

State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: October 10, 2014

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

FROM: Michael Haas
Elections Division Administrator

SUBJECT: Voter Photo ID Requirement Halted by U.S. Supreme Court
Voter Photo ID Guidance 2014-4

This memorandum has been updated from the version originally posted today. It includes a reference to new uniform instructions for absentee voters in Item 1 and corrected the form number in item 7.

As you may have learned already, last night the U.S. Supreme Court ordered that the photo ID requirement will not be in effect for the November 4, 2014 General Election. The Court, by a 6-3 vote, reinstated an injunction against the law which was previously issued by the federal court in the Eastern District of Wisconsin. The Supreme Court's order will be in effect until either the Court rules on the plaintiff's appeal if an appeal is filed within 90 days, or until the expiration of the appeal deadline in 90 days.

Government Accountability Board (G.A.B.) staff and local election officials have worked diligently to implement the photo ID requirement since the Seventh Circuit Court of Appeals order of September 12, 2014, and we appreciate that effort to assist and educate voters and election inspectors. On behalf of the Board and the State, we thank you for all of your hard work and attention to detail as the photo ID requirement was implemented over the past four weeks. Please convey our appreciation to your staff and election inspectors as well, for their efforts and being flexible in accommodating changes in the voting laws and procedures.

With 25 days remaining before Election Day, we now need to focus on implementing procedures without the photo ID requirement, providing updated training to election inspectors, and informing voters about the proper procedures during absentee voting and at polling places.

We will provide additional guidance to address this transition and questions that arise. To address some of the most immediate issues, please keep in mind the following points as you process absentee ballots, deploy special voting deputies, and prepare for Election Day:

1. All absentee ballots should be processed without requiring that the elector submit a copy of his or her photo ID, including ballots which were issued prior to the Court of Appeals order of September 12, 2014. Any absentee ballot requests which you have been holding because a copy of the photo ID has not been submitted must be immediately fulfilled. Revised uniform instructions have been posted at <http://gab.wi.gov/forms/voters-uniform-military> which we encourage you to use for new absentee ballot requests. Absentee ballots and ballots cast on Election Day by electors who do not submit a photo ID, and which are otherwise valid, are not to be treated as provisional ballots.
2. While election officials are not to require electors to provide or present photo ID as a condition of obtaining a ballot, clerks should continue to process any photo ID that is submitted during the mail-in absentee process. The copy of the Photo ID should be retained with the voter's file and the clerk must keep a record that photo ID has been submitted for that voter, by using either the Statewide Voter Registration System or some other documentation. If the photo ID requirement is reinstated for future elections, a copy that is submitted by a mail-in absentee voter will satisfy the photo ID requirement for future mail absentee requests, provided that the elector does not change his or her name or address.
3. If you have sent absentee ballots to electors who reside in a residential care facility that is eligible for special voting deputy service, but which will not be served by special voting deputies, and who are also not indefinitely confined, a letter should be sent indicating that the photo ID requirement is enjoined and they are not required to either provide a copy of their proof of identification with their ballot or have an authorized representative of the facility verify their identity. The G.A.B. will provide a form letter for this purpose.
4. The Sample Type E Notice posted on the G.A.B. website included a sentence indicating that photo ID was required to obtain an absentee ballot. Because the Type E Notice was to be published by this past Tuesday, October 7, it does not need to be re-published. However, you should be aware that electors who appear for in-person absentee voting may believe a photo ID is required based upon your Type E Notice. For notices which are posted, the last sentence of the first paragraph should be deleted.
5. Emphasize to special voting deputies that the photo ID requirement is not in effect for voters residing in a nursing home or other adult-care facility. While those voters were able to satisfy the requirement by the signatures of the special voting deputies on the certificate envelope, special voting deputies should be reminded that they should not tell the elector that the photo ID requirement is in effect for the General Election.
6. Emphasize to election inspectors that they must not request that an elector present a photo ID before a ballot is issued. If an elector offers to present a photo ID, the inspector should advise the voter that the requirement is not in effect. Inspectors should work to avoid creating an impression for voters waiting in line that they will

need to present a photo ID. No signs should be posted which state or imply that the elector must present a photo ID as a condition of receiving a ballot.

7. The GAB-190 and Wisconsin Election Data Collection System (WEDCS) have been revised to eliminate the option to record provisional ballots issued due to a voter not presenting photo ID. We also plan to revise the Provisional Ballot Tracking System and Form GAB-123(r) to remove the option to record provisional ballot information due to the lack of a photo ID. We will provide additional information about other forms or systems that will be updated to reflect the court injunction for the General Election.

This latest court development will create new challenges for clerks, SVD's, inspectors, and voters to minimize confusion and uncertainty. As always, we appreciate your continuing extraordinary efforts and will do all that we can to answer questions, assist you in implementing the law, and communicate with voters. If you have any questions, please contact the G.A.B. Help Desk at gabhhelpdesk@wi.gov or (608) 261-2028. Thank you.