

**State of Wisconsin
Before The Elections Commission**

IN THE MATTER OF THE COMPLAINT OF:

JUSTIN GAVERY,

[REDACTED]
Milwaukee, WI 532 [REDACTED]

Complainant,

v.

MARICHA HARRIS,

in her capacity as Deputy Director of the
City of Milwaukee Election Commission,
200 E. Wells Street, Room 501
Milwaukee, WI 53202

and

PAULINA GUTIÉRREZ,

in her capacity as Executive Director of the
City of Milwaukee Election Commission,
200 E. Wells Street, Room 501
Milwaukee, WI 53202,

Respondents.

VERIFIED COMPLAINT

Complainant, by and through undersigned counsel, alleges the following:

INTRODUCTION

1. This Complaint concerns claims against the two highest-ranking officers of the City of Milwaukee Election Commission ("MEC") in connection with numerous failures and violations of Wisconsin election laws and procedures related to the August 11, 2026, Partisan Primary Election (the "Primary Election"). The claims identified herein involve, at least, four (4) separate failures by Respondents related to the meeting of MEC's board of absentee ballot canvassers at its central counting location ("Central Count") and the Primary Election: (I) the erroneous download and transmission of *audit logs* rather than

the *required vote totals* from tabulators; (II) the absence of required notice of the meeting of the municipal board of absentee ballot canvassers; (III) notice of the required pre-election public test of tabulators only *after* the test had already occurred; and (IV) the refusal to permit election observers to observe ballot-handling and other election activities on election day occurring within a blocked-off area of Central Count.

2. Each failure is independently unlawful, an abdication of basic diligence and competence, or an abuse of discretion. Taken together, these failures show that MEC could not reliably administer a partisan primary—an election with a fraction of the turnout and operational demand of a General Election. Read alongside the similar failures documented below dating to at least 2018, they reveal not isolated error but a persistent pattern that demands the Wisconsin Elections Commission's (the “Commission”) sustained oversight before November 3, 2026.

3. The Commission had two opportunities (at its August 31 and September 9 meetings) to hold MEC accountable. On August 31, it decided to send a “polite” letter; and on September 9, rather than open its own investigation into MEC's results-transmission failure, the Commission’s response was to “just move on.” A letter is not an order, and moving on is not oversight. This Complaint is now necessary because the body charged with oversight of MEC has chosen to look away with the General Election bearing down.

4. Context is also important here. MEC’s Central Count has established a pattern of failures for nearly a decade. In 2018, defectively sealed absentee ballot certificate envelopes tore and damaged ballots during processing, requiring reconstruction of thousands of ballots. In 2020, MEC positioned observers so far from the count that some resorted to binoculars, while an outside organization was permitted to work directly within MEC’s operations with access to internal, non-public information. In 2024, improperly secured tabulators forced MEC to halt the count and re-run approximately 31,000 absentee ballots mid-process. Now, in 2026, and even before the General Election has occurred, MEC’s failures continue, including those detailed in this Complaint.

5. This pattern of failures has one recurring result: controversy, speculation, and public embarrassment for the City of Milwaukee, for MEC, and for the State of Wisconsin. The relief available under Wis. Stat. § 5.06(6) is prospective. The Commission may require an election official to conform her conduct to the law, restrain her from acting inconsistently with it, and require her to correct action inconsistent with it. The question before the Commission is therefore not only why the August 11 failures occurred, but whether MEC can be expected to avoid their recurrence on November 3, 2026, absent an order. Intent is not the measure of that inquiry. Whether these failures were willful, the product of reckless disregard for statutory obligations, negligence, or the result of inadequate training and supervision, the record of four cycles is that MEC does not correct itself. Accountability, and an order, are warranted.

THE PARTIES

6. Complainant, Justin Gavery (“Complainant”), is a qualified "elector" pursuant to Wis. Stat. chs. 5 and 6, residing at [REDACTED], within the City of Milwaukee, Wisconsin.

7. Complainant was present at Central Count as a member of the public exercising the right of observation conferred by Wis. Stat. §§ 7.41 and 7.52(1)(a) and Wis. Admin. Code ch. EL 4 for the Primary Election and has served as an election observer in multiple elections since at least 2022. Complainant intends to continue to observe elections in the City of Milwaukee, including at MEC’s Central Count location, as a member of the public, and specifically intends to observe Central Count again during the November 3, 2026, General Election.

8. Complainant cast a ballot as a City of Milwaukee elector in the Primary Election and intends to cast a ballot as a City of Milwaukee elector in the November 3, 2026, General Election and as a City of Milwaukee elector in future Wisconsin elections.

9. Respondent Maricha Harris (“Respondent Harris”) is the Deputy Director of the Milwaukee Election Commission and served at Central Count for the Primary Election both as a Chief Inspector and as a member of the City of Milwaukee Board of Absentee Ballot Canvassers. *See* Wis. Stat. §§ 7.53(2m)(b), 7.21(1). As Chief Inspector, Respondent Harris was required to hold current certification from the Commission, § 7.31; to direct the conduct of the activities assigned to the inspectors, § 7.36; and to certify to the correctness of the inspectors’ statement and tally sheets and sign her name, § 7.51(4)(a); *see also* Wis. Admin. Code § EL 11.04(1). As one of the three members of the Board of Absentee Ballot Canvassers, Respondent Harris was personally required to “certify to the correctness of the statements and tally sheets and sign [her] name[.],” Wis. Stat. § 7.52(7), and the Board on which she served bore the duty to “make full and accurate return of the votes cast,” § 7.52(8)—the return the City was then required to report to the Milwaukee County Clerk “no later than 2 hours after the votes are tabulated,” § 7.51(4)(c).

10. Respondent Paulina Gutiérrez (“Respondent Gutiérrez”) is the Executive Director of MEC. Because Milwaukee administers its elections through a board of election commissioners rather than a municipal clerk, the duties Wisconsin election law imposes on municipal clerks fall to MEC and to Respondent Gutiérrez as its Executive Director. Wis. Stat. §§ 7.20(1), 7.21(1). She is charged with supervision of the City’s elections, § 7.15(1); with directing all proceedings at Central Count and supervising the officials serving there, §§ 5.86(1), 7.36; with training election officials and inspecting the conduct of elections so they are conducted honestly, efficiently, and uniformly, § 7.15(1)(e); with preparing and publishing the required notices, §§ 7.15(1)(d), 5.84(1), 7.52(1)(a); and with operating and adequately staffing Central Count as the City’s § 6.855 alternate absentee ballot site, §§ 6.855(3), 7.15(2m).

JURISDICTION, TIMELINESS, AND STANDING

11. The Commission has jurisdiction over this complaint pursuant to Wis. Stat. § 5.06(1), which provides that if “any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act” violates Wisconsin election law, including violations related to “election administration or conduct of elections,” such “elector may file a written sworn complaint with the commission” against the election officials.

12. Pursuant to Wis. Stat. § 5.05(1), the Commission has general authority for the administration of chapters 5 through 10 and 12 of the Wisconsin Statutes and is empowered to ensure compliance with election laws by election officials, including the Respondents herein.

13. The Commission may order any election official to immediately transfer into its possession original documents necessary and relevant to permit review of compliance. Wis. Stat. § 5.06(5). Following such investigation, the Commission may decide the matter and, by order, require an election official to conform her conduct to the law, restrain her from acting inconsistently with the law, or require her to correct any action or decision inconsistent with the law. Wis. Stat. § 5.06(6).

