



Wisconsin Elections Commission

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Litigation Update: *Brown v. WEC*¹ Frequently Asked Questions June 12, 2024

Case Topics: Alternate absentee voting site designations; partisan advantage of alternate sites; Racine “mobile election unit.”

Order Issued: On June 11, 2024, the Wisconsin Supreme Court entered an order that stays, or pauses, some of the effects of a January 2024 decision from the Racine County Circuit Court relating to the alternate absentee site designations that were made by the City of Racine during the August 2022 elections.

Time-Sensitive: The deadline for municipal governing bodies to designate alternate sites for the August 2024 Partisan Primary is **tomorrow (June 13, 2024)**. Please review this communication in its entirety with your local counsel. You may also wish to ensure that your municipal governing body receives a copy.

1. Does the order affect all municipal clerks?

Not directly. The order is only legally binding on the WEC and the City of Racine, but its reasoning and analysis could be applicable statewide. Therefore, we recommend municipal clerks and their governing bodies be aware of the reasoning of the Court’s order, especially in advance of alternate absentee site designations for the August Primary and November General Election.

2. What does the order say?

The Wisconsin Supreme Court rejected a lower court’s decision requiring alternate absentee voting sites to have the same or similar political demographics as the ward in which the clerk’s office was located. The lower court stated this was intended to prevent any “partisan advantage” but the Wisconsin Supreme Court reasoned the requirement would be impossible to implement. Thus, the Wisconsin Supreme Court concluded the effect of lower court’s order would be limiting alternate sites to a few — or just one — alternate site, which has been expressly rejected by federal courts² and the Wisconsin Legislature.³

However, the Wisconsin Supreme Court allowed the lower court’s order prohibiting the City of Racine from using a mobile election unit. The Supreme Court believed there are enough good arguments about the legal validity of the mobile election unit on both sides that it will let the rest of the appeal process play out on the merits instead of intervening to pause the Circuit Court decision on appeal.

¹ Wisconsin Supreme Court Case Number 2024AP232; Circuit Court Number 2022CV1324

² *One Wisconsin Institute, Inc. v. Thomsen*, 198 F. Supp. 3d 896, 963 (W.D. Wis. 2016), Affirmed in part, reversed in part, and vacated in part by *Luft v. Evers*, 963 F.3d 665 (7th Cir. 2020).

³ Wis. Stat. § 6.855(5).

Wisconsin Elections Commissioners

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3. What does the order require?

The order does not require affirmative action for anyone other than the Racine City Clerk.

4. Does the order change any established practice?

The only established practice that the order changes is a finding that Racine's use of the mobile election unit as an alternate absentee site may be unlawful under Wisconsin's absentee voting statutes.

5. How final is the order? Are there any next steps in this case?

The case is not concluded. This order was an appeal of a request for the Circuit Court to stay its decision while the aggrieved parties appealed it. You can think of this order as a "pre-appeal" of sorts — the Supreme Court took a look to decide who would be most harmed if the Circuit Court order was allowed to stay in place, and it changed the part of the decision that it thought was most likely going to lose on appeal.

6. What should I do to comply with the order?

While this order is not binding statewide, municipal clerks should be aware of the case because it could result in future changes to the law and/or future legal challenges.

7. What should I do if I still have questions?

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