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09-18-2023
Clerk of Circuit Court
Waukesha County
2022CV001336



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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September 18, 2023

VIA ECF

The Honorable Michael P. Maxwell
Circuit Court Judge, Branch 8
Waukesha County Courthouse
515 West Moreland Boulevard
Waukesha, WI 53188

Re: *Richard Braun v. WEC*
Case No. 22-CV-1336

Dear Judge Maxwell:

I write on behalf of the Defendant, Wisconsin Elections Commission (the "Commission"), in the above-referenced case. Filed contemporaneously with this correspondence is an affidavit from James Witecha, Chief Legal Counsel for the Commission, confirming the Commission's compliance with the Court's September 5, 2023, Order. Thank you for your attention to this matter.

Sincerely,

Electronically signed by:

Lynn K. Lodahl
LYNN K. LODAHL
Assistant Attorney General

LKL:ajl

cc: Counsel of Record (via ECF)



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: September 15, 2023

TO: Wisconsin Municipal Clerks
Wisconsin County Clerks
City of Milwaukee Election Commission
Milwaukee County Elections Commission

FROM: Wisconsin Elections Commission (WEC)

SUBJECT: National Mail Voter Registration Form

1. **Summary.** The National Mail Voter Registration Form (“National Form”) cannot be used in Wisconsin to register voters.
2. **Background.**

The National Form is commonly distributed at military installations, embassies, and consulates. It is now accepted in 48 states. As a result, municipal clerks and their staff may receive the National Form from voters in the military or from those living overseas. Wisconsin residents may also encounter the form online, or in third-party mailings, and submit it to their municipal clerk. In all cases, the National Form can no longer be accepted for voter registration purposes.

The form, also called the “NVR-A Form” or the “Federal Form,” is published by the U.S. Election Assistance Commission (EAC) and appears as shown here on the EAC website:
https://www.eac.gov/sites/default/files/eac_assets/1/6/Federal_Voter_Registration_ENG.pdf

A Waukesha County Circuit Court recently ruled that the National Form may not be used for voter registration in Wisconsin. Braun v. WEC, 2022CV1336. The court further directed the WEC to notify all Municipal Clerks of this finding, and to remove any published guidance indicating the form is acceptable. Although the form has been used in Wisconsin since 1994, it was originally approved by the State Elections Board and not subsequently re-approved by the WEC. The Court noted that the Wisconsin Elections Commission had not prescribed use of the form under the authority granted in Wis. Stat. § 6.33.

3. **Implementation.**

If municipalities receive a completed National Form, the municipal clerk cannot accept the form for registration purposes, unless or until such time as the Commission prescribes use of the

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Administrator
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National Mail Voter Registration Form in Wisconsin, or the Commission or a competent court of law determines the form to be lawful for use in Wisconsin. Instead, the WEC recommends that clerks inform the applicant how to lawfully register in Wisconsin using the prescribed form EL-131 or through the online voter registration process on MyVote Wisconsin (<https://myvote.wi.gov>). This is similar to the procedure established in Wisconsin Administrative Code s. EL 3.03(2), which requires follow-up action when clerks receive incomplete forms, and states that:

If information is missing from a voter registration application form, the municipal clerk shall contact the applicant by any means feasible, including in person, by email, facsimile transmission, or telephone, to obtain the missing information.

The only other state to reject the National Form, New Hampshire, likewise treats the form as a request for registration information.

Clerks should be mindful of election deadlines when processing registration requests or requests for registration information. The third Wednesday before an election is the last day to register online. Wis. Stat § 6.28(1)(a). The Friday preceding an election is the last day to register at a clerk's office or other designated location. Wis. Stat. § 6.29(2)(a). After the deadline, a voter's only recourse is to register at the polls on Election Day.

On September 14, 2023 the six member Wisconsin Elections Commission met to discuss the Braun ruling and voted to issue this memo to clerks.

4. **Other Forms Not Affected.** The Federal Post Card Application (FPCA) and Federal Write-In Absentee Ballot (FWAB) are **not affected** by this ruling and should be accepted from military and overseas voters.