14. This Complaint sets forth facts, *upon Complainant’s information and belief*, sufficient to show probable cause that violations of law and abuses of discretion have occurred. Wis. Stat. § 5.06(1).

15. This Complaint is timely under Wis. Stat. § 5.06(3). It is filed as soon as practicable following the Commission’s lack of action at its August 31 and September 9 meetings related to MEC’s Central Count. This Complaint does not relate to nominations, qualifications of candidates, or ballot preparation in advance of an election, and does not prejudice the rights of any other party.

16. While it is not necessary at this stage, Complainant claims particularized concrete injuries, including, but not limited to, the deprivation of Complainant’s right to observe election activities on election day at Central Count, as well as tabulator testing prior to election day, and the dilution and debasement of Complainant’s vote.

17. Complainant’s injuries are actual, particularized, and traceable to Respondents’ conduct, and each may be redressed by an order under Wis. Stat. § 5.06(6).

18. Complainant files this Complaint in part to satisfy Wis. Stat. § 5.06(2), which bars any person authorized to file under § 5.06(1) from commencing an action or proceeding to test the validity of an election official’s decision, action, or failure to act without first filing a complaint under § 5.06(1). Notwithstanding the foregoing, Complainant reserves the right to seek *mandamus* or other action directly in circuit court if and to the extent the complaint procedure is inadequate or cannot provide timely relief.

BACKGROUND: MILWAUKEE'S CENTRAL COUNT OPERATION

19. The City of Milwaukee has provided by ordinance, pursuant to Wis. Stat. § 7.52(1)(a), that *in lieu* of canvassing absentee ballots at the polling places under Wis. Stat. § 6.88, a municipal board of absentee ballot canvassers shall canvass all absentee ballots received by 8:00 p.m. on election day.

20. The City of Milwaukee Board of Absentee Ballot Canvassers for the Primary Election consisted of Respondent Harris, Stephanie Rushing, and Terry Perry:

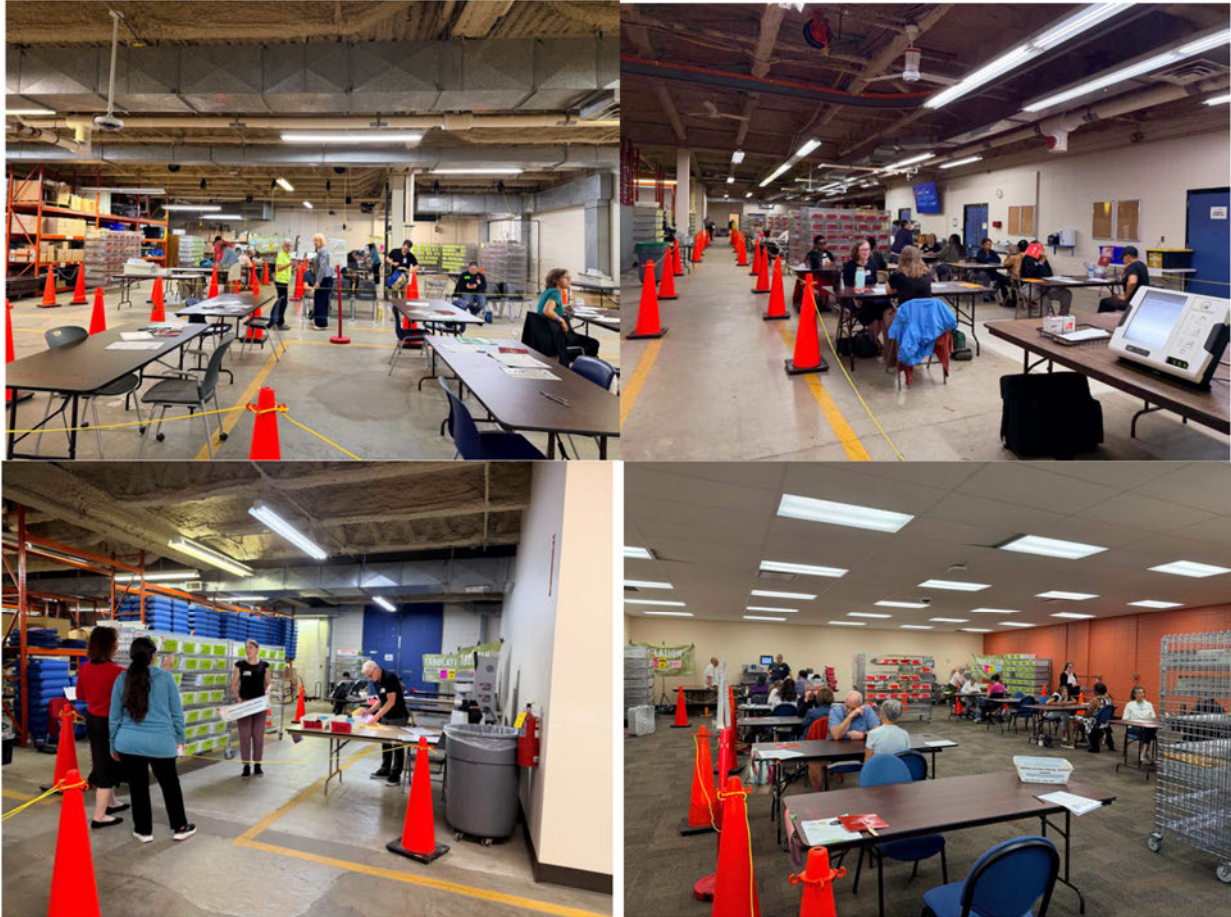


21. Because Milwaukee canvasses absentee ballots under Wis. Stat. § 7.52 rather than returning them to the polling places for the applicable wards, that canvass is conducted at a single facility commonly referred to as “Central Count.” For the Primary Election at issue, MEC held Central Count at 1901 S. Kinnickinnic Avenue in the City of Milwaukee. Central Count is the alternate absentee ballot site designated by the City pursuant to Wis. Stat. § 6.855.

22. Because Central Count is a site designated under Wis. Stat. § 6.855, Wis. Stat. § 7.15(2m) applies to it directly: the clerk—here, by operation of Wis. Stat. § 7.21(1), Respondent Gutiérrez — “shall operate such site as though it were his or her office for absentee ballot purposes and shall ensure that such site is adequately staffed.”

23. Central Count is an “observable location” under Wis. Admin. Code § EL 4.02(11), which expressly enumerates both “a meeting location of a board of absentee ballot canvassers” and “a central count location.”

24. For the Primary Election, the Central Count location was set up utilizing several different rooms, some of which provided an opportunity for observation at a distance behind ropes and cones, and others in which no entry and no public observation were allowed. Examples of the Primary Election set up, and the cordoned-off observer areas, are below, as personally observed by Complainant.

