law or abused the discretion vested in them or proposes to do so.

On April 30, 2026, the Commission conducted and completed its investigation into whether during the April 7, 2026, Spring Election the City Clerk, County Clerk, MBOC, and CBOC incorrectly accepted 23 absentee ballots that had been delivered to their polling places after 8 p.m. in violation of Wis. Stat. § 6.87(6). As part of its investigation, the Commission reviewed correspondence between City of Madison Attorney Michael Haas and WEC staff, notices, agendas, and meeting minutes from the MBOC and CBOC, and a letter and documentation from the City Clerk to the County Clerk and CBOC explaining the circumstances of the 23 ballots.

On April 30, 2026, the Commission summarily decided this matter after completing the investigation it deemed to be appropriate, and hereby issues this order against the City Clerk, the County Clerk, the MBOC, and the CBOC. Wis. Stat. § 5.06(6).

Part Two:
Factual Findings

Election inspectors in the City of Madison counted 23 absentee ballots even though the ballots arrived at their polling places after 8 p.m. The City of Madison Clerk said she was advised by her City Attorney to mark each late arriving ballot and count it with the others, which she did. The Madison Municipal Board of Canvassers voted to include those 23 ballots in their certification count, as did the Dane County Board of Canvassers.

The factual record for the Madison incident consists of the following materials:

- April 8-9, 2026, Correspondence between Madison City Attorney Michael Haas and WEC Staff
- Meeting Minutes, Madison Municipal Board of Canvassers
- April 13, 2026, Letter and Documentation from City of Madison Municipal Clerk Lydia McComas to Dane County Clerk Scott McDonnell and the Dane County Board of Canvassers
- Meeting Minutes, Dane County Board of Canvassers

Part Three:
Legal Analysis

Absentee ballots must be returned so they can be “delivered to the polling place no later than 8 p.m. on election day.” Wis. Stat. § 6.87(6). Municipal clerks must deliver absentee ballots that arrive on election day to their polling places “before 8 p.m.” Wis. Stat. § 6.87(6). The same statute that contains those deadlines also states: “Any ballot not mailed or delivered as provided in this subsection may not be counted.” Wis. Stat. § 6.87(6). These provisions of law do not apply to municipalities that count their absentee ballots using a board of absentee canvassers meeting (“central count”).

It appears as if the City of Madison Clerk’s Office counted the 23 absentee ballots at issue because “there was no connivance, fraud, or undue influence and the Clerk’s office and election officials substantially complied with the law.” See *In re Hayden*, 105 Wis. 2d 468, 313 N.W.2d 869 (Ct. App. 1981); *Lanser v. Koconis*, 62 Wis. 3d 86, 214 N.W.2d 425 (1974) (both which the Clerk’s office cited in various materials. In both of those cases, the Wisconsin Supreme Court appeared to interpret § 6.87(6) as directory, not mandatory, despite the Legislature’s directive that ballots cast in contravention of that provision may not be counted. Specifically, the *Hayden* court concluded: “We conclude that, despite the directive that improperly delivered ballots shall not be counted, the statute governing the delivery of absentee ballots must be construed as directory. Only when the municipal clerk appears to have solicited voters, or when there is any evidence of fraud, will voters who acted in good faith be disenfranchised.” *Hayden*, 105 Wis. 2d 468, 478.

The City of Madison Clerk’s Office’s reliance on *Hayden*, *Lanser*, and any case that predates 1985 fails for two reasons. First, and most importantly, the Legislature amended the law in 1985 to confirm that specific provisions of absentee voting procedure—including Wis. Stat. § 6.87(6) — must be construed as mandatory. Wis. Stat. §. 6.84(2). Second, even if the Legislature had not made that statutory clarification, both *Lanser* and *Hayden* can be distinguished because the issue in both cases was not the timeliness of delivery of absentee ballots to their polling places before polls closed, but rather, the method of delivery either to the voters or back to the municipal clerk. In other words, neither of those cases analyzed whether § 6.87(6) was mandatory or directory with respect to the requirement that absentee ballots be returned to the municipal clerk so that they can be delivered to their polling places by 8 p.m.

All of the caselaw discussed above—and apparently relied upon by the City of Madison—predates Wis. Stat. § 6.84(2), which was enacted in 1985, and provides unambiguous legislative direction for interpreting absentee procedure statutes. That statute states:

“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)

In other words, the Legislature has passed a clear statute indicating that Wis. Stat. § 6.87(6) “shall be construed as mandatory.” Absentee ballots cast in contravention of the specific statutes enumerated in § 6.84(2) may not be counted or included in the certified results of any election. *Gonfiantini v. Rock Cnty. Bd. of Canvassers*, 416 Wis. 2d 118, 138, 20 N.W.3d 773 (Ct. App. 2025).

Several courts that have considered post-election challenges to absentee voting procedures have been reluctant to reject absentee ballots, or otherwise change election results, when the noncompliance with voting statutes was not the fault of the voter. See *Lanser*, 62 Wis. 2d 86 at 93 (“However, we are not inclined to disenfranchise these voters who acted in conformance with the statutory requirements.”), *Hayden*, 105 Wis. 2d 468 at 482 (“...[V]oters should not be disenfranchised through no fault of their own because of technical mistakes committed by election officials.” (internal citations omitted)). But again, both *Lanser* and *Hayden* were decided before

the Legislature amended the law in 1985 to declare that compliance with Wis. Stat. ss. § 6.87(6) is mandatory.

It may be a compelling argument to assert that 23 absentee voters in the City of Madison should not have their ballots rejected solely because the Clerk's office failed to deliver them to their polling places on time. Based on the Madison City Clerk's assertions to the Dane County Board of Canvassers in, these absentee ballots "had been in the Clerk's Office's custody since Monday, April 6, 2026" and the failure to deliver them to the polling places by 8 p.m. was "due to a longer-than-usual delivery time." In other words, the ballots appear to have been timely returned by the voters, and the error in timely delivering them to the polling places was solely due to actions of the clerk's authorized representatives.

However, the Commission cannot ignore a clear statute to treat the ballot delivery line as a mandatory requirement of absentee voting. The law directs the Commission to read § 6.87(6) as mandatory, and that law says that ballots that are not delivered to polling places by 8 p.m. cannot be counted.

Since the Commission has concluded that the City of Madison Clerk took actions that were contrary to law when she decided to count the 23 absentee ballots that were delivered to their polling places after 8 p.m., it must also address the actions of the Madison Municipal Board of Canvassers and Dane County Board of Canvassers. Both boards of canvassers appeared to have taken votes to affirm the decisions of the local election inspectors to count the absentee ballots in Madison.

The Commission concludes that Madison Municipal Board of Canvassers and the Dane County Board of Canvassers both abused their discretion in violation of Wis. Stat. § 5.06(1) when they decided to include the 23 absentee ballots in their canvass of the results of the April 7, 2026, Spring Election. Both the MBOC and CBOC knew that the ballots had not been delivered to their correct polling places by 8 p.m., in direct contradiction to the plain statutory language of Wis. Stat. §§ 6.87(6) and 6.84(2). Accordingly, it was an abuse of discretion for the MBOC and CBOC to vote to include those ballots in their election results.

Part Four:
Order

In addition to this decision letter, the Commission also issues the enclosed order pursuant to Wis. Stat. § 5.06(6).

If any party should have questions about this letter or the Commission's decision, please feel free to contact the commission at 608-266-8005 or elections@wi.gov.

Sincerely,

WISCONSIN ELECTIONS COMMISSION