

# Waukesha County judge rules unmanned absentee drop boxes not allowed under state law

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A Waukesha County judge ruled unmanned absentee ballot drop boxes aren't allowed under Wisconsin law and directed the Elections Commission to inform clerks within two weeks they can't be used in the February primary.

Judge Michael Bohren also sided with the conservative Wisconsin Institute for Law & Liberty, which brought the suit, in finding that the commission should've issued its 2020 guidance through the administrative rules process, which would've given lawmakers a say in the policy.

He also found state law bars ballot harvesting after WILL challenged the practice. In 2020 guidance the Elections Commission issued, the agency informed clerks that a family member or another person could return absentee ballots as their use skyrocketed during the COVID-19 pandemic.

But Bohren ruled that wasn't supported by state law.

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"The statute is clear. It's not ambiguous," he said while ruling from the bench.

An appeal is likely and could put the issue of drop boxes before the state Supreme Court. A split court in June declined to directly hear a separate lawsuit challenging their use without first requiring it to go through the lower courts.

An Elections Commission spokesman said the agency and commissioners would review the court's order and consult with legal counsel in the coming days.

WILL Deputy Counsel Luke Berg praised the ruling, saying it provides “Wisconsin voters with certainty for forthcoming elections.”

According to the Elections Commission, more than 1.3 million absentee ballots were returned by mail in the November 2020 election, while another 653,236 were cast in-person through clerk’s offices. The commission didn’t track how many were returned through drop boxes.

During Thursday’s hearing, Bohren said the law only allows clerks to use a drop box if it’s at a clerk’s office or at an alternative site that was also designated to vote absentee in-person. During the runup to the November 2020 election, Republicans complained that the city of Madison clerk put paid staff in parks to collect absentee ballots. Those events wouldn’t be allowed under Bohren’s ruling.