



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 *Rise, Inc., et al. v. WEC et al.* (2022-CV-002446)

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. This memo discusses the case as well as the Commission's reissued memorandum concerning the Permanent Injunction in *White et al. v. WEC* (2022-CV-001008). The decision and the reissued memorandum are attached to this memorandum. The Commission is also sending a Q&A document related to this memo.

1. Reissued Memorandum Concerning *White et al. v. WEC*

Pursuant to the Permanent Injunction in *Rise, Inc., et al. v. WEC et al.* of January 30, 2024, this communication is hereby issued to give notice that the WEC memorandum of September 14, 2022, contained a definition of a witness address that is invalid and contrary to law. That memorandum has therefore been revised and reissued. Specifically, the Commission's prior definition of a witness address has been withdrawn and replaced with the standards explained in this memorandum and attached permanent injunction. **Please refer to the reissued memorandum, also dated February 9, 2024, concerning *White et al. v. WEC* and continue to follow the Commission's guidance contained in that document.**

2. Concerning the Permanent Injunction for *Rise, Inc., et al. v. WEC et al.*

The Dane County Circuit Court declared that:

[W]ith respect to a witness's address on an absentee ballot certificate, the term 'address' in Wis. Stat. § 6.87(2) and (6d) means 'a place where the witness may be communicated with.'

The Dane County Circuit Court further declared that:

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

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

that the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.

The Dane County Circuit Court declared that, “an absentee ballot certificate is not ‘improperly completed’ under Wis. Stat. § 6.87(9), based on a witness address,” and that, “Wis. Stat. § 6.87 does not authorize the rejection of, return for cure of, or refusal to count an absentee ballot based on a witness’s address,” as long as “the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.”

The Commission is enjoined “from promulgating rules, guidance documents, or other materials inconsistent with this Order, or from otherwise taking any action inconsistent with” the decision. However, the Court did not require the Commission to modify the text of any absentee ballot certificate envelope as long as it advises Wisconsin election officials of the Court’s Order and advises Wisconsin election officials that they have an:

obligation not to reject, return for cure, or refuse to count any absentee ballot based on a witness’s address if the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.

This memorandum, the attached Permanent Injunction, and related Q&A document constitute the Wisconsin Elections Commission’s advisement to Wisconsin’s election officials of their obligations as stated by the Court.

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.

BY THE COURT:

DATE SIGNED: January 30, 2024

Electronically signed by Ryan D. Nilsestuen
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

BRANCH 10

RISE, INC. AND JASON RIVERA,
Plaintiffs

Declaratory Judgment and Permanent
Injunction

vs.

WISCONSIN ELECTIONS
COMMISSION et al.,
Defendants

Case No. 2022CV2446

For the reasons stated on the record and given in the Court’s January 2, 2024, Decision and Order (Dkt. 223), the Court hereby:

1. **DECLARES** that, with respect to a witness’s address on an absentee ballot certificate, the term “address” in Wis. Stat. § 6.87(2) and (6d) means “a place where the witness may be communicated with”;
2. **DECLARES** that 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 allow a reasonable person in the community to identify a location where the witness may be communicated with;

3. **DECLARES** that an absentee ballot certificate is not “improperly completed” under Wis. Stat. § 6.87(9), based on a witness’s address, so long as the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with;
4. **DECLARES** that Wis. Stat. § 6.87 does not authorize the rejection of, return for cure of, or refusal to count an absentee ballot based on a witness’s address, if the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with;
5. **DECLARES** that the Wisconsin Elections Commission’s September 14, 2022, Memorandum entitled “Temporary Injunction on WEC Guidance re Missing Absentee Witness Address,” Dkt. 38 Ex. 8, is invalid and contrary to law to the extent that it adopts a different definition of “address” for purposes of the witness address requirement than the definition adopted in this Order;
6. **ORDERS** Defendant the Wisconsin Elections Commission, by February 9, 2024, to rescind the Memorandum entitled “Temporary Injunction on WEC Guidance re Missing Absentee Witness Address,” Dkt. 38 Ex. 8, or to revise and reissue the memorandum consistent with this Order;
7. **ORDERS** Defendant the Wisconsin Elections Commission, by February 9, 2024, to promptly advise all municipal and county election officials of this Court’s Order;
8. **ENJOINS** Defendant the Wisconsin Elections Commission from promulgating rules, guidance documents, or other materials inconsistent with this Order, or from otherwise taking any action inconsistent with this Order; and

9. **ENJOINS** Defendants Maribeth Witzel-Behl, Tara McMenamin, and Celestine Jeffreys from rejecting or returning for cure any absentee ballot based on a witness's address, if the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.
10. Provided, however, that nothing in this Order shall require Defendant the Wisconsin Elections Commission to modify the printed text of the absentee ballot certificate as the Wisconsin Elections Commission approved it at its December 19, 2023, meeting, so long as Defendant the Wisconsin Elections Commission advises municipal and county election officials of this Court's Order and of their obligation not to reject, return for cure, or refuse to count any absentee ballot based on a witness's address, if the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.

This order is final for purposes of appeal.