

CITY OF MADISON

Investigative Findings – Unprocessed Ballots



Background

On Thursday, December 19, 2024, Jim Witecha, Chief Legal Counsel for the Wisconsin Elections Commission (WEC), notified City Attorney Mike Haas via voicemail and email that 193 absentee ballots had not been counted in the November 2024 election. WEC had become aware of the issue the day before when Assistant City Clerk [REDACTED] had reached out to staff at WEC to seek assistance in the reconciliation process to account for the issue. The failure to count ballots at the polling place and to take action after the election led 193 valid absentee ballots to not be counted across three wards (56, 65, 68) in the City of Madison. City Attorney Haas contacted the Mayor's Office about the issue on December 20, 2024. The Mayor's Office assigned Human Resources Director Erin Hillson and Parks Superintendent Eric Knepp to investigate the matter and provide this report. The WEC is also conducting a separate investigation into the absentee ballot count irregularities.

Allegation(s)

1. Was APM 2-33 violated in the failure to process ballots for the 2024 election?
2. Was APM 2-33 violated in the failure to communicate to other internal City stakeholders about the failure to process ballots for the 2024 election?
3. Was APM 2-33 violated in the failure to appropriately notify the State of the failure to process ballots?
4. Were any State Laws or ordinances violated in the processing of ballots for the 2024 November election?
5. What core process or performance issues contributed to 193 ballots being left unprocessed?
6. Did City Clerk Maribeth Witzel-Behl breach her contract related to performance of duties as the Madison City Clerk?

Work Rules Alleged

Administrative Procedure Memorandum No. 2-33

- A.2. *Employees will meet performance expectations and will efficiently and effectively carry out their duties during work hours or while on work premises. In doing this, employees will not engage in horseplay, roughhousing, or other disorderly behavior that will interfere with carrying out their or other employees' work.*
- A.3. *Employees will complete all assignments and duties in a timely manner, as directed by supervisors, managers, lead workers, or other authorized employees and will not engage in insubordinate behavior.*
- A.4. *Employees will perform assignments and duties with attention, care, and efficiency. Employees must strictly limit unauthorized personal business during work hours so that it does not affect the timely completion of assignments and duties. This includes, but is not limited to, unauthorized or excessive personal phone or technology use.*

- A.5. Employees will provide accurate and complete information whenever required by their position or as requested by an authorized person.
- A.7. Employees will be truthful and accurately record all required information, including but not limited to, timesheets, payroll, purchasing card transactions, and/or itineraries.
- C.8. Employees will adhere to Federal, State, and local laws, and refrain from engaging in any illegal activity during work hours or while on the work premises.
- C.13. Employees will conduct themselves in a manner that does not prevent themselves or others from adequately carrying out their duties and functions.
- D.1. Employees will be effective stewards of City materials and equipment. City materials and equipment must be used carefully and only as authorized.

Relevant Contract Provisions (2021 Contract, City Clerk Maribeth Witzel-Behl)

- Plan and direct all City elections and supervise the registration of voters. Hire, train, and manage election officials. Staff and equip each polling location to minimize voter lines. Ensure each polling location has the training and tools needed to make voting accessible for voters with disabilities. Provide accessible and equitable voting options throughout the City for in-person absentee voting.
- Hire, train and manage the hourly employees who independently administer in-person absentee voting. Manage the security of election equipment, ballots, data, and results. Appoint, train, and serve on the municipal Board of Canvassers to certify municipal election results. Advise and support the Board of Canvassers for the Madison Metropolitan School District.
- Provide court testimony, affidavits, and declarations for state and federal court cases regarding voting rights. Provide technical advice and feedback to the Wisconsin Election Commission. Provide training and guidance to election administrators in Wisconsin and in other states. Advise national organizations on election best practices.
- Develop and maintain a high level of awareness of related professional standards and the effective integration of evolving technologies and methods. Maintain effective cooperative relationships both internally and with other governmental agencies.
- Direct the general administration of the department to include the development and implementation of the departmental budget, personnel administration, and the integration of racial equity and social justice into all aspects of the agency's work, etc.
- Provide related high-level expertise and consultation to the Mayor and Common Council. Represent the interests of the organization in a wide variety of internal and external settings.
- Prepare and present relevant written and oral reports. Perform and/or oversee special studies. Maintain necessary records, files, and statistics.