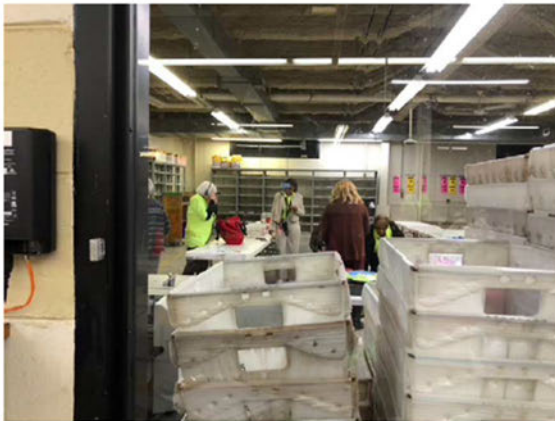


25. Complainant personally observed during the Primary Election, and at prior elections, that several rooms within Central Count were restricted, blocked, or concealed from the public, and that no public access or observation was permitted, including a large room containing thousands of absentee ballots in certificate envelopes adjacent to a loading dock that MEC has described as the “Secure Ballot Room.”

26. MEC restricts these rooms, including its “Secure Ballot Room,” and the public cannot observe the ballot handling and election activities that occur inside them on election day. But MEC has done more than restrict access. Over several election cycles, it has worked to conceal that the rooms exist at all. The rooms once had interior windows, visible during election day operations, showing the ballot handling underway inside. MEC then covered those windows and stacked crates in front of them to block the view. By the 2026 Spring Election and the August Primary Election, Complainant personally observed that MEC had removed windows outright and windows once covered or obscured were walled off entirely, as seen below, eliminating any way to observe, or even know, the rooms’ existence.

Blocked Window #1 in 2025:

Feb. 18, 2025 6:36 pm



April 1, 2025 8:35

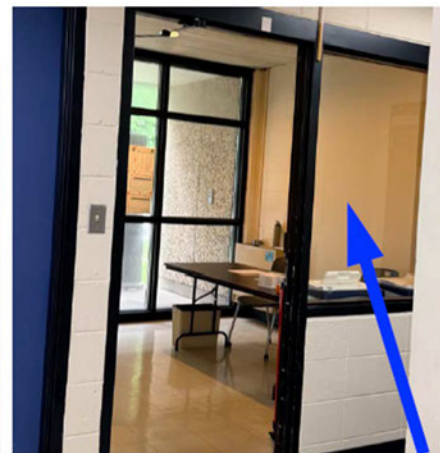
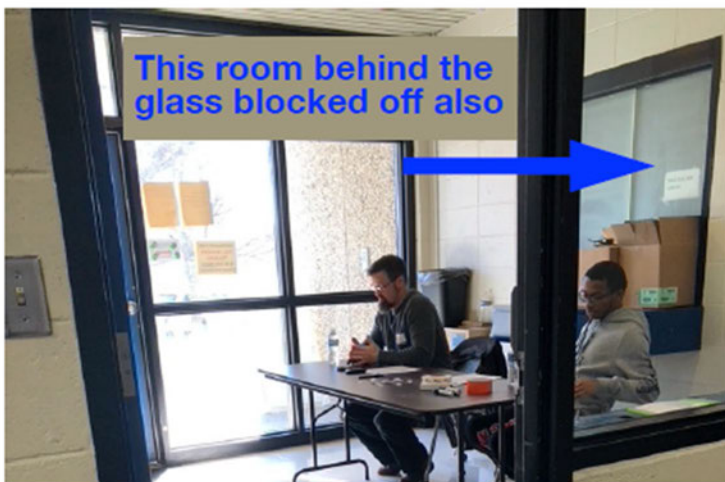


Blocked Window #1 in 2026:



A window papered over in 2025 removed and replaced with drywall by the Primary Election:

April 1, 2025 9:51 am



August 11, 2026 7:33 am
You would never know there was
a window behind the table now

Additional windows completely walled off for the Primary Election:



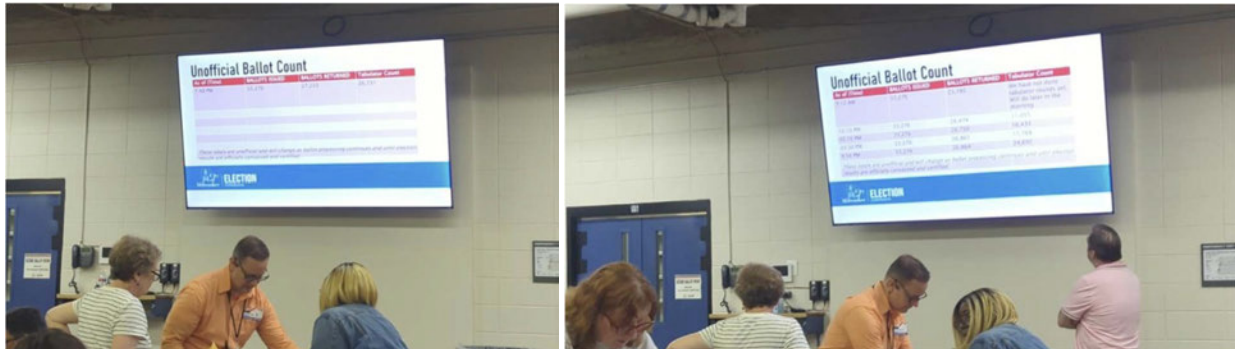
27. For the Primary Election, approximately 27,268 absentee ballots were returned and 27,187 tabulated at Central Count.

28. Nine (9) “high-speed” automatic tabulators were in use at Central Count. The following table identifies the tabulators in use at Central Count for the Primary Election by “pod” and includes each tabulator’s Dominion Voting Systems serial number, the seal number used, the wards assigned to each pod, the times of the first and last ballots tabulated, and the MEC official responsible for closing procedures:

Pod	Serial Number	Seal #	Wards	First Ballot	Last Ballot	Responsible Official
1	DS 8516080260	45928418	1 – 32	8:54am	8:18pm	Respondent Harris
2	DS 8514080143	45928417	33 – 70	9:01am	8:40pm	Respondent Harris
3	DS 8515070187	45928419	71 – 98	9:21am	8:22pm	Respondent Harris
4	DS 8510090022	45928162	99 – 134	9:34am	8:20pm	Stephanie Rushing
5	DS 8514080144	45928421	135 – 175	9:19am	8:26pm	Stephanie Rushing
6	DS 8516080262	45928425	176 – 212	9:31am	8:41pm	Stephanie Rushing
7	DS 8516100271	45928424	213 – 260	9:20am	8:40pm	Respondent Harris
8	DS 9523090674	45928402 45928423	261 – 290	8:50am	8:41pm	Respondent Harris
9	DS 4520083566	45928422	291 – 356	10:08am	8:37pm	Respondent Gutiérrez

29. Tabulation of absentee ballots began at Central Count for the Primary Election between approximately 8:50 a.m. and 10:08 a.m. depending upon the particular “pod.”

30. Throughout the day of the Primary Election, MEC provided updates on the number of absentee ballots received and the current number tabulated:



31. As personally observed by Complainant, by 4:56 p.m., 24,691 ballots had been tabulated, with a total of 26,864 returned, and by 7:48 p.m., tabulation was nearly complete, with 26,731 of a then-total 27,233 returned. The final delivery of returned ballots arrived at Central Count shortly after 8:00 p.m.

32. The tabulation of ballots was, according to MEC records, completed no later than 8:41 p.m., and the absentee ballot canvass process was completed at Central Count no later than 10:15 p.m.

