

Primary Primers: Wisconsin's election shows that a pivot to absentee ballots is possible at short notice – though not without problems.



Last week Wisconsin held its presidential primary election alongside contests for the state Supreme Court and other local offices. [Wendy Scattergood](#) reports on controversies and lawsuits in the lead up to the vote as well as the difficulties posed by a rise in the use of absentee ballots in a social distancing election.

• This article is part of our [Primary Primers](#) series curated by Rob Ledger (Frankfurt Goethe University) and Peter Finn (Kingston University). Ahead of the 2020 election, this series explores key themes, ideas, concepts, procedures and events that shape, affect and define the US presidential primary process. If you are interested in contributing to the series contact (ledger@em.uni-frankfurt.de) or Peter Finn (p.finn@kingston.ac.uk).

Five days before Wisconsin's scheduled April 7th [election](#) – which included contests for the state's Supreme Court, local offices, and a referendum on victims' rights among others – a federal judge ordered that the absentee ballot return date be extended to April 13th. In addition, the judge said some absentee voters unable to have their ballots witnessed [did not need the witness](#). However, this ruling was overturned about 24 hours later. Those who may have submitted their absentee ballots within that window will not have had their votes counted.

The next day, the Friday before the Tuesday election, Democratic [Governor](#) Tony Evers called the state legislature into session and asked legislators to send all registered voters (except those who had already voted) absentee ballots by May 19, then delay the receiving of these ballots until May 26th. Over the following weekend, each house of the legislature met for mere minutes, refused to take up the Governor's request, and adjourned.

Then the following Monday, the day before the election, Governor Evers issued an [Executive Order](#) delaying the election until June 9th. Republican legislative leaders immediately filed suit in state court to negate the order. The Wisconsin Supreme Court ruled the same day in agreement with Republican legislative leaders, who argued that the Governor could not use his emergency powers to defy election statutes.

Also on the day before the election, the US Supreme Court heard an appeal of the federal judge's earlier ruling on absentee ballots. They [ordered](#) that absentee ballots must be received or postmarked on the day of the election, rather than received as is the normal procedure. The order to wait to release election results until April 13th remained intact from the earlier federal court ruling.

What went down on Election Day

Local public works departments built plexiglass barriers to protect poll workers, rounded up dozens of traffic cones and rolls duct tape to keep voters at least 6 feet apart. Local distilleries delivered bottles of 70 percent alcohol to be used as hand sanitizer. Many poll workers were issued with protective gear. Where localities requested them, members of the National Guard showed up to work the polls and help with absentee ballots. Most areas were able to open the majority or even all of their regular polling stations. Others consolidated in larger voting areas, such as school gyms, to allow for greater social distancing and to ensure veteran polling inspectors were at every polling place.

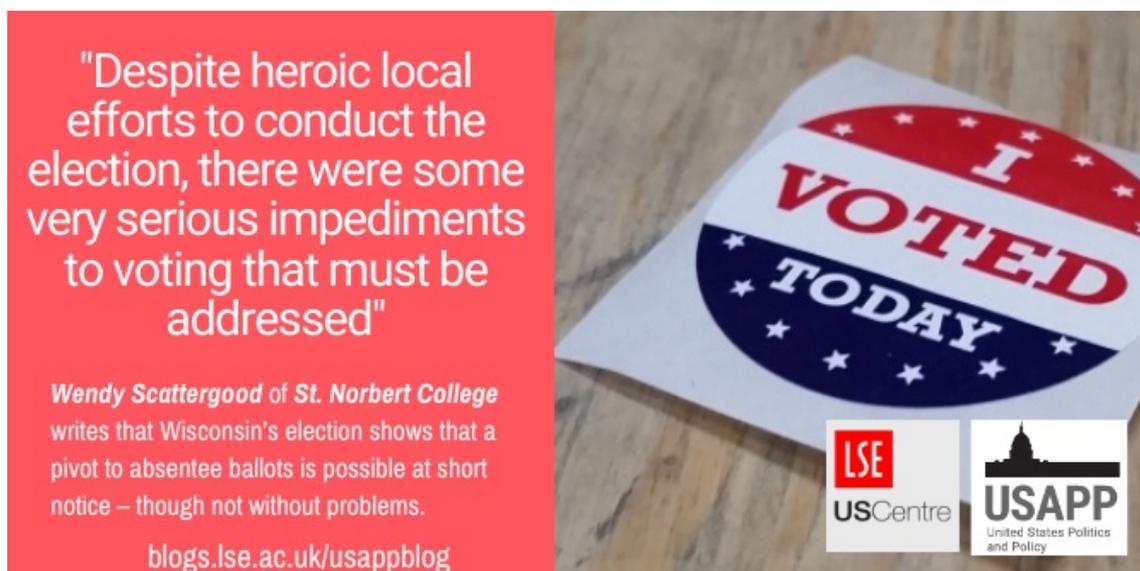
Reports from all over the state showed people adhering to requests for distancing and safe conduct in showing their identifications and filling out their ballots. Workers diligently wiped down surfaces and pens used to fill out ballots. At 8pm when the polls officially closed, many of these polling places had no one left in line, were able to fill out the necessary certifications and the voting machines were safely delivered back to the village and city halls to be locked down.

However in some areas, most notably Milwaukee and Green Bay, where there were severe poll worker shortages, the number of polling places were stripped to the bare minimum. In Milwaukee, a city that would normally have 180 polling places, now had 5. In Green Bay, where they would normally have 31 polling places, they now had 2. Lines were more than an hour in Milwaukee and [3-4 hours long in Green Bay](#). Due to the election statute which states that as long as you are in line by the 8pm closing time you will be allowed to vote, some poll workers and voters were still there at midnight. Complaints by the dozens were coming in from those who through work responsibilities or disability etc., were unable to vote due to these long lines and extreme circumstances.

