

Testimony
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Senator Johnson and members of the Committee, thank you for this opportunity to present testimony regarding the November 3, 2020 election in Wisconsin. Wisconsin has specific laws related both to elections and to recounts that have been tested both in Court and in the legislative process.

To begin, it is important to understand that Wisconsin treats absentee voting as a “privilege,” not a right. Our Legislature explicitly wrote in the law that because absentee voting occurs without the normal election-day protections, it is far more likely to result in, in the statutes words: “fraud or abuse”; “overzealous solicitation of absent electors who may prefer not to participate in an election”; and “undue influence on an absent elector to vote for or against a candidate.” The Wisconsin statutes are explicit that the enforcement of them: “shall be . . . 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.”

In Wisconsin, absentee balloting must be witnessed, and the certification on the outside of the envelope containing the ballot provides a place where the

witness must sign, and provide his or her address. That envelope is an official, certified document and as the statute states, "*If a certificate is missing the address of a witness, the ballot may not be counted.*" This provision is mandatory. Despite that explicit directive, the clerks in Dane and Milwaukee Counties actually *altered* these legally binding documents after they arrived in their offices. Addresses were added. As the recent court case explained, even the clerks themselves thought alteration of documents was inappropriate. We identified more than 3,000 such ballot envelopes after the election, during the recount.

Perhaps even more telling was the discovery, after the election, many ballot envelopes had no initials from the municipal clerks. Initials are added to the envelopes containing the ballot by the clerk receiving the envelope as a verification that proper identification has been provided—that the absentee ballot was indeed cast by the person named. If there are no initials, the ballot cannot, by law, be counted. More than 2,000 ballots had no initials and thus there was no way even to know if they were properly received and identification was presented.

It is important to recognize that, unlike other States, Wisconsin does not allow advance voting. Instead, any vote cast prior to November 3 was an absentee vote, subject to the mandatory, strict regulation of the statutes. But rather than

follow the statute, the City of Madison conducted advance voting that it labeled “Democracy in the Park” on September 26 and October 3 at 206 separate locations in Madison. Ballots were received, witnesses were provided to certify ballot envelopes, and signage advertised the locations as if it were election day. In Wisconsin the law expressly prohibits any clerk from having more than one additional clerk’s office. But, in this Fall’s election, Madison created 206. Then, in a rather obvious attempt to avoid later scrutiny, the City took those ballots and mixed them in with all the other absentee ballots so that it would be nearly impossible to identify all the illegal votes cast. Still, even without the names, there is no dispute that 17,271 ballots were received through these improper and illegal events.

Given the pandemic, municipal clerks laudably incorporated safety protocols into election day voting, including plexiglass barriers, social distancing, enforcement of mask mandates and the like. However, in the handling of absentee voting they went far beyond the law. For absentee voters in Dane and Milwaukee Counties the County clerks told voters they could vote without Identification (an obvious requirement for all voters) so long as they claimed to be indefinitely confined under a statute meant for those residing in nursing homes, assisted living facilities and homebound disabled persons. Our Supreme Court

held just this week that the advice given was directly contrary to the statute.

28,395 persons claimed that status in the weeks after the clerks posted their notices. By law, the clerks are required to take action to remove those persons for whom they have “reliable information that [the] . . . elector no longer qualifies for the service.” No action was taken, and those individuals, without any identification whatsoever, were allowed to cast ballots. A simple search disclosed individuals who went to protests, attended weddings, went to work, and even acted as a Biden Elector, who was able to get to the Capitol this past week, but claimed four weeks earlier that she was unable to make it to the polls.

The list of the abuses of Wisconsin’s absentee voting laws is long. Clerks preprinting their initials on ballot certifications, clerks certifying unknown persons, envelopes witnessed by unauthorized poll workers, certifications submitted that failed to indicate in-person voters, 386 sealed envelopes opened by clerks after the election in Milwaukee County and others in Dane County, and of course nearly 170,000 ballots cast without a separate application. The Wisconsin statutes presume that those votes cast in a manner contrary to that required by statute, were fraudulent or the result of undue influence, and the law mandates explicitly that they not be counted.

All in all, more than 3 million of Wisconsin's citizens cast their votes legally and without taint. Many other votes were not legally cast. As the Chief Justice of Wisconsin's Supreme Court explained several days ago, "Every single voter in this State is harmed when a vote is cast in contravention of the statutes." The 3 million legal voters who cast their ballots ought not have had their votes diluted and cancelled out by votes which, by law, were not to be counted.

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