



Wisconsin Elections Commission

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DATE: July 31, 2024

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

FROM: The Wisconsin Elections Commission

SUBJECT: **Litigation Update: *Oldenburg v. WEC***¹
RE: Official Absentee Ballot Application/Certification (EL-122); absentee ballot return envelope

On July 30, 2024, the Wisconsin Elections Commission (“the Commission”) held a public meeting to review and issue guidance following the Marinette County Circuit Court’s decision in *Oldenburg v. WEC*. The Commission passed the following motion unanimously:

The Wisconsin Elections Commission approves the guidance on pages 65 – 67 of the Commission’s materials with the following changes: That the paragraph beginning “Oral Ruling Issued” on page 65 will be struck; 1, 2, and 3 on page 66 will be struck, and 8 on page 67 will be struck. The memo will be renumbered accordingly.

The Commission is issuing this guidance in the interest of providing guidance to clerks ahead of the August 13, 2024, Partisan Primary. This guidance document is intended to update the Commission’s previous guidance issued on June 10, 2024.²

Oldenburg v. WEC **Frequently Asked Questions** **July 31, 2024**

1. Does this decision mean I have to use the EL-122?

Yes. The court found that the EL-122 fully complies with Wisconsin law. It is therefore unlikely that a challenge based on the same grounds as those brought by Mr. Oldenburg would be successful.

¹ Marinette County Circuit Court Number: 2024CV000043

² Available at: <https://elections.wi.gov/memo/frequently-asked-questions-regarding-use-form-el-122-official-absentee-ballot-certificate>.

Because the decision lifted the temporary injunction, the Commission's previous guidance on use of the EL-122 is back in effect. On April 28, 2023, the Commission unanimously directed staff to implement the new EL-122 design for the February 20, 2024, primary, and also stated that "[o]ld envelope designs shall not remain in use."

2. I'm still sending out and receiving absentee ballots, and in-person absentee voting for the August primary starts soon. Do I need to change any of my procedures?

No. The court's ruling affirms what the bipartisan Wisconsin Elections Commission has always said: The EL-122 constitutes both an absentee ballot application and a certificate.

3. What if I have already taken remedial steps to comply with the previous *Oldenburg* temporary injunction?

If you have taken any steps in response to the *Oldenburg* temporary injunction, or in response to this litigation in general, you should immediately review those steps with your local counsel to assess compliance. The temporary injunction has been lifted as of July 29, and other remedial steps may now be inconsistent with the court's reasoning.

4. What should I do if I receive questions or claims that the outcome of the *Oldenburg* litigation doesn't matter because the statute still requires a copy of the request to be included in the envelope?

No court of law has ever held that a voter must include a copy of her absentee ballot request inside of the envelope along with her ballot, and the judge in this case just ruled against that argument. The court ruled that the EL-122 constitutes a copy of the voter's request, and that it need not be in the envelope because all of the required information is included on the envelope.

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

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