5. **Summary.**

- a. The National Mail Voter Registration Form cannot be used in Wisconsin to register voters.
- b. Clerks who receive the form should contact the applicant to let them know the form cannot be accepted and to explain proper registration procedures in Wisconsin.
- c. Clerks should be mindful of election deadlines when processing registration requests.
- d. The Federal Post Card Application (FPCA) and Federal Write-In Absentee Ballot (FWAB) remain acceptable for use in Wisconsin.
- e. This is the approved guidance of the bipartisan Wisconsin Elections Commission.

6. **Questions.** Call the WEC Help Desk at 608-261-2028 or e-mail elections@wi.gov.

any such guidance and notify all Municipal Clerks that the National Form may not be used for voter registration in Wisconsin.” (Order, Page 9)

4. WEC staff, including myself, performed a comprehensive inventory of records and website postings for the purpose of complying with the Order. Three items were identified and ordered to be removed or corrected by unanimous vote of the WEC Commissioners at a September 14, 2023, public meeting.

5. A document titled "NVRA Tips for Clerks" was removed from the WEC agency website on September 14, 2023. Edits were also made to Page 66 of the "Election Administration Manual for Wisconsin Municipal Clerks" to remove the statement "Wisconsin also accepts the National Mail Voter Registration Form and..." Finally, a clerk training webinar posted in WEC's "The Learning Center" or "TLC" was removed because it referenced the National Mail Voter Registration Form.

6. No additional documents, web postings, or references were identified by WEC staff.

7. The WEC Commissioners also approved a clerk communication detailing the outcome of this case and noting that the National Mail Voter Registration Form was determined to be unlawful for use in Wisconsin. The communication was approved by unanimous vote at a September 14, 2023, public meeting.

8. Commission staff distributed the clerk communication by electronic mail and posting on the WEC agency website on September 15, 2023. (“National Mail Voter Registration Form,” A true and correct copy attached as Exhibit A)

9. The WEC Commissioners also directed staff to contact the United States Election Assistance Commission (“EAC”) by unanimous vote at a September 14, 2023, public meeting. The Commissioner’s approved motion authorized WEC staff to send a pre-approved communication to the EAC Executive Director requesting that the General Instructions and State Instructions for the National Mail Voter Registration Form be updated to provide, “Wisconsin municipal clerks will accept this application only as a request for a voter registration form or for the purpose of the clerk directing that voter to the state’s online voter registration system at <https://myvote.wi.gov/en-us/>.” (Letter to EAC Executive Director Steven Frid, A true and correct copy attached as Exhibit B) The proposed update to the instructions uses similar phrasing to that which the EAC has already approved for the State of New Hampshire, another state where the National Mail Voter Registration Form is not authorized for use.

10. The letter to the EAC Executive Director also requested that the EAC and WEC arrange a meeting to discuss other compliance-based changes that may be necessitated by the Order.

11. It is my belief, based upon the WEC's due diligence and understanding of the Order, that the agency is now in full compliance with the Order.

James C Witecha
James Witecha

Subscribed and sworn to before me
this 18th day of September 2023.

Cody C Davis
[Sign Name]

Cody C Davis
[Print Name]

Notary Public, State of Wisconsin

My commission expires: 01/05/2027

State: Wisconsin

County: Dane



RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT A

Wisconsin Elections Commission



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DATE: September 15, 2023

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National Mail Voter Registration Form

September 15, 2023

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On September 14, 2023 the six member Wisconsin Elections Commission met to discuss the Braun ruling and voted to issue this memo to clerks.

4. **Other Forms Not Affected.** The Federal Post Card Application (FPCA) and Federal Write-In Absentee Ballot (FWAB) are **not affected** by this ruling and should be accepted from military and overseas voters.
5. **Summary.**
 - a. The National Mail Voter Registration Form cannot be used in Wisconsin to register voters.
 - b. Clerks who receive the form should contact the applicant to let them know the form cannot be accepted and to explain proper registration procedures in Wisconsin.
 - c. Clerks should be mindful of election deadlines when processing registration requests.
 - d. The Federal Post Card Application (FPCA) and Federal Write-In Absentee Ballot (FWAB) remain acceptable for use in Wisconsin.
 - e. This is the approved guidance of the bipartisan Wisconsin Elections Commission.
6. **Questions.** Call the WEC Help Desk at 608-261-2028 or e-mail elections@wi.gov.