List of Investigative Interviews (in order of interview)

1. Sam Munger
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

6. [REDACTED]
7. [REDACTED]
8. Jim Verbick
9. [REDACTED]
10. Mike Haas
11. [REDACTED]
12. Maribeth Witzel-Behl

**Note, some witnesses were re-interviewed*

Findings

Timeline of Events:

The following chronology of events is intended to provide a timeline focused on the 193 valid, but uncounted, absentee ballots and the corresponding actions of key Clerk's Office personnel across this time period. Throughout this timeline reference to the uncounted absentee ballots is inclusive of all 193 ballots across Wards 56, 65, and 68. Of which, 125 were Ward 56 ballots in two separate sealed absentee envelopes in a single sealed courier bag. The 67 uncounted Ward 65 ballots and one uncounted Ward 68 ballot were in a sealed envelope within a sealed single courier bag.

October 1, 2024 – November 4, 2024– Pre-election day

The Poll Books for Wards 56, 65, and 68 are printed on October 23, 2024, 13 days before the election. The uncounted ballots are returned to the Clerk's Office during October, with the vast majority being scanned into WisVote as returned absentee on October 28 and 29. The ballots are secured into sealed envelopes and placed in secure courier bags. These courier bags are placed into the security cart and taken the polling location in advance of the election.

On Saturday, November 2, 2024, the Chief Inspectors pick up their supply tote and corresponding Inspector's Statements for their polling places from the Clerk's Office. On Monday, November 4, 2024, the Clerk's Office sent a turnout spreadsheet via email to each Chief Inspector. This information was up to date through November 3 and included the number of absentee ballots returned as of the Sunday before the election. During this timeframe there are multiple trainings offered by the Clerk's Office, with Clerk Witzel-Behl leading most of the training for Chief Inspectors. These sessions include key focus areas and important changes for Chief Inspectors for the coming election. This training did not include mention of the potential for additional absentee ballots being sealed in "green courier bags" and placed in the security cart, not the tabulator.

November 5, 2024 – Election Day

All the uncounted absentee ballots were at their polling place on election day, except for the incorrectly sorted Ward 68 ballot that was in the sealed envelope with Ward 65 ballots and at West High School, the Ward 65 polling place. Each of these bags had tamper-evident seals bearing unique serial numbers to secure each envelope closed. No list of the number of sealed bags by ward was distributed to the Chief Inspectors of each polling location. To facilitate the transport of high numbers of ballots, carrier envelopes were sealed in larger green or red courier bags with a tamper-evident seal bearing a unique

serial number. To facilitate the transport of absentee ballots, absentee ballot carrier envelopes are locked and sealed inside the tabulator for delivery to the polling place. If a ward has more carrier envelopes than will fit inside the tabulator, courier bags are placed next to the tabulator inside the red security cages that are used to deliver election equipment to each polling location. Each ward had a list of absentee ballots and whether they were returned prior to Election Day.

The carrier bags containing the sealed envelopes containing these absentee ballots were apparently missed completely by the staff working at the polling location and there are no notations from the Inspector's Statement addressing them. There is a description on the Inspector's Statement for Ward 65 of the process for trying to reconcile the difference of 1 between tabulator count and voter slips issued. This explanation includes reference to going over the poll book and double checking all absentee envelopes. There is also no evidence of confirmation of comparing absentees processed at the polling site to the absentees received by the Clerk's Office prior to the election. There is no evidence that key Clerk's Office staff were involved or engaged in a direct way in directing either polling places operations on election day.

