

State of Wisconsin \ Government Accountability Board

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DATE: August 5, 2014

TO: Wisconsin County Clerks
Wisconsin Municipal Clerks
Milwaukee County Board of Election Commissioners
City of Milwaukee Board of Election Commissioners

FROM: Michael Haas
Elections Division Administrator

SUBJECT: Wisconsin Supreme Court Decisions and Status of Voter Photo ID Law --
Voter Photo ID Requirement Not in Effect for Partisan Primary

This memorandum provides an update regarding the status of the requirement that most Wisconsin voters provide an acceptable form of photo identification before receiving a ballot. The photo ID requirement was established as part of 2011 Act 23 but its implementation has been enjoined by a state court injunction since the 2012 Spring Primary, and by a federal court decision issued on April 29, 2014. As you are probably aware, on July 31, 2014, the Wisconsin Supreme Court issued decisions in two separate cases finding that the photo ID requirement in Act 23 does not violate the Wisconsin Constitution.

To greatly simplify the two lengthy decisions, the Supreme Court held that the Legislature did not exceed its authority under the Wisconsin Constitution when it required electors to present Act 23-acceptable photo identification; the photo ID requirement does not create an additional elector qualification in addition to those set out in the Wisconsin Constitution or impose an undue or substantial burden on the right to vote; and the requirement is a reasonable regulation that could improve and modernize election procedures, safeguard voter confidence in the outcome of elections, and deter voter fraud.

The Court directed that the Department of Transportation must develop a procedure for providing a free voter ID card without requiring the costs for obtaining necessary supporting documentation, such as a birth certificate. The Court construed an existing DOT administrative rule to permit such a process.

Because of the federal court order described above, the photo ID requirement remains enjoined and will not be in effect for the August 12, 2014 Partisan Primary. The federal court decision has been appealed to the 7th Circuit Court of Appeals. Attorney General Van Hollen has indicated publicly that his office will attempt to obtain approval from that court to reinstate the photo ID requirement in time for the November 4, 2014 General Election. While the outcome of that effort is not certain, in the event that the federal court injunction is lifted, the G.A.B. will immediately notify local election officials and provide guidance as to its implementation.

Because news of the Supreme Court decisions may raise questions from voters, clerks should make it clear to election inspectors that there is no photo ID requirement for the Partisan Primary. The federal court order continues to prohibit all Wisconsin election officials, including local election officials “from conditioning a person’s access to the ballot, either in-person or absentee, on that person’s presenting a form of photo identification.” Until further notice, any election official request that a voter present a photo ID as a condition of receiving a ballot would violate the federal court order.

The G.A.B. has developed the attached Frequently Asked Questions document which may be used at polling places, during in-person absentee voting, and by Special Voting Deputies to respond to questions about the status of the photo ID requirement.

If you have any questions regarding this information, please contact the G.A.B. Help Desk at GABHelpDesk@wi.gov or (608) 261-2028.