EXHIBIT B



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

September 15, 2023

United States Election Assistance Commission
Steven Frid, Executive Director
633 3rd Street NW, Suite 200
Washington, DC 20001

Sent via email: MSFrid@eac.gov

Executive Director Frid,

I write today on behalf of the Wisconsin Elections Commission (“WEC”) to request several changes to the United States Election Assistance Commission’s (“EAC”) forms, instructions, and web postings, in light of recent litigation in Wisconsin. At its September 14, 2023, meeting, the WEC Commissioners passed the following motion by vote of 6-0:

The Wisconsin Elections Commission approves the draft communication to the United States Election Assistance Commission proposed by WEC staff as Exhibit C in the meeting materials. Staff are directed to forward the letter to the Executive Director of the EAC and take any action necessary to ensure compliance with *Braun v. WEC*. The language of the communication will be updated to reflect the language of the first motion: “These changes will remain in effect until such time as the Commission proscribes use of the National Mail Voter Registration Form in Wisconsin, or the Commission or a competent court of law determines the form to be lawful for use in Wisconsin.”

This motion was precipitated by a Decision and Order issued by the Honorable Michael P. Maxwell of the Waukesha County Circuit Court in *Richard Braun v. Wisconsin Elections Commission*, Case No. 2022CV1336, (See Decision and Order included with this correspondence).

The Court found that the WEC never formally prescribed the EAC’s National Mail Voter Registration Form for use in Wisconsin. The court additionally found that, “Until such time as the Wisconsin Elections Commission prescribes use of the National Form, the Commission is enjoined from issuing guidance of any kind that the National Form is approved for use or that the National Form may be used to register voters in Wisconsin.” The WEC was then ordered to withdraw any guidance pertaining to the National Mail Voter Registration Form and notify clerks of the change within 14 days of the order, which was issued on September 5, 2023.

For this reason, the WEC also directed staff to request that the EAC make the following changes, with those changes remaining in effect until such time as the Commission proscribes use of the National Mail Voter Registration Form in Wisconsin, or the Commission or a competent court of law determines the form to be lawful for use in Wisconsin:

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- Change the “General Instructions” to indicate that “Wisconsin municipal clerks will accept this application only as a request for their own absentee voter mail-in registration form or for the purposes of the clerk directing that voter to the state’s online voter registration system at <https://myvote.wi.gov/en-us/>.” This would be similar to the instructions provided for New Hampshire. (See Register To Vote In Your State By Using This Postcard Form and Guide, <https://www.eac.gov/voters/national-mail-voter-registration-form>, Page 1)
- Update the “State Instructions” for Wisconsin to provide that: “Wisconsin municipal clerks will accept this application only as a request for their own absentee voter mail-in registration form or for the purposes of the clerk directing that voter to the state’s online voter registration system at <https://myvote.wi.gov/en-us/>. You need to fill in only Box 1 and Box 2 or 3 or go directly to the MyVote website.” (See Register To Vote In Your State By Using This Postcard Form and Guide, <https://www.eac.gov/voters/national-mail-voter-registration-form>, Page 15)
- Make any other changes to documents, instructions, or webpages of the EAC to ensure that it is clear the National Mail Voter Registration Form is not accepted for use in Wisconsin.

Almost certainly, this request necessitates a meeting between our two agencies. I would invite you to provide the name of staff members that can be contacted to arrange such a meeting. Thank you very much for your time and attention.

Please feel free to direct any questions to james.witecha@wisconsin.gov or (608)266-0136.

Sincerely,



James C. Witecha
Chief Legal Counsel
Wisconsin Elections Commission

CC: Members, Wisconsin Elections Commission
Wisconsin Chief Election Official and WEC Administrator, Meagan Wolfe