



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: September 19, 2024

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

FROM: Wisconsin Elections Commission Staff

SUBJECT: Ballot Access and Litigation Updates

This is an additional update regarding ongoing litigation against the Commission, particularly as it pertains to ballot printing and distribution processes.

Robert F. Kennedy, Jr. v. WEC et al. (24-CV-2653)

- Status: Dane County Circuit Court Issued an Oral Ruling on September 16, 2024. Candidate Kennedy has appealed.

Clerks should be sending out ballots this week as planned. There is no injunction in place, meaning there is no legal basis to withhold ballots from voters or affix stickers to cover up or obscure a name printed on the ballot. Clerks should proceed with sending out absentee ballots in accordance with the law, including compliance with the September 19, 2024, statutory deadline to send absentee ballots to military and overseas electors. Wis. Stat. Sec. 7.15(1)(cm).

- In an oral ruling from the bench on Monday, September 16, 2024, Judge Stephen Ehlke affirmed that state law does not permit the Commission to remove Mr. Kennedy's name from the ballot, and that Mr. Kennedy did not meet his burden to justify the extraordinary relief of applying stickers or otherwise obscuring or removing his name from Wisconsin ballots.
- Mr. Kennedy filed an appeal in the Wisconsin Court of Appeals, District II, on September 17, 2024. The Commission and the Wisconsin Department of Justice are working to file the appropriate briefs and resolve this matter as quickly as possible. The Commission has notified each court at every step of the ballot deadlines, and the courts are aware of the urgency of the matter as well as all relevant deadlines for clerks.

Rise, Inc et al. v. WEC et al. (22-CV-2446)

- Status: Dane County Circuit Court Issued an Amended Declaratory Judgment and Permanent Injunction on September 17, 2024.

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Administrator
Meagan Wolfe

- In an amended judgment issued by Judge Ryan Nilsestuen on September 17, 2024, the court slightly updated its previous judgment and injunction regarding witness address requirements. The only substantive difference from the court’s January 30, 2024, judgment (*See* Commission’s previous guidance here: <https://elections.wi.gov/memo/wec-clerk-communications-relating-absentee-ballot-certificate-witness-addresses>) is that the court determined:

...Wis. Stat. § 6.87’s requirement that the witness’s address be included on the absentee ballot certificate does not require that any particular components or information be included, but only that the face of the certificate contains sufficient information to enable a *municipal clerk* to reasonably identify a place where the witness may be communicated with... (*Emphasis added*)

- This is a shift from a “reasonable person in the community” standard for address determinations to a “municipal clerk” standard. This change was ordered by the Wisconsin Court of Appeals, because the interpretation of a reasonable community member is far more likely to vary than the interpretation of the local clerk. The clerk is better suited to serve as a guidepost for whether an address can be used to sufficiently determine a voter’s location.
- **Reminder:** Edits consistent with the holdings in this case were added to the Election Day and Election Administration manuals in July, so the manuals are already up to date.

Please contact the WEC Help Desk at 608-261-2028 or elections@wi.gov if you have any additional questions.