



Wisconsin Elections Commission

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Frequently Asked Questions Regarding the Use of Form EL-122 (Official Absentee Ballot Certificate & Application):

The Wisconsin Elections Commission (“Commission”) has received many questions regarding the use of its Form EL-122: the Official Absentee Ballot Certificate & Application. Specifically, the use of the form in its current format is being challenged in *Thomas Oldenburg v. WEC et al.* (Case No. 24-CV-0043). The following FAQ is designed to provide answers to those questions and to address misrepresentations that have been circulating on social media and elsewhere.

If you have additional questions, please email elections@wi.gov.

Was Form EL-122, Official Absentee Ballot Certificate & Application, found to be non-compliant with statute and prohibited from use in Wisconsin for absentee voting?

No. The *Oldenburg* case is still ongoing, and the substantive legal questions and requested relief have not been decided by the court. A final order and decision has not been issued.

Misinformation on this topic is circulating throughout the state and misrepresents a temporary injunction issued by the *Oldenburg* Court. The temporary injunction order did not determine Form EL-122 to be unlawful or otherwise prohibit clerks and voters from using it in Wisconsin. The injunction order only stated in relevant part that, “Defendants [*i.e.* the Commission and its Administrator] are hereby enjoined from requiring that Form EL-122 to be used by the clerks of this state.”

[This temporary injunction does nothing more than make the use of Form EL-122 voluntary rather than mandatory. Accordingly, clerks and voters can still use Form EL-122 without violating the temporary injunction.](#)

A copy of the temporary injunction is attached, and clerks should consult with local counsel if they have further questions on its scope or applicability, and the broader applicability of decisions in circuit courts outside of your counties.

Has the Commission created or prescribed another form that serves the same purpose of the EL-122?

No. The Commission has not created or prescribed another form for use in Wisconsin absentee voting.

The sources misrepresenting the information above are saying a clerk or voter can be convicted of a crime if they use Form EL-122, is that true?

The Commission believes that Form EL-122 complies with the law and has taken that position in the *Oldenburg* case. Again, there has been no final order and decision issued in that case yet. It is unlikely that

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using the Form EL-122 before a final decision in *Oldenberg* would subject a clerk or voter to criminal liability for using a document that has served as a certificate and application for many years, and for recent elections as it was amended last year. Even a final order and decision could be subject to appeal, and this case is likely a long way from final disposition. Again, it is recommended that you consult with local counsel about the applicability of the temporary injunction and any risks of liability.

Will a voter's absentee ballot be invalidated if they use Form EL-122?

Likely not. The temporary injunction did not prohibit anyone from using Form EL-122 in the upcoming elections, nor did it say that any ballots returned using the form should be invalidated. While someone may challenge a ballot that was returned using Form EL-122, the Commission believes that such a challenge should not be sustained. There is some question as to whether a ballot can be challenged on this basis at all, but Wis. Stat. § 6.95 also provides in substantive part that, "...If the returns are reported under s. 7.70, a challenge may be reviewed by the chairperson of the commission or the chairperson's designee..." This means that the Wisconsin Elections Commission Chairperson has authority to review any sustained challenge.

Additionally, the challenges raised by the *Oldenberg* plaintiff only relate to absentee ballots that were requested by email (which includes MyVote requests) or facsimile. It has nothing to do with absentee ballots that were requested by any other method. As for absentee ballots requested by email or facsimile, as stated above, no final order and decision has been issued in the *Oldenburg* case. As such, there is no reason to believe that a challenge should be sustained, whether locally or upon review/appeal.

FILED
05-17-2024
Clerk of Court
Marinette County
2024CV000043

DATE SIGNED: May 17, 2024

Electronically signed by Judge James Morrison
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT MARINETTE COUNTY

THOMAS OLDENBURG,

Plaintiff,

Case No. 24CV000043

v.

Case Code: 30701

WISCONSIN ELECTIONS COMMISSION,
et al.,

Defendants.

ORDER ON MOTION FOR TEMPORARY INJUNCTION

This matter came before the Court on Plaintiff's Motion for Temporary Injunction on May 15, 2024. For the reasons stated on the record,

IT IS HEREBY ORDERED:

Plaintiff's Motion for Temporary Injunction is **GRANTED**, and Defendants are hereby enjoined from requiring that Form EL-122 to be used by the clerks of this state. This injunction will continue until further Order of this Court.