November 12-13, 2024

Dane County Canvass occurs on November 12. When Clerk's Office personnel emptied out the tabulator bins on Tuesday, November 12, hourly employee [REDACTED] discovered one sealed green courier bag in the Ward 65 tabulator bin. That bag was delivered to the Clerk's Office on Wednesday, November 13, and delivered to [REDACTED] and [REDACTED]

The courier bag seal #22119703 was broken and opened in the Clerk's Office by [REDACTED] on November 13th. Inside was one Absentee Ballot Carrier Envelope (seal #017034). The envelope was found to contain 68 unprocessed absentee ballots, 67 for Ward 65 and 1 for Ward 68 (mis-sorted). [REDACTED] stated that he sent a Microsoft Teams message to either Maribeth Witzel-Behl or Jim Verbick about the error but did not recall what direction he was given. He then went to the County Clerk's Office to report the issue. There he indicated he spoke to [REDACTED] or potentially another staff person, and that they gave "No instructions" in response to the news of discovered ballots. [REDACTED] indicated he then re-sealed the bag with seal #22117341 in anticipation of a possible recount.

Clerk Witzel-Behl indicated that on November 12, 2024, she instructed [REDACTED] and [REDACTED] to notify WEC if the numbers were off in this ward because these absentee ballots should have been counted. No record of this conversation was discovered and neither of the employees confirmed that this conversation occurred. Rather, both employees indicated "Teams" communication occurred between Clerk Maribeth Witzel-Behl or Jim Verbick and [REDACTED] and as a result [REDACTED] was going to notify the County of the discovery. [REDACTED] reported having limited memory of his conversation in the County Clerk's office related to this discovery, including who he spoke to. It should be noted that Dane County Clerk, [REDACTED] indicated affirmatively that he had no evidence anyone presented the issue to any of the staff in his office, nor to the Dane County Board of Canvassers.

During this period there is no evidence of communication from Witzel-Behl to staff on how to manage this situation, including anything that indicates staff were directed to notify WEC or contact the Dane County Clerk. A review of email communications indicates Witzel-Behl sent 77 emails between November 12 and November 15. None of those communications included any mention of the issue. These emails included direct exchanges with the Mayor's Office and the Dane County Clerk, but the issue of uncounted ballots was not addressed.

November 26-27

Clerk's Office staff doing reconciliation noticed the discrepancy between WisVote and tally from Ward 65. At this point, [REDACTED] [REDACTED] provided direction to staff from Witzel-Behl to open the carrier envelope of the uncounted ballots and assign voter slip numbers to them, keep them sealed, and record them as having participated in the election. [REDACTED] provided this direction via email to [REDACTED] [REDACTED] [REDACTED] and [REDACTED] on November 27 at 8:28 AM. There is no additional evidence of direction provided by Witzel-Behl and Witzel-Behl indicated she provided no direction during this timeframe.

[REDACTED] [REDACTED] email read in relevant part, "Also, Maribeth replied re: the Ward 65 debacle. She would like us to open the carrier envelope of unprocessed absentees. Because these are unique (in that they were properly and timely delivered but negligently unprocessed), she wants us to assign voter slip numbers to them, keep them sealed, and record them as having participated absentee. We can then write the novella in the comments section of the reconciliation page as to why there are so many fewer ballots than participations."

It should be noted that in discussion Clerk Witzel-Behl indicated she was not aware there were votes that were uncounted in any of the three wards (56, 65, or 68), until the week of December 10, and that she provided no direction to [REDACTED] [REDACTED] or any other staff that they should assign voter slip numbers to them, keep them sealed, and record them as having participated in the election in WisVote.

November 29

Statewide Canvass is conducted by WEC Commission Chair Jacobs. WEC is not aware of the 193 uncounted ballots, therefore all ballots remain uncounted.

December 2-4

During the reconciliation process for Ward 56, Clerk's Office personnel [REDACTED] [REDACTED] noticed that there were many outstanding returned absentee ballots. When checking the used certificate envelopes, Clerk's Office personnel found that one of the courier bags for this ward was still sealed (Seal #21183883). Breaking this seal revealed two sealed absentee carrier envelopes (Seal #17142 and #029057). Upon opening, #17142 contained 51 unprocessed absentee ballots and #029057 contained 74 unprocessed absentee ballots, for a total of 125 unprocessed absentee ballots.

