



# Wisconsin Elections Commission

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November 4, 2021

Joe Chrisman, State Auditor  
Legislative Audit Bureau  
22 E. Mifflin Street, Suite 500  
Madison, WI 53703

**Sent via email:** [Joe.Chrisman@legis.wisconsin.gov](mailto:Joe.Chrisman@legis.wisconsin.gov)

Re: Response to the Legislative Audit Bureau's Report on the 2020 General Election.

Dear Auditor Chrisman,

The Wisconsin Elections Commission ("WEC") is in receipt of Report 21-19 pertaining to "Elections Administration" and the November of 2020 General Election ("Report"). WEC staff truly appreciate the detail, professionalism, effort, and often thankless work put forth by Legislative Audit Bureau ("LAB") staff. The WEC will absolutely take the LAB's recommendations under advisement, as staff continue their never-ending pursuit of improvement. The WEC was pleased with the audit's overall finding that the 2020 election was accurate, safe, and secure.

However, these are unprecedented times. The LAB deviated from its own standard practices, and those of effective auditing, and this decision has real-world implications for the WEC and its staff members. For example, errors in the report are currently being perpetuated by legislators, and the public, as fact. It is because of the LAB's deviation from standard practices that this letter is being sent. WEC staff welcome the opportunity to continue working with the LAB team to find positive and proactive solutions on this matter.

WEC staff have significant concerns over the manner in which this report was released, and the subsequent inconsistencies and inaccuracies caused by the LAB's deviation from its own standard/posted procedures. First, releasing the report without giving WEC staff the chance to perform an initial review deviates from the assurances given to WEC staff during the "audit kick-off meeting" (*i.e.* that staff would have preliminary access to the Report so that formal responses could be considered, filed, and documented with the LAB). What is more, it deviates from the posted practice of the LAB. The LAB's website outlines an audit as a five-step process, including: "Step Three: Report Drafting—As a courtesy, the report draft is typically shared with auditee staff in preparation for the exit conference" and "Step Four: Exit Conference—At this meeting, the Bureau provides auditee staff with a formal opportunity to discuss the report draft and to provide additional facts or context. Following the exit conference, auditee staff are typically offered an opportunity to provide a written response, which is published along with the audit report." During the "Entrance Conference" the LAB told WEC staff we would be given these opportunities, and at no point did LAB convey to us that it would deviate from its usual practices. The Administrator was first alerted to this deviation, and of the public release of the report, fifteen minutes prior to the report's release. It should

*Wisconsin Elections Commissioners*

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

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Administrator  
Meagan Wolfe

also be noted that the report must have been selectively distributed prior to the release date as we began getting inquiries the night before we were notified that the report was being released.

This approach allows inaccuracies and inconsistencies to become part of the public record. The record has yet to be corrected through the engagement of WEC staff, the Commission itself, and/or local elections officials. This lack of transparency only serves to damage the credibility of the report and the hard work of LAB staff who compiled it. Questions regarding the veracity of the report and the legitimacy of the recommendations contained within it will remain until the WEC has a chance to formally respond and correct the record.

Additionally, page 8 of the Report cites the following as the reason the Report was not provided in advance and that the WEC was not provided an opportunity to respond, "...because the WEC administrator has limited authority to act without WEC's involvement, we would have needed to provide our confidential draft and audit report to WEC for its consideration." This section goes on to contemplate that because the administrator does not have the specific, delegated authority to respond, and that the Commission can only meet in open session to review and respond to the report, that any formal response will have to be considered, by the six-member Commission, in an open session at a public meeting. Based on this analysis, the six-member Commission will be meeting on December 1, 2021, to review the report and to draft and approve the official response. Only the Chair of the Commission can call a meeting. Cooperative attempts were made by the Chair and Commissioners to find an earlier date to meet on this topic. However, due to competing work schedules of the citizen Commissioners, the Chair was unable to find an earlier date that worked for all six members. *Commissioners have also explicitly requested that the WEC Administrator and staff not provide a response, or even work to prioritize action items, until the six-member Commission has had an opportunity to meet, vote, and provide an official response and direction to staff.* Therefore, WEC staff, who operate under the direction of the Commission, will be unable to provide any response prior to the vote and direction of the Commission on December 1<sup>st</sup>. Neither the Commission nor staff were given notice, nor were any timing expectations set, of a potential public hearing until the afternoon of November 3<sup>rd</sup>. At that time, staff were told that there may be a hearing three business days later on November 9<sup>th</sup>.

Please consider that this is not an exhaustive list of potential grievances or actions to be taken, and other rights are being maintained by the WEC. The WEC will also continue to review the Report and other responsive materials, while researching any recourse that may be within its power to pursue. However, it is my hope that our agencies will be able to proactively work on solutions. WEC staff welcome the opportunity to open the lines of communication and find appropriate, common-sense resolutions to ensure the record is corrected and the report reflects accurate data and facts. To that end, the WEC staff ask for your cooperation in finding a solution to the following issues:

- Finding a mutually agreeable and beneficial way to correct inaccuracies or ambiguities in the Report.
- Determining how a formal response from the WEC could be included in the official audit report record. This inclusion would be consistent with how other audited entities have been treated, including the WEC predecessor agency the Government Accountability Board.
- Ensuring that any legislative hearing on the audit report be held after the Commission's December 1, 2021, meeting. Any hearing held before that date will significantly limit the ability of the WEC staff or Commission to provide information or to answer questions. WEC staff and Commissioners would be unable to participate in a meaningful way until the final, formal response of the Commission is issued at the December 1, 2021, meeting.

Regardless, the WEC hereby requests, under Wis. Stat. Chapter 19, any LAB policy or procedure materials/manuals, in any form, as they existed at the start of the WEC audit, that document the LAB's standard administrative audit practices or procedures. This should include any policy or procedural records published by another organization that the LAB formally adheres to or is otherwise subject to, provided the LAB is custodian over those records in some legally obligatory way. If the LAB does not have such custodial responsibilities, please name those policies/procedures and provide the name of the agency maintaining those records. If the LAB believes this request to be overly broad and/or unlawful, the WEC will consider initially narrowing the

request in scope to records that highlight the need for accuracy in audit reports, or those that detail the auditee's ability to pre-review/correct such reports. Given the Wisconsin State Senate's recent statements on its intent to use the Report as the impetus for launching its own investigation, WEC staff request that the LAB consider its custodial responsibilities to release public records as soon as practicable and without delay, with particular emphasis on the now-expanding definition of "without delay."

It is my sincere hope that our agencies can find a path forward, without further deviation from standard auditing practices, that ensures the accuracy of the information currently available to the Wisconsin citizenry, to which our respective organizations owe a duty of transparency. WEC staff look forward to your response and hope to resolve these matters in a manner beneficial to all parties involved.

**WISCONSIN ELECTION COMMISSION**



James C. Witecha  
WEC Staff Counsel

cc: Honorable Senator Robert L. Cowles  
Honorable Representative Samantha Kerkman  
Wisconsin Elections Commission Members  
Meagan Wolfe, WEC Administrator