33. Upon completion of the absentee canvass, MEC election officials are responsible for printing the Precincts Processed Reports containing the ballot counts for each tabulator, removing the seals over the doors providing access to the data drives, and downloading the vote tallies from each tabulator onto a secure flash drive. The removed seals are then placed on the printed Precincts Processed Reports, the reports are signed, and the drives containing the vote tallies are transported for reporting to the Milwaukee County Board of Election Commissioners at the Milwaukee County Courthouse.

34. The official responsible for closing procedures related to each tabulator used in the Primary Election at Central Count is listed in the last column of the table in ¶28, *supra*.

35. At or about 10:16 p.m., MEC staff, including Respondent Harris and Respondent Gutiérrez, began the process of downloading data from the tabulators to the USB drives for the required transportation and reporting to the Milwaukee County Courthouse.

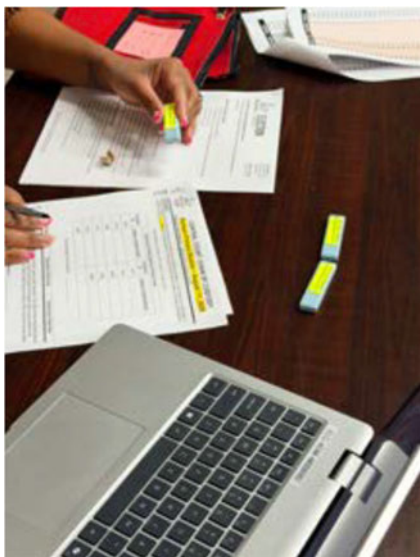
COUNTS

I. Failure to Make a Full, Accurate, and Timely Return of the Votes. *(Against Respondent Harris and Respondent Gutiérrez)*

A. Applicable Facts

36. All foregoing paragraphs are incorporated as if re-alleged herein.

37. The USB drives used for the Primary Election at Central Count were contained in three (3) red bags with 3 drives in each bag. At or about 7:20 p.m., Respondent Harris began opening these bags and using a laptop to “clear” each flash drive, as seen in the photograph from the Primary Election below.



38. Respondent Harris was responsible for, and attempted to execute, the closing procedures identified in ¶33, *supra*, for five (5) of the nine (9) total tabulators.

39. Respondent Harris, personally and as the official performing the download, selected and executed the audit log export function rather than the results export function on all five of her tabulators at Central Count. In its letter to the Commission dated August 28, 2026, MEC acknowledged that the erroneous downloads were performed by a team led by its Deputy Director.¹

40. All of Respondent Harris' five tabulators, and only these five, are identified in MEC's August 28, 2026, letter as the source of the erroneous exports. The five tabulators' own audit logs, provided to the Commission, independently confirm the correlation: every tabulator assigned to Respondent Harris, and no tabulator assigned to any other official, required a second, post-midnight session to complete its

¹ See Letter to Meagan Wolfe, Administrator, Wisconsin Elections Commission, dated August 28, 2026, attached as Exhibit A.

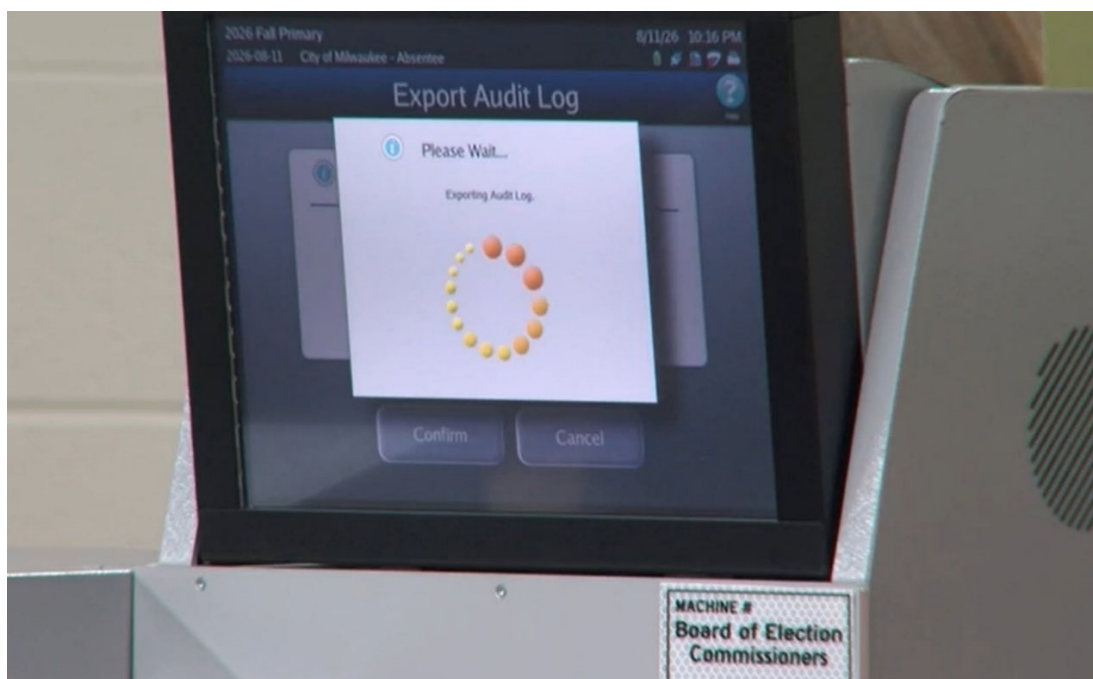
results export, and each exhibited a documented irregularity during that session — an unexplained multi-hour gap in recorded activity, an incomplete or abandoned shutdown sequence, an “ABNORMAL SHUTDOWN” fault on restart, rejected code entries, or reliance on a supervisor-level override code.

41. Respondent Harris is not, and MEC has not claimed her to be, one of the “specially trained technicians who are required for the operation of the automatic tabulating equipment” referenced in Wis. Stat. § 5.86(1). She is the Deputy Director of MEC, and she was performing the duties of an election worker at the central counting location.

42. No second election official directly assisted Respondent Harris with downloading the vote tallies nor did any other official verify what was being exported to her flash drives.

43. As a result, the export of results from the tabulators was not performed by a team consisting of members of each of the two major political parties, nor any other election official whatsoever.

44. MEC has asserted that materials downloaded from the tabulators are encrypted and can be opened only by the Milwaukee County Board of Election Commissioners, and that MEC staff therefore have no opportunity to verify the contents of the flash drives. That assertion, if true, does not excuse the failure; it describes it. An export procedure that contains no verification whatsoever, and that permits five successive erroneous exports to pass undetected, is not a procedure adequate to discharge the duty to make a full and accurate return of the votes. Additionally, as seen in a news outlet’s photograph depicting one of Respondent Harris’ tabulators from the Primary Election, the failure was obvious:



Credit: CBS 58 photojournalist

45. The drives left Central Count with MEC officials, including Respondent Gutiérrez, at or about 11:10 p.m., and were transported to the Milwaukee County Courthouse. The Milwaukee County Board of Election Commissioners, upon attempting to upload the results, discovered shortly before midnight that five of the nine drives contained audit logs rather than results files.

46. Around midnight Milwaukee County Clerk George Christenson publicly announced that MEC failed to report all canvassed absentee ballot results due to a “download issue” leaving 15,702 ballots unreported, nearly 58% of all City of Milwaukee absentee ballots. Shortly after Mr. Christenson’s announcement, Respondent Gutiérrez addressed the media from the Milwaukee County Courthouse blaming the failure on “human error” and pressing “the wrong button.”