On Monday December 3, Clerk's Office personnel began reconciling voter participation for Ward 56. As part of this process, they issued a voter number to each of the uncounted ballots and then recorded the voter as having participated in the election in WisVote like they had done in Ward 65. The hourly staff doing this were doing so based on the email from [REDACTED] [REDACTED] relaying the direction of Clerk Witzel-Behl. During this timeframe there is no additional evidence of Witzel-Behl being involved in processing, or providing direction on these ballots.

December 10-13

Clerk Witzel-Behl also indicates that during the week of December 10 she had a conversation with Deputy Clerk Jim Verbick, who told her that there were a number of ballots (though, not how many ballots) that had not been counted on election night and that the WEC had been notified. Deputy Chief Jim Verbick indicates he had no such conversation.

Clerk Witzel-Behl further indicated she did not know it was a significant number of ballots that were uncounted until December 18, but describes a conversation she had with one of the Chief Inspectors (56 or 65) where they discussed the absentee ballots, and that the Chief Inspector was apologetic she had not discovered the “bag of ballots.”

December 18-19

On December 18, [REDACTED] [REDACTED] emailed [REDACTED] [REDACTED] and copied [REDACTED] [REDACTED] Maribeth Witzel-Behl, Jim Verbick, [REDACTED] [REDACTED] and [REDACTED] regarding Ward 56 and 65 reconciliation issues. He indicated that that he and [REDACTED] had recorded the voters whose ballots were not counted as having participated in the election based on the direction he received from [REDACTED] [REDACTED]. He indicated that WEC would need to be contacted to override these Ward counts. [REDACTED] sent the request to WEC staff at 3:14 PM on December 18. Sarah Statz, an IT Project Manager at WEC, responded at 3:21 PM asking if the Municipal Board of Canvassers had reconvened and counted the ballots prior to the County doing its canvass. [REDACTED] responded at 3:22 PM that this was not the case as the ballots were found after the County Canvass. At 3:36 PM Riley Willman, Elections Supervisor at WEC, emailed [REDACTED] Witzel-Behl, and City Attorney Haas asking if they would be available to meet the next day to discuss. This email [REDACTED] led to City Attorney Haas getting additional information from WEC, which was the first he had heard of the issue. He subsequently notified the Mayor’s Office of the issue, who had not been notified prior to this date.

During these two days Witzel-Behl sent 23 emails, of which 2 were relevant to this matter. One indicated in response to the request by WEC to meet at 1PM on the 19 that she could “meet at 1 if we are done by 1:30.” The second was what appears to be a joking email sent to a staff member on December 19 at 9:33 AM in response to an email from the staff member highlighting a typo in a communication to chief inspectors related to counting absentees at the polls. In response she indicated, “Must have been thinking about the two polling places that didn’t even open some of their packs of absentees to count them.”

Investigative Fact Finding:

Except where noted above, all witnesses’ accounts of what occurred were consistent, with the exclusion of the disagreement between [REDACTED] [REDACTED] and [REDACTED] [REDACTED] related to whether or not a conversation was had between [REDACTED] [REDACTED] and Dane County Clerk’s Office personnel on November 12 about the uncounted ballots.

However, Clerk Witzel-Behl’s account of what occurred differed significantly and was inconsistent with all other witnesses. Significant differences included:

1. Whether Dane County was willing to count ballots at the Dane County Canvass for erroneously rejected/uncounted ballots on election day.

