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MEMORANDUM

DATE: August 26, 2016

TO: Wisconsin County Clerks and the Milwaukee County Election Commission
Wisconsin Municipal Clerks and the Milwaukee City Election Commission

FROM: Wisconsin Elections Commission Staff

SUBJECT: Frequently-Asked Questions – Implementation of Decision in *One Wisconsin Institute* Case: Revised Absentee Envelopes, Absentee Voting and Document Revisions

Since the Commission issued its initial guidance on implementation of the *One Wisconsin Institute* decision on August 23, 2016 (See clerk communication here: <http://www.gab.wi.gov/node/4057>), the Commission staff have fielded numerous calls and emails regarding two aspects of the guidance that was provided.

This memorandum is intended to address the most frequently asked questions on revised absentee ballot envelopes and absentee voting. This memorandum also outlines the plan for updating additional documents and materials affected by the decision.

Revised Absentee Envelopes

Is it OK to use the envelopes with a revision date of 2016-05?

Yes. This is the latest revision date. However, “28” days will have to be crossed out and “10” written in.

Can we use our old stock of envelopes?

You may use old envelope stock (envelopes with a revision date before 2016-05) for in-person absentee and for absentee voting conducted by Special Voting Deputies (SVD). It is recommended that you correct the residency requirement on the envelope and cross out the information about late return of absentee ballots before using old envelope stock for in-person absentee and SVD voting.

You may not use certificate envelopes or absentee mailer envelopes with a revision date before 2016-05 for absentee ballots sent and returned by mail even if you cross out “**CAST BY AN ABSENTEE ELECTOR UNDER S. 7.515, WIS. STATS., AND MAY BE ELIGIBLE TO BE COUNTED AFTER ELECTION DAY,**” and cross out “28” and write “10.”

Absentee envelopes, which include the mailer envelopes (EL-120, EL-120m) and the certificate envelopes (EL-122 series and EL-122m series), revised before 2016-05 contain an Official Election Mail logo () that is too small by postal standards. The placement of this logo on the envelope is also incorrect. The USPS has advised that an envelope containing an improperly placed or sized logo may be rejected by postal equipment and may result in delayed delivery or non-delivery. Therefore your pre-2016-05 envelopes should not be used for ballots that will be sent and returned by mail.

In-Person Absentee Voting

What aspects of in-person absentee voting did the *One Wisconsin Institute* court case change?

The *One Wisconsin Institute* decision generally removed two limitations placed on in-person absentee voting:

- 1) the number of locations that can be utilized for conducting in-person absentee voting within a municipality, and
- 2) the number of days in-person absentee voting can be conducted and the times during the day that in-person absentee voting can take place.

With these restrictions removed, in-person absentee voting can begin as soon as ballots are available for an election and continue through the Sunday before the election. Absentee voting may not be conducted on the Monday before the election. Municipalities can set the times and number of days (including weekends) to conduct in-person voting. There is no minimum or maximum number of days that in-person voting must be conducted and are no restrictions on the specific times during the days it can be conducted, other than the day before the election.

Can in-person absentee voting be conducted the Monday before the election?

No. In-person absentee voting may not be conducted on the Monday before the election.

Do clerks still need to be available until 5:00 p.m. the Friday before the election?

Yes. The court decision did not alter the in-person voter registration deadline. Clerks must be available until 5:00 p.m. the Friday before the election to accommodate voter registration requests.

Can clerks register voters the Saturday and Sunday before the election while conducting in-person absentee voting?

No. The in-person voter registration deadline is 5:00 p.m. or close of business whichever is later [6.29(2)(a)] the Friday before the election.

If clerks choose to begin issuing ballots to in-person voters when ballots are ready, must a notice be published or posted?

The decision did not specify a requirement to publish an actual notice of in-person absentee voting hours. However, if clerks choose to conduct in-person voting before publication or posting of the Type E notice (4 weeks prior to the election), WEC staff believes that information concerning the availability of in-person absentee voting should be made public, whether by publication, physical posting, posting on your municipal website, public service announcements or a press release. Both the Type E notice and any notice of in-person absentee voting hours held before the Type E notice is published can be amended if your hours change.

If the clerk publicizes specific hours for in-person absentee voting, are they restricted to the times listed in that notification?

No. If you happen to be in your office or otherwise available you are free to accommodate an in-person absentee voter. Clerks may however, choose to include a “by appointment only for dates and times other than those specified” clause in their notification so clerks can manage in-person absentee voting along with their other required duties.

Email and Fax Absentee Ballot Requests from Regular Voters

Do clerks have to email or fax absentee ballots to all voters who request them?

The decision removes the restriction on transmitting ballots by fax or email to regular voters. The decision doesn’t state that clerks are required to accommodate regular voters in this fashion. It is recommended that your decision as to whether to accommodate a request for fax or emailed ballot from a regular voter should be based on your ability to do so, not on convenience or reluctance, but the decision clearly says that it is optional for clerks to provide ballots by fax or email even if the regular absentee voter has requested that method for ballot delivery.

Can regular voters now receive a ballot online by downloading it through the My Vote WI website?

No, the decision specifically referenced the ballot transmission methods of fax and email. Regular absentee voters cannot use the My Vote WI website to obtain an electronic ballot online.

Can regular voters use the My Vote WI website to request an absentee ballot be delivered by fax or email?

Not yet. All voters will be able to request fax or email ballot delivery by making the request through a standard absentee ballot application or on the My Vote WI website, although it may not be possible to add that functionality to the website prior to the General Election. The previous guidance on this point was not clear. Until changes are made to the My Vote WI website, regular absentee voters will not be able to request that a ballot be sent to them by fax or email using that site. If a regular absentee voter would like a ballot to be sent to them by fax or email, they should use the standard absentee ballot request form ([EL-121](#)).

Documents and Materials Updates

When will the Calendar of Election Events, the Bring It website, the WEC (GAB) website and all other documents and forms be updated?

Commission staff is in the process of updating all materials affected by the decision. This is a large task, and we hope to have revisions completed by early next week. Documents and materials will be updated with new ‘revision’ dates, and will be posted to the website on a rolling basis as they are completed and approved for posting.

If you have questions regarding this memorandum, please contact the Elections Commission HelpDesk at elections@wi.gov or at (608) 261-2028.