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# REPORT SUMMARY:

## A REVIEW OF THE 2020 ELECTION

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# REPORT SUMMARY:

## A REVIEW OF THE 2020 ELECTION



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# Introduction

The aftermath of the Wisconsin 2020 election has been marked by allegations that it was subject to widespread voter fraud. Concerns have been raised about middle of the night vote dumps, the conduct of election officials in various communities, the widespread adoption of vote-by-mail and absentee drop boxes, as well as allegations of votes being changed by voting machines.

In a Marquette University Law Poll conducted in August 2021, nearly a year after the election, more than 70% of Republicans and 26% of Independents reported a lack of confidence that “the votes for president were accurately cast and counted in last year’s election.”

When large numbers of voters question the authenticity of an election, their concerns, whether valid or not, need to be addressed. A group of researchers and attorneys at the Wisconsin Institute for Law & Liberty (WILL) engaged in an in-depth examination of the 2020 election in Wisconsin.

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FULL REPORT

**A Review of the  
2020 Election**



FULL REPORT

**Finger on the Scale:  
Examining Private Funding  
of Elections in Wisconsin**

## WILL ELECTION REVIEW

**10 month**  
in-depth examination

**20,000**  
ballots reviewed

**29,000**  
absentee ballots reviewed

**460**  
open records requests

**65,000+**  
pages of documents reviewed

Surveys and polling

## Summary of Conclusions

**It is almost certain that in Wisconsin's 2020 election the number of votes that did not comply with existing legal requirements exceeded Joe Biden's margin of victory.** This does not necessarily mean that Biden did not win a majority of the votes of those eligible to vote, but the questions of fraud and unlawful processes are related.

**There was no evidence of widespread voter fraud. In all likelihood, more eligible voters cast ballots for Joe Biden than Donald Trump.** We found little direct evidence of fraud, and for the most part, an analysis of the results and voting patterns does not give rise to an inference of fraud.

**Widespread abandonment of proper procedures raises questions regarding the fairness of the process and the possibility for voter fraud that might not otherwise be detected.**

**We found areas in which processes are not secure, and that reasonable reforms might make such exploitation less likely without unduly burdening the right to vote.** Although there may be little evidence that these vulnerabilities were exploited in 2020, reform is no less imperative.

**We also found that private funding of election operations had a partisan bias and impact.**

## Summary of Findings

### **WE FOUND LIMITED INSTANCES IN WHICH INELIGIBLE PERSONS VOTED OR ATTEMPTED TO CAST BALLOTS**

**This review uncovered nearly 300 instances where ineligible voters cast ballots or attempted to cast ballots.** This is not particularly unusual. But any ineligible votes should be taken seriously and investigated by law enforcement.

**We identified 130 voters across the state of Wisconsin who were flagged by Registration List Alerts for being a felon, but nonetheless cast a ballot in the November election.**

**We identified 42 ballots cast, statewide, by deceased voters.** Nearly all were properly rejected by local clerks. There are two instances where a possibly deceased voter had their ballot counted.

**We found no evidence of more than one vote being cast in the name of the same voter. However,**

**we should note our review was limited to the state of Wisconsin, meaning that someone could, theoretically, have voted in another state.**

**This review identified 129 instances of individuals voting from commercial addresses. All of these addresses were post offices or mailing centers.** Using a PO Box to register to vote is unlawful under Wisconsin law.

## **THERE IS NO EVIDENCE OF SIGNIFICANT PROBLEMS WITH VOTING MACHINES**

**Donald Trump won communities that used Dominion voting machines with 57.2%, an increase from 2016.** WILL could not access voting machines as a part of this review, but we did model the various machines to evaluate their effect on the outcome of the election. Just 14.7% of Wisconsin jurisdictions employ the Dominion voting machines, maligned by many as a culprit in changing votes for Joe Biden.

*WILL's review found that jurisdictions that used Dominion voting machines had no effect on the expected vote total.* Our analysis found Democrats actually did worse than expected in areas that used Dominion machines.

