

# Wisconsin's August 11 Partisan Primary Election

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Abstract:

Following several challenges in administering its spring presidential primary, Wisconsin held a partisan primary election with greater success in mid-August. This memo provides a review of the state's electoral infrastructure for both absentee and in-person voting amidst the coronavirus pandemic. A critical battleground state, Wisconsin will be closely watched as it continues to navigate remaining obstacles and litigation before November 2020.

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# Introduction

Following [the April 7 primary](#), which attracted significant national attention for being one of the country's first elections amid COVID-19 pandemic conditions, Wisconsin held its second statewide primary elections on August 11, 2020. In four months, critical progress was made on previous challenges to ensuring the safety of in-person voting and the accessibility of voting by mail, thus leading officials to view the August primary as "[a good test run](#)" for November.

However, turnout is estimated to be three to four times higher in the fall, and challenges remain with regard to poll worker recruitment, absentee ballot tracking, and pending litigation. This report evaluates the state's election readiness for November in terms of mail-in voting, absentee voting procedures, and recent election litigation.

## I. Overview of Key Election Facts

### A. Elections in Play

On August 11, voters elected the state's major party nominees to the U.S. House of Representatives for the 117th Congress. Wisconsin has eight congressional districts and is represented by five Republicans and three Democrats.

On November 3, Wisconsin will hold the general and presidential election. All of the state's eight congressional seats are up for election, as well as sixteen seats in the Wisconsin Senate and all seats in the Wisconsin Assembly. Neither of Wisconsin's U.S. Senate seats are up for election in 2020.

### B. Review of the April 2020 Primary

On April 7, 2020, Wisconsin held its first pandemic-era election for state nonpartisan, local, and judicial offices, as well as its presidential primary. In the preceding weeks, the online voter registration and absentee voting deadlines were both extended on account of the spread of the COVID-19 pandemic. At the request of the Wisconsin Elections Commission (WEC), a federal judge ordered officials to ensure that results would not be released [until April 13](#), after the deadline to return absentee ballots had passed.

After the state legislature decided not to change the plan for the primary by legislation, Governor Tony Evers unsuccessfully tried to move the primary date via [an executive order](#). On April 6, the state Supreme Court voted 4 to 2 to enjoin the order, which would have postponed in-person voting and extended the receipt deadline for absentee ballots to be counted. On the same day, [the U.S. Supreme Court](#) stayed a U.S. district court order that had extended the absentee voting deadline beyond Election Day, [ruling](#) instead that absentee ballots would be counted only if they were returned in-person by 8 p.m. on April 7, or postmarked on or before April 7 and received by 4 p.m. on April 13.

Following the [court rulings](#), Wisconsin saw a severe poll worker shortage, reduction of polling places, and [long lines](#) for in-person voting, as well as a backlog of absentee ballot requests and complaints about [missing or nullified mail ballots](#). Of the 1.55 million ballots cast in the April election, 25.4% were cast in person, 61.8% were absentee ballots cast by mail and 12.6% were absentee “early” votes cast in the clerk’s office or at a vote center before Election Day (see below). After state election officials served a record number of absentee ballot requests in April, the WEC released [a report](#) documenting the logistical and technical challenges that election officials faced in fulfilling the surge in demand.

A [new study](#) from University of Hong Kong and Stanford University could not conclude that in-person voting on April 7 increased the spread of COVID-19 in Wisconsin. This study refutes an earlier UW-Oshkosh and Ball State [study](#) that found that counties with more in-person voters per voting location had significantly higher rates of COVID-19 transmission after the election than counties with lower in-person voter density.

### C. The August 2020 Primary

According to the WEC, turnout for state partisan primaries (which are open primaries allowing any voter, regardless of party affiliation, to vote in any party’s primary) typically ranges between [15% and 20% of voting-age adults](#), compared to approximately 70% in a general election. For example, in August 2016, with no statewide primaries, turnout was [645,619 voters](#) (14% of the voting-age population), while in August 2018, when there were statewide primaries, turnout reached [1,041,837 voters](#) (23% of the voting-age population).

The WEC has not yet published its estimate of the total turnout for the August 2020 primary, because there were no statewide primaries on the ballot to indicate the total number of ballots cast, and statistical reports used for final turnout numbers take time to be filed by clerks. WEC Administrator Meagan Wolfe [noted](#), “August partisan primaries are typically low-turnout elections. We did not receive any reports from clerks of higher turnout that would contradict that experience.”

Statewide, the WEC [reported](#) that 897,916 ballots were mailed and 712,854 ballots were returned for the August partisan primary. In comparison, there were [819,316 absentee ballots](#) cast in the 2016 U.S. presidential election and [1,159,800 absentee ballots](#) cast in the April 2020 presidential primary.

