



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: February 16, 2022

TO: Wisconsin Municipal Clerks
City of Milwaukee Election Commission

FROM: Wisconsin Elections Commission

SUBJECT: Statement to Clerks – Notification of WEC’s Interpretation of Wis. Stat. §§ 6.87 and 6.855 Contained in Memoranda Issued March 31, 2020 and August 19, 2020 Declared Invalid by Waukesha County Circuit Court (*Teigen, et al. v. WEC and DSCC, et al.*)

On March 31 and August 19, 2020, WEC issued memoranda that discussed issues related to the mailing or delivery of absentee ballots to municipal clerks and the use of drop boxes by municipal clerks for delivery of absentee ballots.

On January 20, 2022, the Waukesha County Circuit Court issued an Order requiring WEC to withdraw those two memoranda, and to issue a statement notifying clerks that WEC’s interpretation of Wis. Stat. §§ 6.87 and 6.855 in those two memoranda has been declared invalid by that Court, as described in the Court’s Order. The Court also prohibited WEC from issuing any further interpretations that conflict with Wis. Stat. §§ 6.87 and 6.855 as described in the Court’s Order.

The Waukesha County Circuit Court’s Order was subsequently stayed by the Wisconsin Court of Appeals through February 15, 2022. That stay expires, however, on February 16, at which time the Circuit Court Order goes into effect.

Accordingly, pursuant to the Circuit Court Order of January 20, 2022, this communication is hereby issued to give notice that the WEC memoranda of March 31 and August 19, 2020, have been withdrawn, and that WEC’s interpretation of Wis. Stat. §§ 6.87 and 6.855 in those memoranda has been declared invalid by that Court, as described in the Court’s Order, a copy of which is attached to this notice. Any other previous guidance by WEC on the topics discussed in the two withdrawn memoranda should also be disregarded, to the extent that it is inconsistent with the attached Order.

A copy of the Order is attached to this notice. Please review this notice and the attached Order with your municipal attorney to determine if any changes to your ballot collection procedures are required.

Please contact the WEC Help Desk at elections@wi.gov or by phone at (608)261-2028 with any questions you may have. Thank you for your prompt attention to this matter.

CC: Wisconsin County Clerks
Milwaukee County Election Commission

Attachment: Order, Waukesha County Circuit Court

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

Administrator
Meagan Wolfe

FILED
01-20-2022
Clerk of Circuit Court
Waukesha County
2021CV000958

DATE SIGNED: January 19, 2022

Electronically signed by Michael O. Bohren
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT WAUKESHA COUNTY
BRANCH 1

RICHARD TEIGEN, et al.,

Plaintiffs,

v.

Case No. 21-CV-958

WISCONSIN ELECTIONS COMMISSION,

Defendant,

and

DEMOCRATIC SENATORIAL CAMPAIGN
COMMITTEE, et al.,

Defendant-Intervenors.

**ORDER GRANTING SUMMARY
JUDGMENT FOR PLAINTIFFS**

Plaintiffs filed this action seeking declaratory and injunctive relief on June 28, 2021. They challenge the legal interpretations of several Wisconsin statutes by Defendant Wisconsin Elections Commission ("WEC") contained in two written memos, one dated March 31, 2020, attached to Plaintiffs' complaint as Exhibit A, ("March Memo"), and one dated August 19, 2020, attached to Plaintiffs' complaint as Exhibit B, ("August Memo") (collectively, "Memos").

Plaintiffs filed a motion for summary judgment and a motion for preliminary injunction on October 15. Defendant Wisconsin Elections Commission, and Defendant-Intervenors Democratic Senate Campaign Committee (“DSCC”), Disability Rights Wisconsin, Wisconsin Faith Voices for Justice, and League of Women Voters of Wisconsin filed briefs in opposition on November 15, requesting summary judgment in their favor. Plaintiffs filed a reply on November 24. This Court heard arguments on the motions on January 13, 2022.

Having considered the parties briefs, affidavits, and arguments, and for the reasons stated on the record during the January 13 hearing, the Court HEREBY ORDERS that the Plaintiffs’ Motion for Summary Judgment is **GRANTED** on all claims, Plaintiffs’ Motion for a Preliminary Injunction is **DENIED** as moot, and Defendant’s and Defendants-Intervenors’ request for summary judgment in their favor is **DENIED**.

The Court HEREBY ISSUES a declaratory judgment and permanent injunction as follows:

DECLARATORY JUDGMENT

For the reasons set forth by the Court on the record at the January 13, 2022 hearing, the Court hereby declares that WEC’s interpretation of state statutes in the Memos is inconsistent with state law, to the extent they conflict with the following: (1) an elector must personally mail or deliver his or her own absentee ballot, except where the law explicitly authorizes an agent to act on an elector’s behalf, (2) the only lawful methods for casting an absentee ballot pursuant to Wis. Stat. § 6.87(4)(b)1. are for the elector to place the envelope containing the ballot in the mail or for the elector to deliver the ballot in person to the municipal clerk, (3) the use of drop boxes, as described in the Memos, is not permitted under Wisconsin law unless the drop box is staffed by the clerk and located at the office of the clerk or a properly designated alternate site under Wis. Stat. § 6.855.

The Court further declares that WEC's Memos are administrative rules under Chapter 227 of the Wisconsin statutes and are invalid not only for the reasons described above, and but also because they should have been, but were not, promulgated as rules.

PERMANENT INJUNCTION

Defendant Wisconsin Elections Commission is HEREBY permanently enjoined as follows:

1. The Wisconsin Elections Commission shall not issue any further interpretations, to municipal clerks or anyone else, that conflicts with Wis. Stat. §§ 6.87 and 6.855, as described above.

2. No later than January 27, 2022, the Wisconsin Elections Commission shall withdraw the Memos and issue a statement to clerks notifying them that WEC's interpretation of Wis. Stat. §§ 6.87 and 6.855 in the Memos has been declared invalid by this Court, as described above.

THIS IS A FINAL JUDGMENT FOR PURPOSES OF APPEAL