## **THERE WERE A SIGNIFICANT NUMBER OF BALLOTS CAST IN THE 2020 ELECTION THROUGH METHODS THAT DO NOT MEET STATUTORY REQUIREMENTS OR STATUTORY INTENT**

**As recently confirmed by the Legislative Audit Bureau, the widespread adoption of absentee ballot drop boxes, encouraged by the Wisconsin Elections Commission (WEC), runs afoul of state law requirements for the collection of absentee ballots.**

**This widespread adoption of absentee ballot drop boxes, not provided for under Wisconsin law, was correlated with an increase of about 20,000 votes for Joe Biden, while having no significant effect on the vote for Trump.** WILL does not claim that the voters who used drop boxes were ineligible voters or should have had their votes rejected. But the ad hoc adoption of absentee ballot drop boxes without established rules, parameters, or security presents an election vulnerability and a challenge to state law.

**More than 265,000 Wisconsin voters adopted the 'indefinitely confined' status, meaning they received an absentee ballot and were exempt from the statewide photo ID requirements.** The number of indefinitely confined voters increased from 66,611 in 2016 to 265,979 in 2020. Given the substantial increase in the number of such voters, it is almost certain that many voters improperly claimed "indefinitely confined status."

**Many of these votes were cast unlawfully.** Additionally, clerks in Dane and Milwaukee counties used the presence of the pandemic to encourage voters to adopt an uncommon status called “indefinitely confined.” The Wisconsin Supreme Court unanimously rebuked the Dane County clerk for encouraging voters to adopt this status in March 2020. In November, it confirmed that a person who did not wish to leave home due to the pandemic was not “indefinitely confined.”

**The votes cast by ‘indefinitely confined’ voters raise a number of red flags.** While we cannot infer any malignant intent on the part of these voters, this means that many votes were cast without the requirement of photo identification. 54,259 ballots were cast by individuals who have never shown a voter ID in any election. 3,718 were cast from addresses that were on the 2019 Mover’s List. 7,747 failed their DMV check when they registered.

## VOTER ROLLS WERE NOT PROPERLY MAINTAINED

**State and federal law requires Wisconsin to maintain accurate voter rolls. But the Wisconsin Elections Commission and local clerks refused to take the required steps in 2020 to remove outdated and inaccurate voter registrations—resulting in tens of thousands of active voter registrations tied to old addresses.**

**Thousands of votes were cast by individuals remaining on the active Mover’s List.** 5,329 voters voted in the election from their old address, and 13,757 voted from a new address while in active mover status. Once again, while not every one of these votes may be illegal, it is vital for election security that we know who voters are and where they live.

**We found that 23,361 Wisconsin voters in 2020 cast ballots despite failing their DMV check this year, meaning their name, address, and/or birthdate doesn’t match what is on file with the Department of Motor Vehicles (DMV).** 4,885 voters cast ballots with a driver’s license number that does not exist in the DMV system. 16,595 had names or date of birth did not match the DMV system. Democratic-leaning counties were disproportionately represented among DMV checks.

**We found that 31,664 Wisconsin voters were in the National Change of Address Database.** Among the subset where a new address was known, 7,151 moved to an address in a different state.

***It is still not possible to infer fraud solely from these unlawfully cast votes or failure to maintain voter rolls.***

There isn’t much, if any, evidence that these voters did anything intentionally wrong (in many instances, they seem to have relied on the advice of election officials) and one might conclude—whether as a matter of law, fairness, or political survival—that it would be unreasonable to throw out their ballots.

It is unclear whether, had these ballots been disqualified, the results of the election would have changed.

## LOCAL PRACTICES WERE NOT UNIFORM AND, IN SOME CASES, MAY NOT HAVE FOLLOWED THE LAW

**This review identified several practices by local election officials that are not uniform, and raises concerns about fair and equal treatment.** While elections are largely decentralized in Wisconsin, every effort should be made to provide voters with equal access and treatment. But in-person absentee voting hours can differ from municipality to municipality, and election officials seem to be rejecting ballots or fixing them (curing) without much consistency. Legislative efforts should be made to ensure these practices are the same in every corner of the state.