- a. Clerk Witzel-Behl indicated there was a “fifty-fifty” chance that these ballots would have been counted though she had stated in the past to other staff the general predisposition of the County was that they would not count other uncounted ballots. She did not provide any specific policy or guidance she had received as to why they were unlikely to count ballots that were not processed on election day.
 - b. Dane County Clerk ██████ indicated that previous instances where the County had not counted ballots were in very different fact patterns, especially remembering a case where a single ballot was not properly delivered to the polling place by 8pm on election day. By state law, this would be the appropriate disposition for a ballot received after 8pm. ██████ indicated that he has always maintained a desire to ensure that all eligible and legal votes are counted in an election. He also indicated that, *“The frustrating part of this whole situation is that a fix allowing at least some of the ballots to be counted was pretty simple – a short Madison Municipal Board of Canvass meeting where the ballots are opened and counted, with the updated numbers transmitted to the county to validate. The new results could have then been transmitted to the state. That could have happened right up until the State certified the election.”* According to McDonnell, this ‘fix’ could not be implemented because his office was never notified of the uncounted ballots.
 - c. According to City Clerk’s Office staff there was a “general understanding,” that the City Clerk’s position was that the Dane County Clerk would not count ballots after election day unless there was a recount. While some staff disagreed with this position, they were all uniform in their belief that it was an informal office policy set by Clerk Witzel-Behl.
2. Whether Clerk Witzel-Behl was notified that there were uncounted ballots prior to the week of December 10, 2025.
 - a. Clerk Witzel-Behl indicated she did not know there were uncounted ballots prior to the Week of December 10, 2024, when she heard there was a “bag” of ballots that had not been counted in the election.
 - b. Staff indicated they believed she was notified on November 12, 2024, and that staff were provided direction from her related to the uncounted ballots on November 27, 2024.
 3. Whether Clerk Witzel-Behl directed two staff to contact WEC on November 12, 2024.
 - a. Clerk Witzel-Behl indicated she directed ██████ and ██████ verbally to contact WEC “if” there was a discrepancy as a part of the reconciliation process.
 - b. Both ██████ and ██████ indicated Clerk Witzel-Behl never directed them to contact WEC at any point.
 4. Whether Clerk Witzel-Behl directed staff to assign voter numbers, record those numbers in the poll books, and record voters as having participated in the WisVote system.
 - a. Clerk Witzel-Behl indicated she had not, at any time, directed any of her staff to assign voter numbers to the uncounted ballots in any of the wards (56, 65, and 68), record those numbers in the poll books, and/or log them as participated in the election in WisVote.
 - b. ██████ indicated he had communication on November 26 or 27 related to the uncounted ballots and that Clerk Witzel-Behl had directed him to assign voter numbers to the uncounted ballots in any of the wards (56, 65, and 68), record those numbers in the poll books, and log them as participated in the election in WisVote.
 - c. ██████ had a contemporaneous email instruction to ██████ and ██████ that indicated in part, *“Also, Maribeth replied re: the Ward 65 debacle. She would like*

us to open the carrier envelope of unprocessed absentees. Because these are unique (in that they were properly and timely delivered but negligently unprocessed), she wants us to assign voter slip numbers to them, keep them sealed, and record them as having participated absentee. We can then write the novella in the comments section of the reconciliation page as to why there are so many fewer ballots than participations."

5. Whether she knew there was a significant number of ballots that were uncounted prior to the meeting on December 18, 2024.
 - a. On multiple occasions in the interview with Clerk Witzel-Behl, she indicated she had no knowledge of a "significant number" of ballots that were uncounted from the election until the meeting with WEC on December 18, 2024.
 - b. When asked what a "significant" number of uncounted ballots would be, Clerk Witzel-Behl indicated in her interview that it would be somewhere around "10 ballots."
 - c. Later in the interview, Clerk Witzel-Behl indicated she had a conversation about a "bag" of ballots (typically a bag of ballots will contain over 30 ballots) with one of the election clerks in the week of December 10, 2024.
 - d. There is also evidence of her giving direction of what to do with the ballots on November 27, 2024.
6. Whether staff would normally contact WEC related to an issue of this nature and magnitude.
 - a. Several staff indicated they do not contact WEC related to ballot issues as a normal course of their duties.
 - b. Clerk Witzel-Behl indicated these same staff would normally contact WEC related to ballot issues as a normal course of their duties.
7. Whether she had been told that WEC had been contacted in her meeting with Deputy Jim Verbick on December 10, 2024.
 - a. Clerk Witzel-Behl indicated that she had a conversation with Deputy Clerk Jim Verbick on or around December 10, 2024, and that in that conversation he indicated that WEC had been contacted related to the uncounted ballot issue.
 - b. Deputy Clerk Verbick indicated that he, "*had no conversations about this issue at all*" with Clerk Witzel-Behl.
8. Whether emails or written instructions are frequently used as formal communication related to key processes and issues in the Clerk's Office.
 - a. Clerk Witzel-Behl stated she would always use email communication related to significant issues and would only use Teams to communicate about smaller questions/issues.
 - b. All staff indicated that Teams is used prominently to the exclusion of other communication vehicles to relay policy, to provide direction, and to answer smaller questions.

