

WILL: Waukesha judge rules absentee ballot drop boxes, ballot harvesting illegal under state law

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The News: Waukesha County Circuit Court Judge Michael Bohren issued a summary judgment decision, in court, that absentee ballot drop boxes and ballot harvesting are not permitted in state law. Judge Bohren also ruled that the Wisconsin Elections Commission (WEC) guidance documents on absentee ballot drop boxes, issued in 2020, should have gone through the rules process.

The Wisconsin Institute for Law & Liberty (WILL) filed a [lawsuit](#) on behalf of two Waukesha County voters in June 2021 challenging the legal status of absentee ballot drop boxes after WEC issued unlawful guidance to clerks, in 2020, encouraging the use of absentee ballot drop boxes, and telling voters that anyone else can return their ballot for them.

The Quote: WILL Deputy Counsel, Luke Berg, said, “The guidance from the Wisconsin Elections Commission on absentee ballot drop boxes was unlawful. There are just two legal methods to cast an absentee ballot in Wisconsin: through the mail or in-person at a clerk’s office. And voters must return their own ballots. We are pleased the court made this clear, providing Wisconsin voters with certainty for forthcoming elections.”

Background: Absentee ballot drop boxes were used widely during Wisconsin elections in 2020. The Wisconsin Elections Commission (WEC) issued memos to Wisconsin clerks in [March](#) and [August](#) of 2020 encouraging their use, stating that absentee ballots do not need to be mailed by the voter or delivered by the voter, in person, to the municipal clerk, but instead could be dropped into a drop box. According to WEC, ballot drop boxes can be unstaffed, temporary, or permanent. This advice was contrary to state law. Voting is a constitutional right, but [state law](#) makes clear that, “voting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place.” There are just two legal

ways in Wisconsin to submit an absentee ballot. When voting by absentee ballot, [state law](#) says “[t]he envelope [containing the ballot] shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” An unstaffed, unsupervised absentee ballot drop box does not meet either of these legal options. And it raises significant concerns that elections are not being conducted legally and that Wisconsin voters will not have certainty that their votes will be counted if cast in this manner.

WILL’s recent [Review of the 2020 Election](#) found that the 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.

The Decision: Waukesha County Circuit Court Judge Michael Bohren issued a decision, in court, that WEC’s guidance on absentee ballot drop boxes should have been adopted through the rulemaking process in Chapter 227. Further, Judge Bohren made clear that state law provides just two legal methods to cast an absentee ballot: through the mail or in-person at a clerk’s office. The ruling means unstaffed absentee ballot drop boxes and ballot harvesting are not legal methods to cast absentee ballots.

Read More:

- [Teigen v WEC](#)
- [A Review of the 2020 Election](#), December 2021