As a result of [a plan](#) approved by the WEC after the commission received federal funding for election safety measures, [Wisconsin](#) joined seven other U.S states in which every registered voter will automatically be mailed an application to request an absentee ballot for the general election. As of September 1, Wisconsin has slightly [over 3,476,000 active registered voters](#). Although the state remains a request-based absentee system, under [Wis. Stat. § 6.86 \(1\)\(ac\)](#), it is among 32 other states in which voters are eligible to cast an absentee ballot without excuse.

## II. Election Administration Context

### A. Vote by Mail

Wisconsin faced three major challenges with regard to mail voting in the August 11 primary: 1) the process of mailing and returning ballots, 2) high numbers of improperly completed ballots, and 3) the shortage of personnel to process ballots in a prompt manner.

#### **Mailing Process:**

The inconsistent delivery of mail-in ballots in the April elections was a major setback to normalizing vote-by-mail. [Many voters](#) lacked the confidence that they would receive their ballots on time, find an eligible witness (as required by state law), or have their ballots received by city clerks on time, leading them to pursue the riskier, yet more reliable, option of in-person voting. As a result, the WEC implemented a handful of solutions for the August 11 primary, in order to strengthen their mail processes and ensure accountability.

According to the [Milwaukee Journal Sentinel](#), [USPS Intelligent Mail Barcodes \(IMB\)](#) were printed onto outgoing ballots to enable voters to track the status of their respective ballots and inform election officials promptly in the event of any logistical hiccup. However, the digital infrastructure behind the system still suffered from a few glitches, inadvertently excluding an estimated 30,000 ballots.

The state also made [significant revisions](#) to the [My Vote website](#), a site from which voters can apply for absentee ballots. The site was recently upgraded to indicate whether blank ballots had been sent to voters in the mail and whether completed ballots were received by a county clerk. The website appears to have operated with minimal problems during the August elections.

Certain cities, like Milwaukee, [severed](#) ties with third-party mail carriers that previously did not provide transparency about the location of voters' ballots. The ongoing partnership between the WEC and USPS may prove to be more reliable, yet recent issues – such as [a controversy](#) regarding tubs of ballots left in USPS mailing centers uncounted – do raise some concern. Voters were also encouraged to drop off their absentee ballots at polling places, through curbside voting, and to take advantage of early voting periods.

### **Improperly completed ballots:**

In the April elections, [over 23,000 absentee ballots](#) were invalidated due to the voters or their witnesses failing to sign an absentee ballot envelope. This figure is comparable to President Trump's 2016 margin of victory (22,748 votes) in the state. While the August numbers have yet to be released, ensuring that voters properly fill out their absentee ballots during the general election is imperative for a battleground state like Wisconsin, as the [high rejection rates](#) may spell trouble for November.

The WEC has launched a public relations campaign [to provide better instructions](#) on filling out a ballot, fulfilling the witness requirement, correcting mistakes, and returning the ballot once completed. Information packets [describing](#) the entire vote-by-mail process were sent to millions of Wisconsin voters. To reduce these kinds of errors in November, ongoing voter education and strong communication between election officials and voters will be crucial.

### **The shortage of personnel to process ballots:**

The April elections saw shortages of poll workers across the state, leading to a major reduction in the number of polling places, overcrowding of the remaining polling places and delayed tabulation of absentee ballots. Many jurisdictions had been forced to hire and train temporary staff, develop new procedures, and work long nights and weekends. The WEC likewise hired short-term staff, expanded technical systems, and worked around the clock. Having a sufficient number of poll workers in November will be important not just for polling places, but also for reliably and quickly counting absentee ballots. This need is only going to grow, with turnout expected to be far higher in November.

While WMTV NBC15 [reported](#) a high turnout of college-aged Wisconsinites amongst newly recruited poll workers in August, there remained a shortage of [700 poll workers](#). The state therefore

deployed 675 National Guard members to assist in election administration, far fewer than the 2,400 [who were mobilized](#) in April. With rates of vote-by-mail likely to skyrocket in the general election, the WEC and counties will need to conduct aggressive hiring campaigns to ensure that polling places across the state are adequately staffed, or else the state is likely to have to call again on the National Guard.

## B. In-Person Voting

For the August 11 primary, the state sought to mitigate two key challenges with in-person voting that the April primary had exposed: 1) improving accessibility, and 2) ensuring the safety of both voters and poll workers.

### **Accessibility:**

As compared with the April election, an increase in the number of open polling stations, combined with a higher percentage of absentee voting and lower turnout allowed Wisconsin to better meet the demand for in-person voting for the August 11 primary. Counties that had struggled in the spring were able to organize the resources and staffing numbers necessary to open more stations. As a result, Wisconsin saw a significantly more efficient in-person process in August.