In addition to these disparities, the following notable responses were consistent amongst all staff:

1. Clerk Witzel-Behl never inquired about the nature or status of uncounted ballots after being notified of the issue on November 12, 2024.
2. The number of ballots that were uncounted would be considered a significant issue for all staff involved and would be a serious issue requiring remediation.
3. Clerk Witzel-Behl provided no written direction related to what to do with the ballots.
4. Clerk Witzel-Behl gave no feedback to staff related to whether their actions were appropriate after meeting with WEC.

5. Clerk Witzel-Behl never notified the WEC, the Dane County Clerk, the City Attorney, or the Mayor's Office about the issue.

Conclusions

Sustained/Not sustained Violations:

Investigators were able to determine the following:

1. Was APM 2-33 violated in the failure to process ballots for the 2024 election?

Yes. While the mistake in getting the ballots counted on election night appears to have been primarily a process and training failure that could have been avoided, there were multiple opportunities for the ballots to have subsequently been counted after election day. The failure to do so was a dereliction of duties on the part of the City Clerk. Specifically:

- *A.2. Employees will meet performance expectations, and will efficiently and effectively carry out their duties during work hours or while on work premises...*
- *A.3. Employees will complete all assignments and duties in a timely manner, as directed by supervisors, managers, leadworkers, or other authorized employees and will not engage in insubordinate behavior.*
- *A.4. Employees will perform assignments and duties with attention, care, and efficiency...*
- *A.5. Employees will provide accurate and complete information whenever required by their position or as requested by an authorized person.*
- *A.7. Employees will be truthful and accurately record all required information, including but not limited to, timesheets, payroll, purchasing card transactions, and/or itineraries.*
- *C.13. Employees will conduct themselves in a manner that does not prevent themselves or others from adequately carrying out their duties and functions.*
- *D.1. Employees will be effective stewards of City materials and equipment...*

Clerk Witzel-Behl violated these requirements through conduct which failed to:

- Demonstrate attention, care, and efficiency in the performance of duties related to the uncounted ballots to mitigate an unprecedented failure of the election process.
- Prepare the Clerk's Office with procedures to identify and address significant issues in the administration of an election.
- Provide and maintain clear policy direction related to uncounted ballots and processes to allow every legal vote to count.
- Effectively hire, train, and manage employees who independently administer in person absentee voting, including the management of ballots and equipment.
- Provide clear direction to Clerk's Office staff related to the processing of erroneously uncounted ballots.
- Inform WEC or the Dane County Clerk directly of the erroneously uncounted ballots.
- Communicate with the Mayor's Office and Office of the City Attorney related to the uncounted ballots.

- Provide clear documentation and written communication related to direction for staff on election processes and issues.
- Properly follow-up with City staff related to their actions after the ballots were discovered.
- Respond accurately and consistently with other witnesses to investigative questions related to this investigation.

2. Was APM 2-33 violated in the failure to communicate to other internal City stakeholders about the failure to process ballots for the 2024 election?

Yes. Specifically,

- *A.2. Employees will meet performance expectations, and will efficiently and effectively carry out their duties during work hours or while on work premises...*
- *A.3. Employees will complete all assignments and duties in a timely manner, as directed by supervisors, managers, leadworkers, or other authorized employees and will not engage in insubordinate behavior.*
- *A.4. Employees will perform assignments and duties with attention, care, and efficiency...*
- *C.13. Employees will conduct themselves in a manner that does not prevent themselves or others from adequately carrying out their duties and functions.*

Given the seriousness of the issue, Clerk Witzel-Behl violated these requirements through failure to directly notify the Dane County Clerk, failure to notify the City Attorney, and failure to notify anyone in the Mayor's Office related to this issue.