**Absentee ballot rejection rates were substantially lower in 2020 than in previous presidential elections.** When voters cast absentee ballots, some percentage are expected to be rejected as a result of mistakes or missing information. But rejection rates for the 2020 presidential election were substantially lower than previous years. Either voters improved their capacity to avoid mistakes, or, more likely, election officials deliberately made efforts to ensure ballots were not rejected.

**Due to the partisan split in absentee voting, WILL estimates that if absentee ballot rejection rates were similar to the rates in 2016, the final election margin would have narrowed by 6,000 votes - making a very close election even closer.** While it should be noted that absentee ballot rejection rates do not appear to vary based on community partisanship, this outcome flows from the partisan skew in the use of absentee ballots.

**State law provides no legal authority for local election officials to fix, or “cure,” defects, mistakes, or missing information on absentee ballots. But the Wisconsin Elections Commission (WEC) said they could—resulting in some municipalities curing ballots while others did not.** As a result of WEC’s lawless advice to local officials, no standard practices were employed to cure ballots.

**While there is a pre-determined allowable number of days available for in-person absentee voting applied statewide, there is no uniform standard of hours available for in-person absentee voting.** Although this did not result in a greater percentage of votes coming from urban areas, it does reveal an imbalance in the opportunity to vote and may have skewed the vote totals.

**The Wisconsin Elections Commission unlawfully suspended the use of Special Voting Deputies for nursing homes and assisted living facilities in 2020—shrugging off standards in state law for the distribution and collection of absentee ballots in those settings.** WILL surveyed 35 Wisconsin communities and found just two could provide records for use of Special Voting Deputies in 2020.

## PRIVATE FUNDING DISPROPORTIONATELY BENEFITTED DEMOCRATS

**Private grants for election administration from the Center for Technical and Civic Life (CTCL), a non-profit largely funded by Facebook founder Mark Zuckerberg and his wife, resulted in an increase in turnout in five Wisconsin cities—all voting heavily for Democrat Joe Biden.**

**A statistical analysis finds significant increases in turnout for Democrats, approximately 8,000 votes statewide, as a result of the distribution of CTCL grants.** Specifically, Biden's vote increased by about 41 votes per municipality in cities that received CTCL grants relative to those that did not over 2016. No statistically significant effect was found for Trump.

## THE RESULTS WERE NOT ANOMALOUS

We began assessing the 2020 election by asking whether there were external signs of irregular activity. We looked for any inconsistencies that suggested fraud, or failure to fully and accurately tabulate the results. Our conclusion is that there is no indication the results are anomalous.

**The high 2020 statewide turnout in Wisconsin (72.3%) was not abnormal. It was the turnout in 2016 that was unusually low.** The 2016 presidential election in Wisconsin had the lowest statewide turnout since 2000 with just 67.34%. The increased turnout between 2016 and 2020, for both candidates, made the election feel like an abnormal swing. But it falls short of 2004 when turnout hit 72.9%. Even in 2012, turnout exceeded 70%.

**In general, the 2020 election in Wisconsin aligned with long-term statewide and national trends of Democratic gains in the cities and suburbs, coupled with increased Republican margins in rural areas.** A high-level review of the election results finds consistent demographic patterns and trends.

**Joe Biden overperformed Democratic congressional candidates, while Trump underperformed Republican congressional candidates.** Biden received 64,434 more votes than Democratic congressional candidates in the state. On the flip side, Trump underperformed Republican congressional candidates in the state by 51,215 votes. Trump also underperformed in 2016 but by more votes. Biden reversed Hillary Clinton's 2016 underperformance. While some believe the "Biden only" votes are a sign of fraud, we found no evidence to support this.

**2020 was a return to more conventional levels of write-in and third-party voting.** In 2016, Wisconsin voters cast 186,000 write-in and third-party votes — an unusually high number. Some regard the absence of such votes in 2020 as suspicious. While it is possible that keeping the Green Party candidate off the ballot benefited Joe Biden, the 2020 election returned to relatively normal levels of write-in and third-party voting.



**The number of registered voters in Wisconsin exceeded November 2020 turnout in every month of 2020.** In the aftermath of the election, some alleged that there more votes cast in Wisconsin than registered voters. This is not accurate for any month in 2020. ***There were not more votes than registered voters.***

**A WILL poll of 2,000 absentee voters revealed a strong partisan split in absentee voting preference.** Among those expressing a preference for one of the two major parties, only 27.4% of the sample identified as Republican, while 72.6% of the sample that identified as Democrats.

