



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: October 28, 2022

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

FROM: Wisconsin Elections Commission

SUBJECT: Temporary Injunction for WEC concerning Spoiling Absentee Ballots
(*Kormanik v. Wisconsin Elections Commission, 22-CV-1395*)

On October 7, 2022, the Honorable Judge Brad D. Schimel of the Waukesha County Circuit Court issued an order for a Temporary Injunction in *Kormanik v. Wisconsin Elections Commission* concerning information about spoiling absentee ballots or returning absentee ballots to electors. The Temporary Injunction is attached to this memorandum. This order was stayed by the Court of Appeals until it made a decision to lift the stay on October 27, 2022, and the order will now go into effect starting at 3 p.m. on October 28, 2022.

The order enjoins and prohibits the Commission from “advising, guiding, instructing, publishing, or otherwise communicating information related to spoiling absentee ballots and/or returning absentee ballots to electors that contravenes Wis. Stat. §§ 6.84, 6.86(1)(ar), 6.86(5) and 6.86(6), except as otherwise provided in Wis. Stat. § 6.87(9).”

Specifically, the order enjoins and prohibits the Commission from “publicly displaying, applying, or disseminating” its August 1, 2022, memorandum called *Spoiling Absentee Guidance for the 2022 Partisan Primary*, an accompanying August 2, 2022, press release called *Rules about ‘Spoiling’ Your Ballot*, and “any other publication that communicates information contrary to Wis. Stat. §§ 6.86(5) and 6.86(6).” Further, the Commission is prohibited from disseminating or publishing any information stating 1. “that a municipal clerk or local election official may return a previously completed and submitted absentee ballot to an elector, except as otherwise provided in Wis. Stat. § 6.87(9)” or 2. “that a municipal clerk or local election official is authorized to spoil an absentee ballot on behalf of an elector.” The Commission may not otherwise provide or publicly display information contrary to Wis. Stat. §§ 6.86(5) and 6.86(6), except as provided in Wis. Stat. § 6.87(9).

Pursuant to the temporary injunction of October 7, 2022, this communication gives notice that the August 1, 2022, memo and the August 2, 2022, press release have been withdrawn by the Commission, subject to further appeals and a final determination.

Please review this notice and the attached Temporary Injunction 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 by phone at (608) 261-2028 if you have any questions. Thank you for your prompt attention to this matter.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

FILED
10-10-2022
Clerk of Circuit Court
Waukesha County
2022CV001395

DATE SIGNED: October 7, 2022

Electronically signed by Brad D. Schimel
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

NANCY KORMANIK

Plaintiff,

v.

Case No.: 22-CV-1395

Case Code: 30701

WISCONSIN ELECTIONS COMMISSION

Defendant,

and

RISE, INC. and the DEMOCRATIC NATIONAL
COMMITTEE,

Intervenors-Defendants.

ORDER FOR TEMPORARY INJUNCTION

The above-captioned matter having come before the Court, the Honorable Brad D. Schimel, presiding, for a hearing on Plaintiff's Motion for Temporary Restraining Order and Temporary Injunction on October 5, 2022. The Court, having reviewed the briefs submitted by Counsel and having heard arguments of counsel, and making findings and conclusions on the record, which is hereby incorporated by reference, hereby enters the following:

IT IS HEREBY ORDERED:

1. That Defendant, Wisconsin Elections Commission (“WEC”), is temporarily enjoined and prohibited from advising, guiding, instructing, publishing, or otherwise communicating information related to spoiling absentee ballots and/or returning absentee ballots to electors that contravenes Wis. Stat. §§ 6.84, 6.86(1)(ar), 6.86(5) and 6.86(6), except as otherwise provided in Wis. Stat. § 6.87(9).

2. That Defendant WEC is temporarily enjoined and prohibited from publicly displaying, applying, or disseminating certain published guidance, including its August 1, 2022 memorandum titled “Spoiling Absentee Guidance for the 2022 Partisan Primary” (“August 1st Published Memorandum”), its August 2, 2022 publication titled “Rules about ‘Spoiling’ Your Ballot” (“August 2nd Published Memorandum”), or any other publication that communicates information contrary to Wis. Stat. §§ 6.86(5) and 6.86(6), including prohibiting the dissemination or publication of the following information: (i) that a municipal clerk or local election official may return a previously completed and submitted absentee ballot to an elector, except as otherwise provided in Wis. Stat. §6.87(9); or (ii) that a municipal clerk or local election official is authorized to spoil an absentee ballot on behalf of an elector. WEC shall withdraw the aforementioned publications by or before 7 p.m. on Monday, October 10, 2022.

3. That Defendant WEC is temporarily enjoined and prohibited from providing or publicly displaying information contrary to Wis. Stat. §§ 6.86(5) and 6.86(6), except as otherwise provided in Wis. Stat. § 6.87(9), and that WEC shall comply with the foregoing by or before 7 p.m. on Monday, October 10, 2022.

4. That Defendant WEC shall notify all Wisconsin municipal clerks and local election officials that the August 1st Published Memorandum and August 2nd Published Memorandum have been withdrawn, consistent with the relief set forth herein, and shall provide the

aforementioned notice to all Wisconsin municipal clerks and local election officials by or before 7 p.m. on Monday, October 10, 2022.

5. That the foregoing temporary injunction against Defendant WEC shall remain in effect until further notified by the Court.