3. Was APM 2-33 violated in the failure to appropriately notify the State of the failure to process ballots?

Yes. Specifically,

- *A.2. Employees will meet performance expectations, and will efficiently and effectively carry out their duties during work hours or while on work premises...*
- *A.3. Employees will complete all assignments and duties in a timely manner, as directed by supervisors, managers, leadworkers, or other authorized employees and will not engage in insubordinate behavior.*
- *A.4. Employees will perform assignments and duties with attention, care, and efficiency...*
- *C.13. Employees will conduct themselves in a manner that does not prevent themselves or others from adequately carrying out their duties and functions.*

Given the seriousness of the issue, Clerk Witzel-Behl violated these requirements through failure to notify WEC directly of the failure to process ballots.

4. Were any State Laws or ordinances violated in the processing of ballots for the 2024 November election?

None Identified. Investigators were unable to find any violations of state law in the processing of ballots for the 2024 November election. However, it should be noted that a separate investigation is

being conducted by WEC, who are election law experts, and who may find potential violations of State law.

5. What core process or performance issues contributed to 193 ballots being left unprocessed?

The scale and scope of absentee processing has increased over the past five years. This has led to significant new processes and challenges. The Clerk's Office staff has worked diligently to provide processes that maintain a secure and transparent election system while also affording individual voters the ability to vote absentee in multiple ways. Though no process can be perfect, that is the aim of an election, and it is apparent that some of the processes utilized during this timeframe, including in the November 2024 election, were inadequate to ensure absentee ballots that should be counted, would be counted.

The first significant contributing factor is the lack of a complete, ward-specific absentee ballot carrier bag/envelope seal log at the polling place. Had this existed, it would have been far more obvious to the Chief Inspector that bags or envelopes with absentees received by the Clerk existed and that if they had not been received or processed, this should get immediate attention on election night. An additional gap in procedures is that there was no data reconciliation process as it relates to processing absentees as part of Closing the Polls.

There are multiple potential ways this could be done to greatly reduce the potential of absentee ballots being missed. The printing of the poll books nearly two weeks before Election Day likely contributed to the problem of not identifying the issue at the polling places on election day. Had they been printed after the absentees were scanned into WisVote, the poll books would have included watermarks indicating "absentee returned." This would also significantly reduce the likelihood of errors, omissions, and mistakes from the highlighting method of names in the poll book when an absentee was issued as well as returned.

The lack of clearly addressing the use of two different types of courier bags for absentees delivered to the polling places during the training for Chief Inspectors potentially contributed to the issue of the ballots being missed. The training for Chief Inspectors is almost always done by Clerk Witzel-Behl and includes all Chief Inspectors participating in the training. The opportunity to highlight and address any changes that had been made to how live and valid absentee ballots were being handled could have been addressed at this training.

After election day, there were additional process options that could have made it far more likely that the uncounted absentees would be identified and still have them counted in the election. One opportunity would be for an expedited reconciliation process comparing absentees issued, returned, and voted by ward by Clerk's office staff prior to the Municipal Board of Canvass (MBOC) and the County Board of Canvass (CBOC). If this information were part of what was prepared for the canvassing process, it is highly likely this would have been noticed and could have been rectified.

6. Did City Clerk Maribeth Witzel-Behl breach her contract related to performance of duties as the Madison City Clerk?

Yes. This significant issue related to the performance of her duties violates the Duties and Responsibilities section of her contract, as articulated above, especially as it relates to:

- *Plan and direct all City elections and supervise the registration of voters. Hire, train, and manage election officials. Staff and equip each polling location to minimize voter lines. Ensure each polling location has the training and tools needed to make voting accessible for voters with disabilities. Provide accessible and equitable voting options throughout the City for in-person absentee voting.*
- *Hire, train and manage the hourly employees who independently administer in-person absentee voting. Manage the security of election equipment, ballots, data, and results. Appoint, train, and serve on the municipal Board of Canvassers to certify municipal election results. Advise and support the Board of Canvassers for the Madison Metropolitan School District.*
- *Provide court testimony, affidavits, and declarations for state and federal court cases regarding voting rights. Provide technical advice and feedback to the Wisconsin Election Commission. Provide training and guidance to election administrators in Wisconsin and in other states. Advise national organizations on election best practices.*
- *Develop and maintain a high level of awareness of related professional standards and the effective integration of evolving technologies and methods. Maintain effective cooperative relationships both internally and with other governmental agencies.*
- *Direct the general administration of the department to include the development and implementation of the departmental budget, personnel administration, and the integration of racial equity and social justice into all aspects of the agency's work, etc.*
- *Provide related high-level expertise and consultation to the Mayor and Common Council. Represent the interests of the organization in a wide variety of internal and external settings.*
- *Prepare and present relevant written and oral reports. Perform and/or oversee special studies. Maintain necessary records, files, and statistics.*