**Our poll found a surprisingly high percentage of respondents who say they did not request absentee ballots.** A higher percentage of Republicans than Democrats claim they did not request an absentee ballot than of Democrats. Most of those who said they did not request absentee ballots appear to have voted. **We could not conclude that this is evidence of fraud, but neither can we exclude it.**

**The number of absentee ballots counted on election night in Milwaukee is consistent with what was reported to be outstanding.** Despite frustration and suspicion about Milwaukee “ballot dumps,” the existence of the votes and the percentage that went for Joe Biden (about 85.7%) appear to be plausible. **Put simply, there was no unexplained “ballot dump.”**

**Just 199 federal-only ballots, available to individuals who have lived in Wisconsin less than 28 days, were cast in the 2020 election.** Some speculated that an uptick in federal-only ballots could indicate fraudulent or ineligible votes. But the number of federal-only ballots was relatively small and showed no pattern in the partisanship of the communities they where they were cast.

## **AN EXAMINATION OF A SAMPLING OF BALLOTS REVEALED FEW PROBLEMS**

**A close review, including a hand count of roughly 20,000 ballots from 20 wards, uncovered no evidence of fraudulent ballots or widespread voter fraud.** While it was not possible to examine over three million ballots, we did closely investigate specific wards. The wards selected had results that stood out in some way from previous elections. After determining which wards to review, we physically viewed and recounted selected ballots.

Three statistical models identified three Wisconsin wards with unusual vote totals. Additionally, WILL selected 17 wards for review due to their large vote shifts between 2016 and 2020.

**Our hand review found that the counts closely matched those reported by the Wisconsin Elections Commission (WEC). The review found no evidence of fraudulent ballots.** The wards WILL reviewed came from: Milwaukee, Madison, Green Bay, Fox Crossing, Mequon, Waukesha, and West Bend.

**In many of the wards examined, WILL found a significant number of voters who voted for Biden and a Republican for Congress, while far fewer voters split the other way.** This is consistent with the

explanation that a key driver of Trump's loss was a segment of traditional Republican voters choosing not to support him.

**A review of 5,800 pages of election inspector statements, a formal procedure for poll workers to document key election statistics and incidents, revealed few issues.** WILL specifically reviewed selected wards in Green Bay because of a high number of damaged ballots that were recreated. We examined both original and recreated ballots to ensure they matched, and found limited instances of unmatched ballots.

# Recommendations

## WEC REFORMS

### 1. Bi-Partisan Legal Counsel and Staff

WILL proposes that the legislature create a bipartisan staff and two legal counsel positions within WEC that would be appointed by Republican and Democrat commissioners respectively. The New York State Board of Elections follows a similar model, but instead has bi-partisan Co-Executive Directors that run the agency. By creating these bipartisan positions, commissioners from each party will have the opportunity to receive staff support and opinions, thus allowing for a more balanced perspective.

### 2. Require Guidance and Communications to Clerks to Be Sent to JCRAR

WILL proposes that any statewide guidance or communications sent to clerks should be forwarded to the Joint Committee for Review of Administrative Rules (JCRAR), who may then decide whether the guidance should be promulgated through the Emergency Rules process. If JCRAR decides that particular guidance should be promulgated, WEC would then have 30 days to submit an emergency rule. At that point, JCRAR could decide whether to suspend said rule (in theory indefinitely).

### 3. Require Joint Responsibility Between WEC and Municipalities for Voter Registration List Maintenance

In April 2021, the Wisconsin Supreme Court (in a case brought by WILL) ruled that it falls to municipal election officials, not WEC, to deactivate the registration status of electors who leave their municipality. Wis. Stat. § 6.50(3) should be amended to require WEC to do so.

The state's membership agreement with ERIC also specifies that states should periodically request data from ERIC and are "strongly encouraged" to do so at least once per year. The statute should be amended

to specify that this request should at minimum, be made annually, and that data from ERIC should be deemed a “reliable” source of information that would trigger a postcard being sent.

