



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: July 12, 2022

TO: Wisconsin Municipal Clerks
City of Milwaukee Election Commission

FROM: Wisconsin Elections Commission

SUBJECT: Wisconsin Supreme Court Decision in *Richard Teigen et al. v. Wisconsin Election Commission et al.* (Case No. 2022AP91)(“Teigen”)

The Wisconsin Supreme Court published its decision in the *Teigen* appeal on July 8, 2022. The decision offered clarity on the legality of absentee ballot drop boxes in Wisconsin, affirmed the trial court’s ruling in several respects, and did not address the mailing of an absentee ballot by an agent of the voter.

Please recall that the Waukesha County Circuit Court issued a summary judgement decision on January 13, 2022, and signed the associated order on January 19th:

...the Court hereby declares that WEC's interpretation of state statutes in the Memos is inconsistent with state law, to the extent they conflict with the following: (1) an elector must personally mail or deliver his or her own absentee ballot, except where the law explicitly authorizes an agent to act on an elector's behalf, (2) the only lawful methods for casting an absentee ballot pursuant to Wis. Stat. § 6.87(4)(b) 1. are for the elector to place the envelope containing the ballot in the mail or for the elector to deliver the ballot in person to the municipal clerk, (3) the use of drop boxes, as described in the Memos, is not permitted under Wisconsin law unless the drop box is staffed by the clerk and located at the office of the clerk or a properly designated alternate site under Wis. Stat. § 6.855.

The trial court further explained that the Wisconsin Election Commission’s (“Commission’s”) guidance documents on drop boxes constituted an unpromulgated administrative rule. The Commission issued a clerk communication titled “Statement to Clerks - Notification of WEC's Interpretation of Wis. Stat. §§ 6.87 and 6.855 Contained in Memoranda Issued March 31, 2020 and August 19, 2020 Declared Invalid by Waukesha County Circuit Court (Teigen, et al. v. WEC and DSCC, et al.)” on February 16, 2022 (“February Communication”).

The February Communication explained that the guidance at issue had been withdrawn by the Commission in accordance with the circuit court order, and that any prior Commission interpretation of Wis. Stat. §§ 6.87 and 6.855 contrary to the judicial order should be disregarded.

The Wisconsin Supreme Court’s decision in *Teigen* has now provided further clarity in this matter, and the Commission’s prior drop box guidance will remain withdrawn and inapplicable given the Court’s determination that drop boxes are illegal and not authorized by Wisconsin statute. The Court’s majority stated it need not

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Julie M. Glancey | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

determine whether the guidance was an unpromulgated rule because drop boxes are unlawful. The *Teigen* decision is quite lengthy and detailed, and the Commission recommends exploring its implications with local counsel. That said, several primary points of consideration from the decision are highlighted below:

- Absentee ballot drop boxes are illegal under Wisconsin statutes.
- An absentee ballot must be returned by mail, or the voter must personally deliver it to the municipal clerk at the clerk's office or a designated alternate site.
- The Court did not address whether the Commission's guidance documents constitute unpromulgated administrative rules because the documents are invalid regardless, given that drop boxes are not authorized under Wisconsin statute.
- Because the applicable Commission guidance documents did not address whether voters who mail an absentee ballot must personally place the ballot in a mailbox, or if a voter's agent may do so, the Court's majority opted not to decide at this time whether Wisconsin law allows an agent to mail an absentee ballot. The Commission notes, however, that Wis. Stat. § 6.87(4)(b)1. provides that the "envelope shall be mailed by the elector" if not delivered in person to the municipal clerk.

Please contact the Commission Help Desk at elections@wi.gov or by phone at (608) 261-2028 with any questions you may have. Thank you for your prompt attention to this matter.

CC: Wisconsin County Clerks
Milwaukee County Election Commission