47. Respondent Gutiérrez, MEC commissioners, and MEC staff thereafter returned to Central Count, apparently under police escort, to again attempt to download the results from Respondent Harris’ five affected tabulators.

48. MEC officials subsequently transported the corrected media back to the Courthouse to report to the County, arriving around 1:00 a.m. The results were reported thereafter and uploaded to the Milwaukee County results page at 1:09 a.m.

49. The elapsed time between the completion of the canvass (including the tabulation) at Central Count and the delivery of a full and accurate return of the votes to the Milwaukee County Board of Election Commissioners was therefore more than four (4) hours—twice the statutory timeframe. Tabulation was complete no later than 8:41 p.m.; the last corrective results export from Respondent Harris’ tabulators did not conclude until 12:29 a.m.; and the returns were not reported to the county until after 1:00 a.m.

50. The results of approximately 58% of all absentee ballots in the City of Milwaukee for the Primary Election were not reported when the returns were first delivered to Milwaukee County. MEC officials had to return to Central Count, where observers had left after being told all aspects of the canvass and closing procedures were complete, to redo the closing process for nearly 16,000 ballots.

B. Applicable Law

51. Section 7.52(8) requires that the board of absentee ballot canvassers “shall make full and accurate return of the votes cast for each candidate and proposition on the tally sheet forms,” and shall deliver such results to the county clerk.

52. Section 7.52(7) requires that, upon completion of the canvass of the absentee ballots, the board “shall immediately complete statements in duplicate,” that each member “shall then certify to the

correctness of the statements and tally sheets and sign their names,” and that “[w]hen the tally is complete, the board of absentee ballot canvassers shall publicly announce the results from the statements . . .”

53. Section 7.51(4)(c) provides: “On election night the municipalities shall report the returns, by ward or reporting unit, to the county clerk no later than 2 hours after the votes are tabulated.” By operation of Wis. Stat. § 7.21(1), the recipient of Milwaukee's returns is the Milwaukee County Board of Election Commissioners. The statute’s trigger is the tabulation of the votes—not the discovery of an error, and not the departure of a courier. The statute applies municipality-wide and does not exempt reporting from central counting locations.

54. Section 5.86(1) provides that “[a]ll proceedings at each central counting location shall be under the direction of the municipal clerk or an election official designated by the clerk,” and that “the employees at each central counting location, other than any specially trained technicians who are required for the operation of the automatic tabulating equipment, shall be equally divided between members of the 2 major political parties under s. 7.30 (2) (a) and all duties performed by the employees shall be by teams consisting of an equal number of members of each political party whenever sufficient persons from each party are available.”

55. Municipal clerks have a duty to properly administer elections under Wis. Stat. § 7.15(1). Section 7.15(1)(e) further requires the clerk to “[t]rain election officials in their duties,” to “assure that officials who serve at polling places where an electronic voting system is used are familiar with the system and competent to instruct electors in its proper use,” and, critically, to “inspect systematically and thoroughly the conduct of elections in the municipality so that elections are honestly, efficiently and uniformly conducted.”

56. Section 7.15(2m) requires the clerk to operate a site designated under Wis. Stat. § 6.855 “as though it were his or her office for absentee ballot purposes” and to “ensure that such site is adequately staffed.”

C. Violations of Law

57. **Respondents** violated Wis. Stat. § 7.52(8). Five flash drives containing audit logs are not a “full and accurate return of the votes cast.” They contained no returns at all. The delivery of those drives to the county did not discharge the statutory duty; it merely created the appearance of having discharged it.

58. **Respondents** violated Wis. Stat. § 7.51(4)(c). Whatever the precise elapsed time, the returns of the City of Milwaukee were not reported to the county board of election commissioners anywhere close to within two (2) hours after the votes were tabulated.

59. **Respondents** violated Wis. Stat. § 5.86(1). Respondent Harris is not a specially trained technician within the statutory exception, and the export of results was not performed by a bipartisan team (or any team whatsoever) as the statute requires. Section 5.86(1) exists precisely so that no single individual's error at a central counting location passes unobserved and uncorrected. Had it been followed, five successive erroneous exports would not have occurred.

60. **Respondent Gutiérrez** violated Wis. Stat. § 7.15(1)(e). She failed to maintain any adequate procedure for exporting and verifying results from the automatic tabulating equipment; she failed to train the officials performing that task, including her own Deputy Director, to perform it correctly; and she failed to inspect systematically and thoroughly the conduct of the election so that it would be efficiently conducted. That five of nine exports were performed incorrectly by her own deputy is itself probable cause to believe that no adequate training or verification regime existed.

61. **Respondent Gutiérrez** violated Wis. Stat. §§ 5.86(1) and 7.15(2m). As the official under whose direction all proceedings at the central counting location must be conducted, and as the official required to ensure that the § 6.855 site is adequately staffed, she permitted a critical, non-recoverable step in the return of the votes to be performed without bipartisan teaming, without verification, and without supervision adequate to catch a single wrong selection repeated five times.

II. Failure to Give Notice of the Meeting of the Board of Absentee Ballot Canvassers *(Against Respondent Gutiérrez)*

A. Applicable Facts

62. All foregoing paragraphs are incorporated as if re-alleged herein.

63. The municipal board of absentee ballot canvassers convened at Central Count on August 11, 2026, to canvass the City of Milwaukee's absentee ballots pursuant to Wis. Stat. § 7.52.

64. No formal public notice of the meeting of the City of Milwaukee board of absentee ballot canvassers at Central Count on August 11, 2026, was given at least 48 hours in advance, and no formal notice of the meeting was given at any time. The required notice for Central Count was never posted on MEC's official election notices webpage—the portal held out as the source for such notices and relied upon by election observers throughout the state, nor was any such notice included within the general City of Milwaukee public meeting notice portal or any other physical posting or publication.

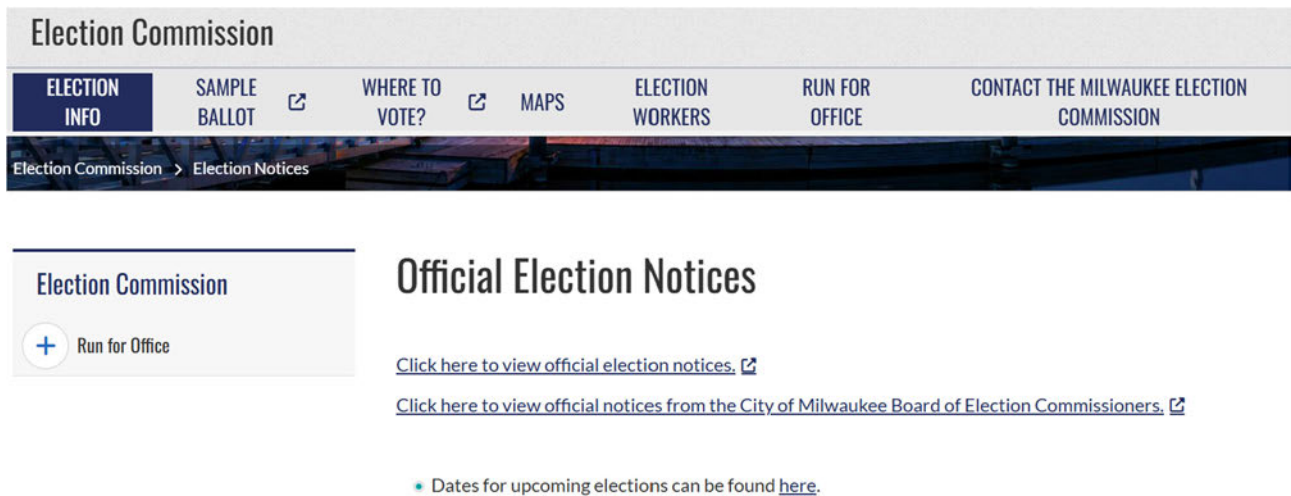
65. Because no notice was given, members of the public had little to no means of ascertaining in advance the time and place at which the board of absentee ballot canvassers would convene, and, importantly, when observation of the canvass would begin.