#### **4. Use HAVA Checks to Update Voter Rolls**

WILL proposes updated procedures that would regularly update voter registration lists for failed HAVA checks. With easily accessible online and same-day in-person registration, this reform would be a prudent move towards ensuring accurate voter rolls.

#### **5. Changes to WEC Complaint Process**

The legislature should adopt language that requires WEC to dispose of a complaint within 60 days. For cases that need more time for investigation, the commission could extend this timeline for an additional 60 days with a majority vote, and only if there is good cause that can be explained in writing by the commission.

While the chair position rotates between Democrats and Republicans, allowing staff to dismiss complaints while only consulting a commissioner of one party seems unfair. Moving forward, WEC should consult with a commissioner of each party before complaints are dismissed, preferably the Chair and Vice-Chair.

Sometimes, WEC is the ultimate defendant in these cases, so there is little incentive for an expedited disposition. In cases where the complaint is against WEC, there should be an option to appeal directly to circuit court.

## **DROP BOXES**

As an organization, WILL has taken the position that the use of drop boxes is not legally permissible under Wisconsin law, even though their use around the state was widespread. If the use of drop boxes continues moving forward, the legislature should explicitly authorize their usage and adopt uniform standards.

### **1. Drop Box Security and 24-Hour Video Surveillance**

To prevent the potential for stolen or damaged absentee ballots, the legislature should set minimum security standards for drop boxes. Boxes should be made of a material that is secure and both tamper and moisture resistant. Boxes should also be equipped with a lock, bolted to the ground, and be under 24-hour video surveillance. As stated earlier, WEC’s drop box guidance encouraged municipalities to partner with libraries to use their book and media drops for ballot collection. This practice should not be allowed moving forward. Giving anyone other than the clerk’s office access to absentee ballots presents an opportunity for impropriety.

## 2. Require Two Employees to Pick Up Drop Box Ballots

To limit opportunities for impropriety when collecting absentee ballots, and to ensure accurate counts, the state should require that each municipality have two employees present for drop box ballot collections. Many of the communities reviewed here already employ this practice, including Madison, Milwaukee, and New Berlin.

## 3. Institute Standardized Chain of Custody Logs

The state should require that all municipalities that use drop boxes maintain a chain of custody log. These logs should contain all the pertinent information to ensure that the ballots were handled properly, including, but not limited to, the location of the drop box, the names of employees collecting ballots, security bag seal serial numbers, and the date and time of collection and delivery. Also, the number of ballots collected should be noted at the time of collection, and then verified by the clerk's office when delivered.

The City of Milwaukee included a step-by-step checklist on drop box collection responsibilities on their forms, presumably to ensure that no steps were missed. The City of Madison included a statement that employees would sign acknowledging that no absentee ballots were altered, added, or removed from the carrier bag, and that falsifying this statement could lead to civil or criminal legal penalties. Adding these to chain of custody logs would be prudent best practice.

## 4. Use Security Bags

In conjunction with chain of custody logs, employees collecting ballots from drop box locations should use tamper-free security bags specifically designed for ballot storage and collection. These bags include security seals with unique serial numbers and security features that can alert a clerk if the seal was tampered with. Upon delivery to the clerk's office, the used seal should be applied to the chain of custody log for record keeping purposes. This requirement could be waived for any drop boxes connected to or located within the building in which the clerk's office is located.

# PRIVATE FUNDING OF ELECTION ADMINISTRATION

Two proposals—an outright ban on private funding of elections, or a requirement that state elections administrators distribute any private funds received by municipalities directly—would be a reasonable solution here. The latter was sent to Governor Evers along with other election reforms, but was vetoed.

## BALLOT HARVESTING

Currently WEC has opined and informed clerks that ballot harvesting is legal under Wisconsin law. WILL disagrees with this conclusion and is challenging ballot harvesting in the same case in which it is challenging drop boxes. Wis. Stat. 6.87 (4) (b) provides that an individual's absentee ballot "be mailed by the elector, or delivered in person," making no exceptions for someone else to deliver the ballot. WILL recommends that the legislature clarify that ballot harvesting is illegal.

