

April 10, 2026

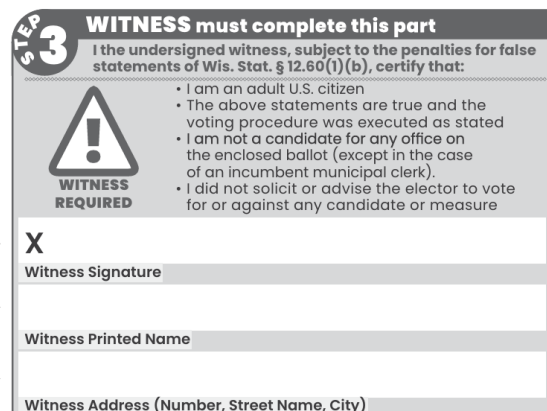
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Dear Members of Ozaukee County Board of Canvassers:

I am writing to you in advance of Monday's noticed meeting of the Ozaukee County Board of Canvassers out of concern that six, qualified absentee voters within the City of Mequon will be unlawfully disenfranchised from this week's election. It is my understanding that these voters submitted valid absentee ballots that are being wrongfully rejected under a misapplication of the witness requirement for absentee ballots. As part of your canvass process, you have the opportunity—and the obligation—to protect these voters and ensure their votes are counted.

### *Legal Background*

Every absentee-ballot envelope in Wisconsin provides a space for the voter to provide their address and a separate space for the witness to provide their address. Notably, the box for the witness address requests only "Number," "Street Name," and "City"; there is neither an instruction nor an indication that the state or ZIP code is required. The relevant piece of the envelope looks like this:

A graphic of a witness requirement form on an envelope. It features a grey header with a "STEP 3" icon and the text "WITNESS must complete this part". Below the header is a warning triangle icon with an exclamation mark and the text "WITNESS REQUIRED". To the right of the icon is a list of three certification statements. Below the list are three input fields: "Witness Signature" (with an 'X' in the box), "Witness Printed Name", and "Witness Address (Number, Street Name, City)".

**STEP 3** **WITNESS must complete this part**

I the undersigned witness, subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b), certify that:

- I am an adult U.S. citizen
- The above statements are true and the voting procedure was executed as stated
- I am not a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk).
- I did not solicit or advise the elector to vote for or against any candidate or measure

**X**  
Witness Signature

Witness Printed Name

Witness Address (Number, Street Name, City)

The different ways in which voters and witnesses record their addresses have been the subject of litigation in recent years. *See White v. WEC*, No. 2022CV1008 (Waukesha Cnty. Cir. Ct.); *Rise, Inc. v. WEC*, No. 2022CV2446 (Dane Cnty. Cir. Ct.); *League of Women Voters of Wis. v. WEC*, No. 2022CV2472 (Dane Cnty. Cir. Ct.). This raft of litigation concluded when, in *Rise*, the Dane County Circuit Court issued its Amended Declaratory Judgment and Permanent Injunction in September 2024 and neither the Wisconsin Elections Commission (WEC) Defendants nor the Wisconsin Legislature, as an intervenor, opted to challenge the amended permanent injunction on appeal.

The *Rise* Injunction includes the following declarations of law:

Wis. Stat. § 6.87’s requirement that the witness’s address be included on the absentee ballot certificate does not require that any particular components or information be included, but only that the face of the certificate contains sufficient information to enable a municipal clerk to reasonably identify a place where the witness may be communicated with;

An absentee ballot certificate is not “improperly completed” under Wis. Stat. § 6.87(9), based on a witness’s address, so long as the face of the certificate contains sufficient information to enable a municipal clerk to reasonably identify a place where the witness may be communicated with; [and]

Wis. Stat. § 6.87 does not authorize the rejection of, return for cure of, or refusal to count an absentee ballot on based on a witness’s address, if the face of the certificate contains sufficient information to enable a municipal clerk to reasonably identify a place where the witness may be communicated with.

### *The Six Disputed Ballots*

Six rejected absentee ballots from residents of Mequon are at issue. It is our understanding that, for each envelope, the witness provided **all** of the requested address information (number, street name, and city). As a result, the municipal clerk is able to “reasonably identify a place where the witness may be communicated with” and as such, “Wis. Stat. § 6.87 does not authorize the rejection” of those ballots. *Rise* Injunction at ¶¶1–4. Nevertheless, the City of Mequon rejected these ballots because the witnesses’ municipalities are allegedly not completely unique—*i.e.*, the name of the municipality on the witness address may be “Germantown,” but multiple Germantowns exist in the United States.

When this issue first came to my attention earlier this week, I promptly wrote to the Mequon City Clerk, copying her outside counsel, the Ozaukee County Clerk, the Ozaukee County Corporation Counsel, the WEC Chair and Administrator, and WEC in-house legal counsel. At the end of the next day, after the election, I received a letter from the Mequon City Clerk’s outside counsel, Attorney Brian Sajdak. (Copies of my initial letter, and of Attorney Sajdak’s letter, are attached here for your convenience.)

Attorney Sajdak’s letter confirmed that Mequon intended to disenfranchise these voters because their witnesses reside in a municipality with a non-unique name: “out of the 3467 absentee ballots the City processed [in the April 7, 2026 election], six were rejected for this issue—a decision made by four different chief inspectors.” (Sajdak letter at 2) Although Attorney Sajdak’s letter assured that, “as required by law, [ballot] rejections will be reviewed a second time during the official canvass” (*id.*), one of my Law Forward colleagues attended the City of Mequon municipal canvass earlier today and observed no review of these ballots.