B. Applicable Law

66. Section 7.52(1)(a) provides that at every election following enactment of an ordinance under that subsection, “the board of absentee ballot canvassers shall, any time after the opening of the polls and before 10 p.m. on election day, publicly convene to count the absentee ballots for the municipality. The municipal clerk shall give at least 48 hours’ notice of any meeting under this subsection. Any member of the public has the same right of access to a meeting of the municipal board of absentee ballot canvassers under this subsection that the individual would have under s. 7.41 to observe the proceedings at a polling place.”

67. The 48-hour notice requirement and the right of access conferred in the same subsection are not severable in practice. The right to observe a public meeting is worth nothing if the public is not told when and where the meeting will occur. Notice is the mechanism by which the observation right created by § 7.52(1)(a), § 7.41, and Wis. Admin. Code § EL 4.05(3)(a) is made effective.

68. MEC has, in the past, consistently posted its official notices on its website and on the City of Milwaukee *Legistar* portal via direct links, as seen below. The required notice for the Primary Election was never posted and the start time not otherwise provided.



69. Section 7.15(1)(d) independently requires the clerk to “[p]repare the necessary notices and publications in connection with the conduct of elections or registrations.” That duty falls on Respondent Gutiérrez by operation of Wis. Stat. § 7.21(1).

C. *Violations of Law*

70. **Respondent Gutiérrez** violated Wis. Stat. § 7.52(1)(a) by failing to give at least 48 hours’ notice of the August 11, 2026, meeting of the municipal board of absentee ballot canvassers.

71. **Respondent Gutiérrez** violated Wis. Stat. § 7.15(1)(d) by failing to prepare and provide a notice necessary to the lawful conduct of the election.

72. **Respondent Gutiérrez** also abused the discretion vested in her with respect to the conduct of elections within the meaning of Wis. Stat. § 5.06(1).

III. Failure to Publish Timely Notice of the Pre-Election Tabulator Testing.
(Against Respondent Gutiérrez)

A. *Applicable Facts*

73. All foregoing paragraphs are incorporated as if re-alleged herein.

74. In advance of the Primary Election, MEC conducted the testing of the automatic tabulating equipment required by Wis. Stat. § 5.84(1). That test was conducted on Saturday, August 1 at 8:00 a.m.

75. Notice of the August 1 tabulator testing was not timely provided. Notice of the time and place of that test was provided after the testing had already occurred, posted on MEC’s official notices website portal on August 4.

76. Because timely notice was not published, Complainant and other members of the public were deprived of the opportunity to attend the test, which the statute expressly requires to be open to the public.

B. *Applicable Law*

77. Section 5.84(1) provides that where a municipality employs an electronic voting system utilizing automatic tabulating equipment, “either at the polling place or at a central counting location,” the clerk shall have the equipment tested not more than 10 days before election day, and that “[p]ublic notice of the time and place of the test shall be given by the clerk at least 48 hours prior to the test by publication of a class 1 notice under ch. 985 in one or more newspapers published within the municipality . . .” The statute further provides: “The test shall be open to the public.”

78. The 48-hour publication requirement is the sole mechanism by which the public’s statutory right to attend the test is made meaningful. A notice provided after the test has concluded is not notice; it is a record of an event the public was excluded from.

79. Section 7.15(1)(d) independently obligates Respondent Gutiérrez to prepare the necessary notices and publications in connection with the conduct of elections.

C. Violations of Law

80. **Respondent Gutiérrez** violated Wis. Stat. § 5.84(1) by failing to provide notice of the time and place of the pre-election test at least 48 hours prior to the test.

81. **Respondent Gutiérrez** violated Wis. Stat. § 7.15(1)(d) by failing to prepare and provide a notice necessary to the lawful conduct of the election.

82. **Respondent Gutiérrez** also abused the discretion vested in her with respect to the conduct of elections within the meaning of Wis. Stat. § 5.06(1).

83. This violation is of particular consequence in light of Count I. The pre-election test is the single occasion on which the public may verify that the automatic tabulating equipment functions correctly. MEC has since represented that it will demonstrate the results download process during future public pre-election testing—an acknowledgment that public pre-election testing is the appropriate forum for precisely the verification whose absence produced the August 11 failure.

IV. Denial of Observer Access at the Central Counting Location.
(Against Respondents)

A. Applicable Facts

84. All foregoing paragraphs are incorporated as if re-alleged herein.

85. Complainant was admitted as an observer at Central Count for the Primary Election on August 11, 2026, as set forth above.

86. Portions of the Central Count facility were blocked off from observers, including by new permanent walls as identified above. For example, an interior window that had previously allowed observers to see into the room—and that MEC had only papered over during the 2025 elections—was removed entirely and replaced with drywall by the time of the August 11, 2026, Primary Election, eliminating any sightline into the room whatsoever. *See supra*, ¶26. Other previously visible windows into rooms that contained ballot certificate envelopes were completely covered with new permanent walls or other barriers to not only prevent observation, but to conceal the existence of the room and the ballot envelope handling, sorting, and other election day activities being done by the board of absentee ballot canvassers, MEC staff, and election inspectors at Central Count. *See supra*, ¶26.

87. Ballot envelopes were located within, and election officials were handling ballot envelopes as part of the board's election activities within, these restricted and unobservable areas during the Primary Election and in prior elections. The election activities occurring in these restricted areas at Central Count did not involve the initial return of absentee ballot envelopes to MEC; the ballot envelopes were undeniably being handled within Central Count while the municipal board of absentee ballot canvassers was convened on election day and conducting the canvass required by Wis. Stat. § 7.52.

88. During the Primary Election and other previous elections, Complainant and numerous other observers attempted to enter these restricted areas and requested access to observe the activities within the blocked-off area. These areas were explicitly marked as restricted, completely concealed, or obscured, and observers were denied any access. Observers were told that they were only allowed to observe the voting process, and not any "ministerial tasks" that occur in the restricted areas, including its "Secure Ballot Room."

89. MEC characterizes the work performed within the blocked-off areas as "sorting" or "organizing." That characterization does not answer the question presented. Under Wis. Stat. § 7.52 and Wis. Admin. Code ch. EL 4, what governs is not the label officials assign to a task, but when the task occurs and which body is performing it.

