



Wisconsin Elections Commission

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DATE: February 9, 2024

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

FROM: Wisconsin Elections Commission

SUBJECT: Permanent Injunction on WEC concerning Absentee Voter Witness Address Information in *League of Women Voters of Wisconsin v. WEC, et al.* (2022-CV-002472)

On January 30, 2024, the Honorable Judge Ryan D. Nilsestuen of the Dane County Circuit Court issued a Permanent Injunction in the above-referenced case relating to what witness address information must be included on an absentee ballot certificate. The decision is attached to this memorandum. The Commission is also sending a Q&A document related to this memo.

Concerning the Permanent Injunction for *League of Women Voters of Wisconsin v. WEC, et al.*:

The Dane County Court declared that:

[T]he Materiality Provision of the federal Civil Rights Act of 1964, 52 U.S.C. § 10101, applies to the requirement under Wisconsin statute that each absentee ballot contain address information for an eligible adult U.S. citizen who witnessed the voter casting the absentee ballot.

Concerning witness address information, the Court found that the materiality provision prevents absentee ballots from being rejected in four specific instances. An absentee ballot may **not** be rejected if:

- a. The witness's street number, street name, and municipality are present, but there is neither a state name nor a ZIP code provided;
- b. The witness's street number, street name, and ZIP code are present, but there is neither a municipality nor a state name provided;
- c. The witness's street number and street name are present and match the street number and street name of the voter, but no other address information is provided; or
- d. The witness certification indicates that the witness address is the same as the voter's address with any or any combination of the following words: "same," "same address,"

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

“same as voter,” “same as above,” “see above,” “ditto,” or by using quotation marks and/or an arrow or line pointing to or from the voter address.

The Wisconsin Elections Commission is enjoined from taking any action inconsistent with the decision.

Please review this notice, the attached Permanent Injunction, and the Q&A document with your municipal attorney to determine if any changes to your procedures are required.

Please contact the WEC Help Desk at elections@wi.gov or at (608) 261-2028 with any questions. Thank you for your prompt attention to this matter. This memorandum was reviewed and approved by the six members of the Wisconsin Elections Commission at their February 8, 2024, public meeting.

FILED
01-30-2024
CIRCUIT COURT
DANE COUNTY, WI
2022CV002472

BY THE COURT:

DATE SIGNED: January 30, 2024

Electronically signed by Ryan D. Nilsestuen
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 10

DANE COUNTY

LEAGUE OF WOMEN VOTERS OF
WISCONSIN

Plaintiff

Declaratory Judgment and Permanent
Injunction

vs.

WISCONSIN ELECTIONS
COMMISSION, et al.,
Defendants

Case No. 2022CV2472

On January 2, 2024, after extensive briefing and fully apprised of the premises, the Court issued a Decision and Order on Summary Judgment (Dkt. 157) in favor of Plaintiff League of Women Voters of Wisconsin. After further consideration and a hearing involving counsel for all parties on January 30, 2024, the Court now enters the following declaratory judgment and permanent injunction.

THE COURT DECLARES that the Materiality Provision of the federal Civil Rights Act of 1964, 52 U.S.C. § 10101, applies to the requirement under Wisconsin statute that each absentee ballot contain address information for an eligible adult U.S. citizen who witnessed the voter casting the absentee ballot. *See* Wis. Stat. § 6.87. Because federal law preempts state authority that purports to establish rules determining substantive rights and obligations contrary to federal law, the Materiality Provision prohibits rejecting absentee ballots based upon one of the following

errors or omissions: (1) witness certifications containing the witness's street number, street name, and municipality, but not other address information such as state name or ZIP code; (2) witness certifications by a member of the voter's household who lists a street number and street name, but omits other information, such as a municipality; (3) witness certifications using terms like "same" or "ditto" or other means to convey that their address is the same as the voter; and (4) witness certifications with a street number, street name, and ZIP code, but not the municipality or state name.

Consistent with the judgment above and the Court's prior Decision and Order on Summary Judgment (Dkt. 157), IT IS HEREBY ORDERED that:

1. By February 9, 2024, Defendants Don Millis, Robert F. Spindell, Jr., Mark L. Thomsen, Ann S. Jacobs, Marge Bostelmann, Carrie Riepl, and Meagan Wolfe, through Defendant Wisconsin Elections Commission, must disseminate to all county clerks, all municipal clerks, the Milwaukee County Election Commission, and the Milwaukee City Election Commission, a copy of this Order and guidance on its implementation such that no absentee ballot may be rejected based upon witness certifications bearing witness-address information meeting any of the following four sets of criteria:

- a. The witness's street number, street name, and municipality are present, but there is neither a state name nor a ZIP code provided;
- b. The witness's street number, street name, and ZIP code are present, but there is neither a municipality nor a state name provided;
- c. The witness's street number and street name are present and match the street number and street name of the voter, but no other address information is provided; or
- d. The witness certification indicates that the witness address is the same as the voter's address with any or any combination of the following words: "same," "same address," "same as voter," "same as above," "see above," "ditto," or by using quotation marks and/or an arrow or line pointing to or from the voter address.

2. Defendants Wisconsin Elections Commission, its Commissioners, and Administrator are hereby permanently enjoined from taking any action inconsistent with this Declaratory Judgment and Permanent Injunction.

This order is final for purposes of appeal.