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MEMORANDUM

DATE: August 19, 2016

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

FROM: Michael Haas, Administrator
Nathan Judnic, Staff Counsel

SUBJECT: Update on Federal Court Decision in *One Wisconsin Institute* Case – Altering Forms and Establishing In-Person Absentee Voting Hours

We are providing this update regarding the status of the One Wisconsin Institute lawsuit to address questions we have received from local election officials. We will provide more definitive guidance as soon as the 7th Circuit Court of Appeals issues its ruling as to whether the orders of Judge James Peterson will be stayed while the appeal of the case is pending, which may occur as early as the end of next week. Following are answers to the most significant questions we are receiving and which require the most immediate attention:

1. *When will we know whether to alter procedures for the November election based upon Judge Peterson's ruling?*

Judge Peterson's decision would change several rules and procedures, including changing the residency requirement for voter registration from 28 days to 10 days, allow for expanded in-person absentee voting hours, and allow absentee ballots to be sent by email or fax to all voters. Both the plaintiffs and the Wisconsin Department of Justice (DOJ) have appealed aspects of the decision and DOJ has requested that the 7th Circuit Court of Appeals issue a stay of Judge Peterson's orders to alter those procedures, meaning that Judge Peterson's orders (which would change the rules as reflected in the statutes) would be placed on hold until the appeal is decided.

On August 12, DOJ filed a brief with the 7th Circuit which included a request for a ruling on the request for a stay by next Friday, August 26th. Given how promptly the Court of Appeals has ruled on similar requests, it is possible that a ruling will be issued within a week or so. For that reason, while we are taking steps to implement

Judge Peterson's decision, we are delaying significant public education as well as detailed guidance regarding changes for the November election for a short period of time in order to avoid confusion in the event that a stay is issued and no changes become effective. We plan to present proposed guidance to the Elections Commission at its meeting on August 30th with the hope that we will receive a ruling from the 7th Circuit by that time.

2. *While we wait for a ruling from the 7th Circuit Court of Appeals, what is the residency requirement for voter registration?*

Judge Peterson's decision held that the change to a 28-day residency rule for voter registration was unconstitutional and that electors must be allowed to register if they establish residency for 10 days. This change should not have an immediate impact for voters establishing residency for the General Election until we are closer to that date.

However, for any local recall elections that take place in the meantime, voters must be allowed to register upon establishing residency for 10 days. In those cases, the reference to the 28-day residency requirement on documents such as the voter registration application, absentee ballot application, and absentee ballot certificate can be manually changed to 10 days.

3. *Our printer advises that we need to submit print orders now for new forms that change the 28-day residency requirement to 10 days, in order to ensure those forms are ready for absentee voting. Should we print new forms?*

This is ultimately a local decision but there are factors you may wish to keep in mind. Given that the 7th Circuit Court of Appeals may issue a decision shortly, the safest approach would be to wait for another week to place an order if possible. We are not posting new forms for the time being. We realize that time is short to print new forms, but there are potential risks in printing forms with either the 10-day or 28-day requirement at this time.

If forms are printed with the 28-day residency requirement and the 7th Circuit does not stay that part of the Court order, those forms would not be accurate. Conversely, if forms are printed with the 10-day residency requirement and the 7th Circuit issues a stay, the forms would not be accurate. Unfortunately we cannot provide more definite guidance at this time, so local clerks must make those judgments regarding committing public funds under those circumstances.

4. *Some municipalities are already posting expanded hours for in-person absentee voting and I am getting requests to commit to expanded hours. Do I need to decide now what hours we will conduct in-person absentee voting?*

No, because we expect to have a ruling from the 7th Circuit before ballots are available, you may wait to determine and advertise hours for in-person absentee

voting until a decision is issued regarding the stay request. Delaying that announcement would also reduce confusion in the event that the two-week limit on in-person absentee voting is reinstated.

We also realize there may be a higher demand for in-person absentee voting hours than existed prior to the institution of the two-week voting period. If you are unsure or uncomfortable about balancing the demand for voting hours with other staffing and workload issues, you may wish to seek input or direction from your governing body.

We hope that this information is helpful for the short term. We will certainly communicate as soon as there are additional developments regarding the One Wisconsin Institute case and guidance from the courts. If you have other specific questions regarding this matter, please contact the Elections Commission HelpDesk at elections@wi.gov or at (608) 261-2028.