Problems with absentee ballots

Poll workers had been hearing throughout the day that people had requested absentee ballots by the online deadline, but had never received them. The registered voter lists used by poll workers had been updated the night before the election and designated which voters had been issued absentee ballots and which voters' absentee ballots had been received. Those who were listed as "issued" but not "received" were allowed to vote in person. However, those with health issues and/or disabilities who were not able to vote in person, [were effectively disenfranchised](#).

The next day, hundreds of [undelivered absentee ballots](#) were discovered in several different Post Offices around the state. There was no immediate explanation. The Postal Service has been asked to investigate.



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In addition, as the absentee ballots were being received, many did not have postmarks or had only partial postmarks (e.g., had the month, but not the day, marked on the envelope). At least eight different kinds of problems with postmarks were reported. The [Wisconsin Elections Commission](#) met Friday, April 10th, and ruled that some absentee ballots with inadequate postmarks may be counted if the local board of canvass can determine, with guidance from the local post office, whether the ballot was sent on or prior to the election day of April 7th. Not helping matters was a [Zoombombing](#) that interrupted a Milwaukee Election Commission meeting.

On Monday, April 13th, ahead of election results being released, a group of [Milwaukee residents filed suit](#) in federal court arguing that the "fundamental unfairness of the Legislative Defendants' intentional act to force voters into an unreasonable, unfair, and unconstitutional choice between (a) exercising their fundamental right to vote in an in-person election during a pandemic; and (b) forgoing their right to vote in order to preserve their life and health and the lives and health of those close to them and the public overall".

As of Monday morning, April 13th, almost 186,000 ballots that had been reported sent had not been received. There could be many reasons for the discrepancy and some of those folks voted in person, but other issues with disenfranchisement due to ballots not being received (then not being able to vote in person due to work, disability, or health), or postmark issues are clearly part of this group. If any of the elections are close, these potential ballots could have made a difference. Lack of clear guidance and a statewide standard for determining which absentee ballots count and which do not, will undoubtedly lead to more lawsuits.

What about turnout?

Republicans have been previously accused of opposing mail-in ballots because it might mean lower turnout from their voters. However, an analysis by [Charles Franklin](#) in the *Milwaukee Journal Sentinel* shows a wide range of absentee voting across communities, including in Republican areas.

As of Monday night, with 93 percent of precincts reporting, over 1.4 million votes have been cast. With nearly 1.1 million absentee votes returned (about 86 percent of those sent), it shows the in-person voting rates were very low, despite people in Milwaukee and Green Bay having to stand in long lines. But how does this year's turnout compare to recent elections?

The total vote count from the Spring 2016 election was 2.1 million, though it's important to remember that Wisconsin voted earlier in the primary in 2016 than in 2020, and at the time, both Republican and Democratic presidential nomination races were still competitive. Even without the virus and other changes, we would expect turnout to be somewhat lower than in 2016.

Despite fears and last-minute changes and court rulings, this year Wisconsinites voted in greater numbers than either of the two last Wisconsin Supreme Court elections: in the state's [2018 Supreme Court election](#), when the more liberal leaning candidate won, just under one million votes were cast and in the 2019 race, which went to the conservative, 1.2 million votes were cast.

Early results

In the non-partisan state Supreme Court race, Democratic leaning Jill Karofsky [beat](#) incumbent Daniel Kelly by a 55-45 percent margin. And, as expected, Joe Biden beat Bernie Sanders handily: 63 percent-32 percent. The [Marsy's law referendum](#), which would amend the state's constitution to give more rights to crime victims, also passed by a wide margin. With over 1800 local elections happening, it's hard to say what the impacts are on the local level as a whole.

What have we learned from Wisconsin's coronavirus election?

The first lesson is to recognize the enormous amount of stress, work, and health risk that our local governments underwent during this process, much of it caused by last-minute partisan bickering and unrealistic demands coming from both sides of the political aisle. Despite this, thousands of people across the state, including our National Guard troops, worked hard to ensure the safety of poll workers, voters, and our votes.

Second, even under extremely short timelines, both the local clerks and the voters have shown that it would be possible, with further planning and resources, to have a substantial increase in absentee, mail-in voting. However, as many other states have discovered, [mail-in voting is not without its problems](#). For example, there are far more rejected ballots in mail-in ballots than in-person, opening up election results to more lawsuits and less trust in the results. Also, I can't help feeling some sadness for the loss of the community and civic spirit that surrounds in-person voting.

Third, despite heroic local efforts to conduct the election, there were some very serious impediments to voting that must be addressed, and will undoubtedly require further intervention by state and federal courts. The Postal Service must address the hundreds of undelivered ballots and incomplete or illegible postmarks. The issue of those quarantining and who feel they are unable to safely obtain a witness of their ballot must be dealt with. Limited access to technology is an impediment for many in registering and requesting an absentee ballot and on-going problems with access to proper identification and voter roll purges also need to be rectified. All of these have reasonable and obtainable solutions, given political will.

Finally, while both the state and federal courts had to intervene in this case, and will no doubt be involved in new cases that arise due to problems outlined above, this could and should have been handled weeks ago by the state legislature and the governor. The argument for not postponing was that this election was not only a “presidential preference” primary, but also a general election for judges, city councils, school boards, and local referendums and that by postponing, these positions would be left empty. Many people are asking, that under such extraordinary circumstances that everyone is dealing with right now, including deciding to risk one’s health in order to vote, would it have been such a stretch to ask current incumbents to sit a little longer? Do we really want the courts deciding our elections?

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Note: This article gives the views of the author, and not the position of USAPP– American Politics and Policy, nor of the London School of Economics.

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