While Milwaukee had only five of its typical 180 polling sites open in April, the city [operated](#) 168 in August (roughly 95% of its regular sites). Milwaukee Elections Commission executive director Claire Woodall-Vogg noted that extra time ahead of this election was "the biggest factor" in [securing](#) the additional sites: "The biggest difference between April 7 and August 11 is that we have had the time to make in-person voting safe for election workers and voters." Green Bay recruited 280 new poll workers over the summer and [increased its voting station count](#) from two to 17. Madison [added](#) 20 new polling places for a total of 86. In Madison, one in-person voter said, "Every other time it's taken so long, the place is just packed all day. This time it took five seconds."

### **Safety:**

Counties statewide implemented standard safety procedures at in-person voting sites. The WEC designed COVID-19 [specific training sessions](#) for poll workers and election officials. Poll workers were instructed to disinfect clipboards, voting booths, and other high-touch surfaces after use. Plexiglass barriers separated voters from workers. Polling sites [were prepared](#) with hand sanitizing stations and painter's tape on the floor to indicate how voters should social distance. Most districts employed single-use pens, and some allowed voters to bring their own. In Milwaukee, workers were also [instructed](#) to fill out a health checklist to ensure no one was symptomatic.

Although strongly encouraged to wear masks, voters [could not be barred](#) from voting if they decided not to do so. Voters were not required to remove their masks to verify their identity, unless determined necessary by the poll worker. All poll workers were required to wear masks and were provided with additional personal protective equipment. "I don't think that our in-person at the polls voting could have gone any better than it did," Woodall-Vogg [said](#) about the August election. "Our election workers felt safe, our voters felt safe."

### C. Litigation

While several eleventh-hour court rulings—including a pair of [emergency Supreme Court](#) decisions—threw the administration of April's election into chaos, the August primary was largely free of last-minute rule changes.

#### **Seventh Circuit ruling:**

The most significant alterations to the August primary rules came more than a month before the election. On June 29, 2020, the Seventh Circuit Court of Appeals issued a [long-awaited decision](#) on over a dozen election provisions. Specifically, a unanimous panel of the appellate court:

- Upheld a reduction of the time period for early in-person absentee voting from a six-week period prior to Election Day to a two-week period;
- Upheld a requirement that voters reside in a district for 28 days (instead of the previous 10 days) to vote for offices other than President and Vice President;
- Upheld a prohibition on the use of email and fax to send absentee ballots to voters (except for military and overseas voters);
- Upheld the state's voter ID requirement;
- Ruled that expired student IDs were a permissible form of voter ID at the polls, if the voter can also provide proof of enrollment; and
- Ruled that certified housing lists provided by schools did not have to include citizenship status to serve as proof of enrollment.

The ruling was [largely viewed](#) as favorable to the Republican-controlled legislature, which had passed a host of voting restrictions in 2011. In upholding many of the restrictions, Judge Frank Easterbrook wrote that "Wisconsin has lots of rules that make voting easier," noting that those rules "matter when assessing challenges to a handful of rules that make voting harder."

Shortly after the ruling, the WEC [issued](#) a memo to local election administrators outlining its major holdings and promising further “comprehensive guidance” on its full impact. The WEC also held a [webinar](#) for clerks on the changes.

### **Pending litigation:**

Though the August primary was relatively unaffected by last-minute litigation, [several pending cases](#) have the potential to disrupt the general election. One case consolidated [several lawsuits](#) (including *DNC v. Bostelmann*, *Edwards v. Vos*, *Lewis v. Knudson*, *Swenson v. Bostelmann*, and *Gear v. Knudson*) that arose around the April primary which challenged a number of existing voting restrictions as dangerous and impracticable during the COVID-19 pandemic and mandated more safety precautions at the polls. At a hearing held in early August, the judge acknowledged that the likely onslaught of absentee ballots constituted a “sea change in voting,” but said he was not sure that the public health situation in November would necessitate all the changes requested.

Among other demands, the plaintiffs seek to:

- Lift the requirement that absentee ballots be signed by a witness and received by clerks by 8:00 PM on Election Day;
- Lift the requirements that voters include photo ID with their absentee ballot applications and proof of residence with their electronic and by-mail voter registrations;
- Require state elections officials to send absentee ballots to all voters registered as of September 30;
- Allow voters to download absentee ballots by fax or email;
- Lift the by-mail and electronic voter registration deadlines (currently October 14);
- Allow clerks to start verifying the validity of absentee ballots before Election Day, to give voters time to fix mistakes; and
- Force the state to hire more poll workers, set up drop boxes for absentee ballots, and expand drive-by voting opportunities.