As this issue remains unresolved, I am writing to you as the next—and crucial—layer of review in the voting process.

According to Attorney Sajdak’s letter, the Clerk “concur[s] with [my] recitation of the relevant legal precedent.” (Sajdak letter at 1) His letter also acknowledges that “the ‘will of the voter,

if that can be ascertained ...,’ should be the guiding principle.” (*Id.* at 2 (quoting *Rise Inc. v. WEC*, 2024 WI App 48, ¶49, 413 Wis. 2d 366, 11 N.W.3d 241)) But the letter diverges from law by insisting that the *Rise* Injunction fails to provide “a simple directive.” (*Id.* at 1) The letter continues, explaining that, in examining the certificate contained on an absentee-ballot envelope, a witness address “that contained only a municipality name”—without a state or a ZIP code—“would be rejected if that municipality name is shared with more than one municipality.” (*Id.* at 2) The letter explains that rejecting a ballot “is a policy of last resort utilized only when all other reasonable attempts [to ascertain where the witness could be contacted] have failed.” (*Id.*)

There are two fundamental problems here. **First**, the position that the City Clerk is espousing, both through her actions and the letter from her lawyer, is contrary to law. It is choosing to disregard the “will of the voter” where that will can be easily ascertained, even though the voter has fully complied with Wisconsin law and regulations. The voter and their witness have provided all information the WEC-promulgated form certificate on the absentee-ballot envelope requests, and the *Rise* Injunction instructs that the ballot should be counted. **Second**, the City Clerk’s position appears to be self-contradictory. On the one hand, Attorney Sajdak’s letter seems to argue that election officials should not, or cannot be reasonably expected to, look beyond the “face of the certificate,” *Rise* Injunction at ¶¶2–4, on the absentee-ballot envelope for information. But the City Clerk is clearly doing so to determine how many municipalities across the United States share any given name. If election officials may use extrinsic sources of information to determine that a given municipality name is not unique as support for a conclusion that therefore a ballot should not be counted, they can and should instead be using extrinsic sources of information to determine whether they can discern which of those municipalities contains the witness address. Utilizing the other witness-address information—street name, house number, and witness name—will often help reasonably determine the “place where the witness may be communicated with.” *Rise* Injunction at ¶1.

As I wrote to the City Clerk earlier this week: “if you are able to use the address information provided on an absentee ballot envelope to locate the relevant individual, the address requirement is satisfied and rejecting the ballot violates Wisconsin law as described in the *Rise* Injunction. Consequently, if the City Clerk’s Office is per se rejecting absentee ballots simply because the zip code and state are not identified, you are likely wrongfully disenfranchising absentee voters.” (Mandell letter at 2)

It currently appears that the City Clerk has violated Wisconsin law by disenfranchising absentee voters for the arbitrary reason that their witnesses live in municipalities with non-unique names. Despite the assurances in Attorney Sajdak’s letter, the decision to disenfranchise these voters was not “reviewed a second time during the [municipal] canvass” (Sajdak letter at 2), which also raises questions about whether the City of Mequon’s municipal canvass earlier today may have also deviated from Wisconsin law requiring each municipal canvass to “publicly canvass the returns of every election.” Wis. Stat. § 7.53(2)(d).

Importantly, the Wisconsin Constitution requires that these votes be counted. In Wisconsin, the right to vote extends beyond casting a ballot, it includes having it counted. As the Wisconsin Supreme Court has long insisted, “not to count [a voter’s] vote for no fault of his own would deprive him of his constitutional right to vote.” *Ollman v. Kowalewski*, 238 Wis. 574, 578, 300 N.W. 183 (1941). Here, the voter has done everything right. Each piece of the

requisite absentee ballot envelope has been completed according to the instructions on the envelope. At this point, election officials can reasonably identify a contact address; and if not, this is the fault of absentee-ballot envelope design, not these voters' failure to fill out the envelope. Thankfully, the right to vote overwhelms such administrative failures as that "constitutional right cannot be baffled by latent official failure or defect." *State ex rel. Wood v. Baker*, 38 Wis. 71, 89 (1875); see also *McNally v. Tollander*, 100 Wis. 2d 490, 503, 302 N.W.2d 440 (1981), and *Ollmann*, 238 Wis. at 579 (both citing *Wood* for the same proposition). Accordingly, these votes must be counted.

I am writing in advance of your noticed meeting at 8:00 AM on Monday, April 13, 2026, because during the county canvass meeting the Board is to "carefully review the tally sheets and inspectors' statement" for all wards within the County, and "[i]f any votes are rejected, the board of canvassers shall specify the reasons therefor." Wis. Stat. § 7.60(4)(c). As part of the county canvass, the Board should determine whether, as Attorney Sajdak's letter asserts, there are absentee ballots that the City of Mequon rejected and, if so, whether rejection of each of those ballots is proper under Wisconsin law. For any ballot improperly rejected, the Board should either count the votes on that ballot and add them to the canvass or, alternatively, instruct the City of Mequon Municipal Board of Canvassers to reopen its canvass to count those votes before the county canvass can be completed.

Copied here are the Ozaukee County Corporation Counsel, as well as the Mequon City Clerk, Attorney Sajdak, the WEC Chair and Administrator, and WEC in-house legal counsel.

Thank you for your prompt attention to this matter. We appreciate the work that you and other canvassers do to facilitate Wisconsin's free, fair elections.

Sincerely,



Jeffrey A. Mandell  
General Counsel, Law Forward, Inc.

Encl.

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