



Wisconsin Elections Commission

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DATE: August 22, 2024

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

FROM: Wisconsin Elections Commission

SUBJECT: Litigation Update Pertaining to Disability Rights Wisconsin et al. v. WEC (Case #: 24-CV-1141)

1. **Summary.** On August 19, 2024, the Wisconsin Court of Appeals, District II, issued an order staying the temporary injunction issued by the Dane County Circuit Court in Disability Rights Wisconsin et al. (“DRW”) v. Wisconsin Elections Commission (“WEC”). **This means that clerks cannot currently send electronic ballots to voters who self-certify as having a print disability.** Electronic ballots may only be sent to military and overseas electors in accordance with Wis. Stats. §§ 6.22(2)(e) and 6.24(4)(e). The Wisconsin Court of Appeals stay was issued before the Commission even had an opportunity to send out a clerk communication on the Dane County decision. However, this case only sought to allow electronic ballots to be sent to voters with disabilities beginning with the November of 2024 General Election, so the temporary injunction had not yet been implemented. That means clerks are simply maintaining the status quo they have always been used to, and nothing has changed from the previous 2024 elections.

2. Background.

On April 16, 2024, DRW, the League of Women Voters of Wisconsin, and several individual voters filed suit in Dane County against the WEC. They sought a court order that would allow disabled voters the ability to receive, mark, and return their absentee ballots electronically. In significant part, the plaintiffs argued they are unable to independently cast their votes and must share selections with an assistant, thus surrendering their constitutional right to a secret ballot, because statute no longer allows discrete processes for all but a few classes of voters (*e.g.* military and overseas voters).

Judge Everett D. Mitchell of the Dane County Circuit Court issued a temporary injunction order on June 25, 2024, and a clarifying decision and order on July 18, 2024, which stated in substantive part:

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

Administrator
Meagan Wolfe

- Provisions prohibiting municipal clerks from distributing absentee ballots by email, including Wis. Stat § 6.87(3)(a), are unenforceable as applied to absent electors, as defined by Wis. Stat. § 6.20, who self-certify to having a print disability. For purposes of this order, a “print disability” is a disability that prevents the certifying absent elector from being able to independently read and/or mark a paper absentee ballot, including blindness or a physical disability that impairs manual dexterity.
- Defendant Wisconsin Elections Commission shall facilitate the availability of electronically delivered (*i.e.*, emailed) accessible absentee ballots for the November 2024 general election for absent electors who self-certify to having a print disability and who request from their municipal clerk an electronically delivered absentee ballot in lieu of mailing under Wis. Stat. § 6.87(3)(a).
- This order shall not be construed to permit electronic return of a marked absentee ballot. To be accessible, an electronically delivered accessible absentee ballot must be capable of being read and interacted with, including marked, by a voter with a print disability using digital assistive technology such as a screen reader.

The Wisconsin State Legislature intervened in this case. As an intervenor, the Legislature subsequently sought a stay of the order that would have permitted electronic ballot delivery to certain disabled voters from the Wisconsin Court of Appeals. The stay was granted, and the temporary injunction is now on hold while the court hears the appeal.

The important takeaway from this litigation update is that as of now, Wisconsin’s clerks may not send absentee ballots electronically to voters who self-certify as having a print disability this November. Only military and overseas voters may currently utilize electronic ballot transmission processes.

The WEC will communicate any significant future changes in this case as things progress.

3. **Questions.** Call the WEC Help Desk at 608-261-2028 or e-mail elections@wi.gov.