90. The Commission drew that line in *Kopplin*. It held that the initial return of absentee ballots to the Executive Director, and the processing and sorting of those ballots, "tasks falling under Wis. Stat. §§ 6.86(5) and (6), 6.87(4)(b)1., (6), and (9), and 6.88(1) and (2)," are tasks "not required to be observable." It held with equal clarity that it "does not agree that ministerial tasks of the board of absentee ballot canvassers can be restricted, and all tasks defined under Wis. Stat. § 7.52 are subject to the general rule of public observation of the voting process, though not subject to the specific distance requirement."

91. The activities at issue here fall on the observable side of that line. The Executive Director's initial processing of returned absentee ballots under §§ 6.86, 6.87, and 6.88 was complete before the board of absentee ballot canvassers convened at Central Count on August 11, 2026. Once the board convened and the canvass under § 7.52 began, the tasks performed on absentee ballots and absentee ballot certificate envelopes at Central Count were tasks of the board of absentee ballot canvassers and of inspectors serving "under the direction and supervision of the board of absentee ballot canvassers," Wis. Stat. § 7.52(1)(b), and were therefore subject to the general rule of public observation.

92. Under the Wisconsin Statutes these activities are observable, and Chapter EL 4 confirms that result. Section EL 4.05(3)(a) entitles an observer to observe "during all hours when a board of absentee

ballot canvassers is meeting to canvass absentee ballots.” The entitlement is measured by when the board is meeting, not by a room-by-room classification of the work occurring while it meets.

93. No designated observation area was established from which the activity within the blocked-off areas could be observed, and Respondent Gutiérrez did not record the reason the observation area requirements could not be met.

B. Applicable Law

94. Section 5.87(1) provides: “All proceedings at the polling place and at any central counting location shall be open to the public, but no person, except those employed and authorized for the purpose, may touch any ballot, container, envelope, return or equipment.” The public-access mandate is stated as to “any central counting location” without qualification.

95. Section 7.52(1)(a) provides that “[a]ny member of the public has the same right of access to a meeting of the municipal board of absentee ballot canvassers under this subsection that the individual would have under s. 7.41 to observe the proceedings at a polling place.” Section 7.41(2) in turn requires that observation areas “be so positioned to permit any election observer to readily observe all public aspects of the voting process.”

96. Chapter EL 4 of the Wisconsin Administrative Code took effect August 1, 2025, and governed the Primary Election. It was *not* in effect when the complaint in *Kopplin* was filed, and the Commission accordingly declined to apply its standards in that decision.

97. Chapter EL 4 now supplies the following express requirements:

- a. Section EL 4.02(11) defines “observable location” to include “an alternate absentee ballot site,” “a meeting location of a board of absentee ballot canvassers,” and “a central count location.” Here, Central Count is all three.
- b. Section EL 4.02(16) defines “public aspects of the voting process” to mean “the election activities that take place at an observable location during those hours specified in this chapter as permitting observation, except for inspection of confidential information.” The definition is one of general inclusion subject to a single stated exception. It contains no carve-out for sorting, organizing, or other ministerial work.
- c. Section EL 4.03(1)(a) requires the designated election official to “[e]stablish at least one observation area to enable observers to readily observe all public aspects of the voting process during the election without disrupting the voting process.”

- d. Section EL 4.05(3)(a) provides that at a board of absentee ballot canvassers location, “[t]he designated election official shall permit an observer to observe during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots, and observation shall not start later than the zeroing of election equipment.”

98. Under Wis. Admin. Code § EL 4.02(6), the “designated election official” at Central Count is the clerk—here, by operation of Wis. Stat. § 7.21(1), Respondent Gutiérrez—or an election official designated by her such as Respondent Harris.

C. Violations of Law

99. **Respondents** violated Wis. Stat. §§ 7.52(1)(a) and 7.41(2) by failing to position observation areas to permit observers to readily observe all public aspects of the voting process.

100. **Respondents** violated Wis. Admin. Code §§ EL 4.03(1)(a), EL 4.05(3)(a), and EL 4.05(6)(a) by failing to establish an observation area enabling observation of all public aspects of the canvass, and by refusing to permit observation of ballot handling and counting occurring at a central counting location during the hours the board of absentee ballot canvassers was convened.

101. **Respondent Gutiérrez** violated Wis. Admin. Code § EL 4.03(5) if, as Complainant believes, she did not record any explanation for the inability to accommodate the required observation areas.

102. The Commission observed in *Kopplin* that the practice of conducting absentee ballot handling in a room adjacent to the canvassers' meeting while providing no access to that location was concerning and suggested that MEC either relocate the activity or permit some level of access. MEC did neither—it was afforded discretion and abused that discretion by making observation even more difficult.

PRAYER FOR RELIEF

103. WHEREFORE, Complainant requests that the Wisconsin Elections Commission:

- a. Accept this Complaint for filing under Wis. Stat. § 5.06;
- b. Conduct a thorough investigation into the foregoing allegations and, pursuant to Wis. Stat. § 5.06(5), order Respondents to transfer to the Commission’s possession the original documents necessary and relevant to that review, including without limitation, documents and correspondence related to the issues identified above for the Primary Election and applicable to future elections.
- c. Determine whether Respondents violated the Wisconsin election laws and procedures identified *supra*; or abused the discretion vested in them by law;

- d. Order, pursuant to Wis. Stat. § 5.06(6) and in advance of the November 3, 2026, General Election, that Respondents conform their conduct to the law, and specifically that Respondents:
- e. Adopt and publish a written procedure governing the export of results from automatic tabulating equipment at Central Count that requires, at minimum, that each export be performed and independently verified by a team of two election officials of opposite major-party affiliation;
- f. Document and complete training of all officials who will perform tabulator export functions, and certify that completion to the Commission;
- g. Prepare, publish, and post every notice required by Wis. Stat. §§ 5.84(1) and 7.52(1)(a) and by Wis. Stat. §§ 19.83 and 19.84, and file proof of each with the Commission;
- h. Designate, publish in advance, and maintain observation areas at Central Count sufficient to permit observers to observe all proceedings and operations involving absentee ballots and absentee ballot envelopes at MEC's central counting location, consistent with Wis. Stat. § 5.87(1) and Wis. Admin. Code §§ EL 4.03(1), EL 4.05(3), and EL 4.05(6), including, but not limited to, the area referred to as the "Secure Ballot Room";
- i. Cease the practice of conducting any ballot or ballot envelope activity of the board of absentee ballot canvassers at MEC's central counting location on election day within an area from which observers are excluded, or in the alternative allow observation within those areas;
- j. Determine whether additional corrective action, including further training, oversight, or other remedial measures, is warranted to prevent recurrence; and
- k. Grant such other and further relief and take such further action as the Commission deems necessary and appropriate.

Respectfully submitted this 10th day of September 2026.

CHALMERS, ADAMS, BACKER & WALLEN, LLC

/s/ Electronically Signed by Nicholas J. Boerke

Nicholas J. Boerke (WI Bar No. 1083217)

1045 W. Glen Oaks Lane, Suite 103

Mequon, WI 53092

Tel: 262-698-6124

nboerke@chalmersadams.com

Attorney for Complainant

[Verification of Complainant on following page.]

VERIFICATION

I, Justin Gavery, being duly sworn upon oath, state that I personally read the above Complaint and that the above allegations are true and correct based on my personal knowledge and, as to those allegations stated on information and belief, I believe them to be true.


Justin Gavery, Complainant
September 10, 2026

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

Subscribed and sworn to before me
by Justin Gavery, this 10th day of September 2026.