That said, WILL recognizes that there may be some circumstances in which another individual delivering another's ballot is appropriate, such as for one's spouse or immediate family. Senate Bill 203, one of the election reform bills passed by the legislature and vetoed by Governor Evers, represents a well-reasoned approach to the issue. The bill clarifies the individuals who can drop off a ballot for another person, including children, grandchildren, and spouses.

## ABSENTEE BALLOT CERTIFICATE CURING

While it is WILL's opinion that absentee ballot curing is currently illegal under state law, it was still widely used in the 2020 and prior elections. If the legislature decides to allow this practice to continue, they should adopt the following policies:

- 1. Determine and set a standard of ballot curing**
- 2. Standardize Absentee Ballot Envelopes**
- 3. Require Any Marks by Clerk's Office to Be Marked in Red Ink and Initialed**
- 4. Require All Cured Absentee Envelopes to Be Logged into Absentee Ballot Log**

## TRANSPARENCY

At minimum, WILL recommends that the following information be preserved for future election reviews:

- 1. Monthly Snapshots of Voter File and Election Day Snapshot**

Currently, one can only acquire the voter file in its current, real time state. A voter's name, on-file address, and voter status (Active, Inactive, Indefinitely Confined, etc.) should be available on a monthly basis, if not more frequently.

## 2. Voter File Should Be Available to Public at No Cost

Despite being a public record, it costs \$12,500 to acquire a copy of the voter file in Wisconsin. State law should be changed to make this file available to citizens who request it.

## 3. All Data Should be Available at the Ward Level

Some municipalities in the state combine several wards in their reporting of election results. Full transparency requires that investigators be able to isolate votes from each ward in the state.

## 4. Create Municipal-Level Election Statistics Reports

To increase transparency for the public, municipal clerks should prepare a report of pertinent election statistics that would be publicly accessible on their website and WEC's website. To vouch for their accuracy, the municipal To see a full list of suggested reporting categories, please see our full report.

## 5. Cast Vote Record Transparency

When ballots are deposited into modern optical scan tabulators, an image file of a cast vote record is created. The legislature should require counties that have electronic cast vote records to post these documents on their website.

# INDEFINITELY CONFINED LIST

To ensure greater security, Wisconsin should develop a tightened indefinitely confined standard, while still giving voters options in accessing this process.

The solution to this problem is to require medical documentation in order to apply for such status. At least seven states, including Connecticut, Nevada, and Louisiana, require some form of medical documentation to obtain permanent absentee status. Legislation introduced in Wisconsin would create a similar requirement, albeit only for voters under the age of 65.

Further, the law should specify that voters must show ID if they possess one, or explain why they cannot physically obtain a valid ID. The legislature should also create a statutory timeline for removing non-voters from the indefinitely confined list. Under current law, if an indefinitely confined voter fails to cast and return a spring, general, or special election ballot, the clerk must send a first-class letter or postcard informing the voter that they will be removed from the indefinitely confined list unless they apply for renewal within 30-days. We propose amending Wisconsin law to require clerks to send the letter within 30-days after the election.

## **UNIFORM IN-PERSON ABSENTEE HOURS**

The legislature should establish uniform statewide hours for in-person absentee voting that apply to each municipality throughout the state. One possibility would be to use the average amount of hours currently offered from every municipality to set the uniform statewide requirement. This could mean an increase in hours in some locations and a decrease in hours for others—resulting in equal access to in-person absentee voting statewide.

## **ALLOW “MONDAY PROCESSING” OF ABSENTEE BALLOTS**

Wisconsin should adopt a law that allows clerks to begin processing absentee ballots on the Monday before the election.

To limit the potential for “leaked results”, this process should be limited to steps taken up until a ballot is actually fed into a tabulator. Legislators could consider making it mandatory for communities that use central counts, as they are often the most delayed in reporting results.

## **REDUCE APPEARANCE OF LATE-NIGHT BALLOT DROPS IN CENTRAL COUNT COMMUNITIES**

While the appearance of late-night ballot dumps could be largely solved by allowing a “Monday Count,” another way to fix this issue is to require communities that use central count to report results as they are completed.

Additionally, communities using central count should be required to create separate reporting precincts for the in-person and absentee counts.



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