Clerk Witzel-Behl violated these contract requirements through conduct which failed to:

- Demonstrate attention, care, and efficiency in the performance of duties related to the uncounted ballots to mitigate an unprecedented failure of the election process.
- Prepare the Clerk's Office with procedures to identify and address significant issues in the administration of an election.
- Effectively hire, train, and manage employees who independently administer in person absentee voting, including the management of ballots and equipment.
- Provide and maintain clear policy direction related to uncounted ballots and processes to allow every legal vote to count.
- Provide clear direction to Clerk's Office staff related to the processing of erroneously uncounted ballots.
- Inform WEC or the Dane County Clerk directly of the erroneously uncounted ballots.
- Communicate with the Mayor's Office and Office of the City Attorney related to the uncounted ballots.

- Provide clear documentation and written communication related to direction for staff on election processes and issues.
- Properly follow-up with City staff related to their actions after the ballots were discovered.
- Respond accurately and consistently with other witnesses to investigative questions related to this investigation.

7. In addition to the above sustained violations, the City also would add multiple violations of APM 2-33 related to accuracy in reporting which requires: *Employees will be truthful and accurately record all required information...*

As noted in the findings, given the consistency of reporting related to all other staff in the Clerk's Office excluding Clerk Witzel-Behl, there is significant evidence to support the contention that her responses to questions given in interviews related to this investigation, her responses to WEC, information she provided to the Office of the City Attorney and information she provided to the Mayor's Office deviated significantly from, and was inconsistent with, the recall of all other interviewees.

Conclusions/Recommendations:

Significant violations of APM 2-33 and breach of contract were identified for Clerk Witzel-Behl in this investigation.

No other employees in the Clerk's office were identified as violating APM 2-33 as it relates to the inappropriately uncounted ballots in wards 56, 65, and 68. While errors were made by individual employees, these errors all appeared to be due to failures in leadership, process, and direction. Consequently, no further corrective/disciplinary action is recommended for other Clerk's Office staff. Rather, these staff appear to be consistently committed to the City vision and goal of making each legal vote count in the City of Madison.

Multiple recommendations have been provided by the Wisconsin Elections Commission and may mirror some of the investigators' recommendations. These investigators recommend deference to WEC recommendations, with special attention to the following:

1. Ensure poll books are printed as late as possible in the process to both alleviate burdensome work at the polls on election day and to ensure a more consistent approach that could highlight this issue happening again.
2. Establishment of a process of expedited reconciliation of absentee ballots issued, received, and tabulated on election day with an emphasis of that process empowering and training Chief Inspectors on a process that allows this to be identified at the polling site on election day.
3. Ensure all sealed and secured ballot bags and absentee ballot envelopes have their seal numbers recorded and provided for each ward at each polling location.
4. Establish a more thorough and clear training plan for Chief Inspector's leading up to an election that highlights any new or unique situations they are likely to encounter in administering the coming election.
5. Establish a process to include information on absentee ballot processing, including those issued, received, and tabulated on a by-ward basis as a part of the canvass process.

6. Ensure that all staff are aware of what constitutes a major and significant issue within the operations of the office and elections and establishing clear expectations and accountability as it relates to how these issues will be reported and how leadership will address them in a timely, open, and clear manner.
7. Establish clear communication protocol in the office including what issues should be well documented through email or written policy and those that can be resolved through Teams discussions.
8. Establish clear leadership structures and accountability for staff. While all staff in the Clerk's office provide leadership in a variety of ways, key process leaders were left out of critical conversations related to this issue, delaying the contact to WEC by many weeks.