Nicholas J. Boerke
Notary Public, State of Wisconsin



My commission is permanent.

EXHIBIT A

TO

VERIFIED COMPLAINT



Commissioners:

Terrell Martin, Chair
Patricia Ruiz-Cantu
Douglas Haag

Executive Director:

Paulina Gutiérrez

August 28, 2026

Ms. Megan Wolfe
Administrator
Wisconsin Elections Commission
201 W Washington Ave
Madison, WI 53703

Re: City of Milwaukee Central Count for the 2026 August 11th Partisan Primary Election

Dear Administrator Wolfe:

I am writing to provide the Wisconsin Elections Commission (WEC) with a detailed overview of the events that occurred at the City of Milwaukee Election Commission's (MEC) Central Count following the August 11, 2026 Partisan Primary, as well as the steps MEC is taking in response.

MEC processed 27,187 absentee ballots using nine high-speed tabulators during the August 11 election. I want to make clear: the error described below delayed the public reporting of Milwaukee's results by approximately one hour, but it did not affect the security, tabulation or accuracy of the election results, nor did the error prevent or impede any voter from casting a ballot.

What Happened

Late on Tuesday, August 11, when the Milwaukee County Election Commission (MCEC) began assessing the election results delivered from Central Count, MCEC discovered that five of the nine secure data sticks contained audit log files rather than the election results files.

An audit log does not contain election results. It documents activity and events that occur on the tabulator during an election.

Upon discovering the discrepancy, the MCEC Executive Director immediately notified me. I informed news media of what had occurred and explained that MEC staff would return to the Operations Center, where Central Count was held, to download the correct election results from the five affected tabulators. I also informed media that the Milwaukee Police Department (MPD) would be present and invited reporters to observe and record the process.

Before the team returned to the Operations Center, MEC staff and security personnel confirmed that no unauthorized individuals were in the facility and secured the surrounding areas. MPD was also stationed outside the Operations Center to control access to the building.

Members of the bipartisan City of Milwaukee Board of Election Commissioners (BOEC), MEC's Deputy Director and I returned to the Operations Center under MPD escort with the secured data sticks issued by MCEC. News media present were allowed into the facility and permitted to observe and record the download process.

The election results were then downloaded from the five affected tabulators with MEC staff, BOEC members, MPD, and media present.

Following the corrected download, MEC made available to media the original, timestamped Precincts Processed reports and newly printed Precincts Processed reports from the five tabulators. The reports showed no change in the number of absentee ballots processed and confirmed the ward information remained the same.

As part of MEC's standard download procedure, a Precincts Processed report is printed from each tabulator before results are downloaded. That report accompanies the secure data stick to MCEC. During transfer, MCEC verifies that the seal number on the secure transport bag matches the chain-of-custody documentation and that the serial number associated with the data stick corresponds with the serial number on the printed Precincts Processed report.

MEC provided MCEC with both the original reports and the newly printed reports from the corrected download, along with the secure data sticks containing the election results. MCEC subsequently uploaded Milwaukee's results for public reporting at approximately 1:00 a.m. on Wednesday, August 12.

Download Procedures

Since late 2023, MEC has used written Central Count results-downloaded procedures. Those procedures have been reviewed and approved by the BOEC and have been updated as MEC's Central Count operations have evolved.

The results-download process is conducted by teams that include a full-time MEC staff member, a member of the bipartisan BOEC, and a political-party-nominated Central Count election worker from the opposite party. The MEC staff who performed the download process during the August 11 election had written instructions available, had received training and successfully completed the procedure during previous elections.

For the August Partisan Primary, MEC planned to use three download teams led by the Executive Director, Deputy Director, and Absentee Ballot Coordinator. All of whom had completed the procedure before.

The Central Count results-download process began at approximately the same time MEC was completing the final results-upload procedures from polling locations across the city. Due to this circumstance, and also existing staff vacancies, I stepped away from the download process to assist with the completion of polling-location uploads.

Before doing so, I confirmed with the Deputy Director that they could lead the Central Count download process in my absence. The download began with two bipartisan teams, with members of the planned third team joining one of the two teams. After polling-location uploads were completed, I returned to the download process and led a team in completing the remaining tabulator download.

During the subsequent review, MEC determined that the download team led by the Deputy Director mistakenly selected and downloaded the audit log rather than the election results file from the five of the nine tabulators. Written procedures were available to the team at the time the downloads were performed.

MEC takes responsibility for that error. While the existing safeguards ensured that the error did not affect the security and accuracy of the underlying election results, and allowed the discrepancy to be identified before results were posted, the incident also identified an area of MEC's process that can be strengthened.

Corrective Actions Before November

MEC has begun implementing several changes before the November Election.

Written download procedures are being updated to include visual images of each relevant screen that will enhance those instructions. An appropriate version of those procedures will also be made available to observers at Central Count, excluding passwords and other security-sensitive information.

Download teams will participate in a briefing immediately before the download process begins to confirm that all participants understand their individual responsibilities and the steps required to complete the download.

MEC will also implement a point-and-call verification process. Staff will verbally identify and confirm critical selections as they complete them, allowing other members of the bipartisan team to actively verify each step.

MEC also plans to demonstrate the results-download process during public testing before the November election and provide additional information so observers and news media can better understand and follow the process.

In the interest of transparency, MEC will make available copies of the audit logs, EL-104s and the Precincts Processed reports from the August 11 Partisan Primary Central Count. Those records will be available by Friday, September 4th at:

<https://city.milwaukee.gov/election/ElectionInformation/Central-Count>.

Moving Forward

Since my appointment as Executive Director in 2024, MEC has administered 11 citywide elections and processed hundreds of thousands of ballots for Milwaukee voters. MEC's mission and oath guide its work, and voter confidence is of the utmost importance to staff.

Following each election, MEC conducts an after-action review to identify what worked, what did not and where operations can be strengthened. The August 11 error is part of that review.

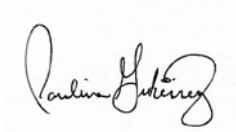
Election administration depends on people, which is precisely why elections include multiple layers of security, documentation, bipartisan oversight and verification. Human error can occur. MEC's responsibility is to build processes that prevent those errors when possible, identify them when they occur, and ensure they cannot alter the accurate counting of votes.

In this instance, an error occurred during the results-download process. At the same time, the safeguards surrounding the election worked as intended: the discrepancy was identified, the underlying election results remained intact, the correct files were retrieved, and Milwaukee's accurate election results were ultimately reported.

MEC recognizes the broader environment in which election officials and election workers now perform this work. Mistakes can quickly become the basis for misinformation or unfounded allegations about election integrity. That reality makes transparency, accuracy and strong procedures even more important. It also reinforces the need to protect dedicated election workers from abuse by bad actors focused on continuing to sow distrust regardless of the facts. We understand our responsibility to provide voters with clear, factual information about how their elections are administered and we are committed to doing so.

MEC will continue working with WEC, the BOEC, City leadership and election workers to implement the lessons from August 11, and prepare for a secure, accurate and transparent November General Election.

Sincerely,

A handwritten signature in black ink, appearing to read "Paulina Gutiérrez", is placed over a light gray rectangular background.

Paulina Gutiérrez
Executive Director
City of Milwaukee Election Commission