Another pending case is a [challenge](#) brought by a conservative advocacy group seeking to purge up to 129,000 voters from the state voter rolls. The plaintiffs argue that the WEC is obliged under state law to remove voters from the rolls if they do not respond to a “movers mailing” within 30 days; currently, they are allowed to remain for two years. However, the Wisconsin Supreme Court is unlikely to rule on the case prior to the November election. On July 1, the court rejected a request by plaintiffs to speed up the case, holding that oral arguments would not occur until September 29 — just 34 days before the election. By then, Justice-elect Jill Karofsky — voted to the bench in the April



primary election — will have replaced Justice Daniel Kelly, shrinking the court’s conservative majority to 4-3.

On September 14, the Wisconsin Supreme Court ruled that the Green Party’s presidential candidate will not appear on the state’s ballot, meaning that election officials would not be forced to undertake a wholesale reprinting of thousands of ballots across the state. According to [the New York Times](#), “[m]ore than a million Wisconsin voters have already requested absentee ballots, and the prospect of an enormous reprinting would have affected every county and municipal election official in the state.”

#### D. Election Funding

The WEC has received [over \\$7.27 million](#) in federal CARES Act funding, designed to help cover unbudgeted expenses due to the pandemic. It has approved [a \\$4.1 million grant program](#) to help local officials address expenses such as postage, supplies, and envelopes, due to high demand for absentee ballots. All 1,850 Wisconsin municipal clerks are eligible to apply for the block grants and receive a base grant of \$200 plus \$1.10 per registered voter.

The WEC is also using the funds to send an informational mailer to approximately 2.7 million registered voters about their voting options for November: (1) absentee voting by mail, (2) early in-person at the clerk’s office, or (3) voting at the polls on Election Day. It will include an absentee ballot request form and a return envelope.

CARES Act Programs	Expense
Sub-Grants to Local Election Officials	\$4,126,528
Absentee Informational Mailer	Not more than \$2,252,035
Sanitation and PPE Supplies	Not more than \$500,000
WEC staff, development costs for USPS IMB, and reserve fund for April/May costs	Not more than \$400,000
<b>Total</b>	<b>\$7,278,563</b>

In addition, the Center for Tech and Civic Life agreed to fund the [Wisconsin Safe Voting Plan](#), which includes \$1.8 million to help “launch poll worker recruitment, training, and safety efforts.” Mayors from Wisconsin’s five largest cities (Milwaukee, Madison, Green Bay, Racine, and Kenosha) have [pooled together an additional \\$6.3 million](#). This funding will allow election

administrators to increase hazard pay for poll workers and to cover sanitation expenses for property owners that offer up their space to be used as a polling station. The plan also provides \$876,700 to “ensure safe and efficient election day administration.” This includes purchasing PPE, plexiglass dividers, disinfectant supplies, and hand sanitizing stations.

### III. Summary of State’s Readiness for November

For the November election, Wisconsin faces three sets of challenges. With respect to vote-by-mail procedures, the hope is that the November election will continue the successful trajectory established in August. Cooperation between local officials and the USPS will be critical for the timely and reliable mailing of ballots. The adoption of intelligent barcodes and improvement of the MyVote Wisconsin voter information website are steps in the right direction. Furthermore, as in all states, voter education will be critical to ensure voters avoid errors in filling out and mailing their absentee ballots. The state will also need to hire election workers to accommodate the unprecedented number of absentee ballots already requested for November. As of September 14, Wisconsin has received [over 1 million absentee ballot requests](#). WEC Administrator Meagan Wolfe [remarked](#), “We are...making it easier for clerks to process the higher volumes of absentee ballot requests we anticipate in future elections.”

Similarly, Wisconsin election officials will need to scale up efficient and safe in-person voting options and procedures for November. The Milwaukee Bucks recently [joined](#) several other NBA teams in receiving approval to turn their arena, Fiserv Forum, into a polling location. Funding available through the [Wisconsin Safe Voting Plan](#) and the [CARES Act](#) will be critical in poll worker recruitment efforts and acquiring necessary sanitation materials.

Finally, pending litigation has the potential to affect election rules up until election day. In fact, as the state had begun to mail out absentee ballots, the Wisconsin Supreme Court temporarily enjoined sending out the ballots in a case brought by the Green Party, which argued it was wrongfully excluded. The Court [reversed](#) course in a narrow 4 to 3 vote just three days later. But the spectre of disorder the last minute judicial action presented represents a cautionary tale for how the best laid plans of election officials can be disrupted by last-minute action by other branches of government.