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MEMORANDUM

DATE: August 23, 2016

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

FROM: Michael Haas, Administrator
Nathan Judnic, Staff Counsel

SUBJECT: Seventh Circuit Court of Appeals Denies Stay Motion in *One Wisconsin Institute* Case and Implementation Guidance

Yesterday afternoon, the Seventh Circuit Court of Appeals denied the State's motion to stay Judge Peterson's decision in the *One Wisconsin Institute* case pending appeal. This ruling does not affect the one aspect of Judge Peterson's decision requiring the Department of Motor Vehicles to reform the ID Petition Process (IDPP) prior to the November election, which Judge Peterson stayed pending appeal. The current IDPP will remain in effect during the appeal of this case.

The Seventh Circuit's ruling does mean that significant election administration changes will be in effect for the November election, and this communication is intended to provide local election officials with guidance to assist in implementing those changes.

1) Municipalities may hold in-person absentee voting in more than one location.

Municipalities may conduct in-person absentee voting in locations in addition to the clerk's office/board of election commissioner's office or at an alternative site under Wis. Stat. § 6.855. If a municipality decides that locations other than the clerk's office or board of election commissioner's office will be used, the Commission recommends that the municipality use the procedure set forth in Wis. Stat. § 6.855 for designating an alternate location to allow enough notice to in-person absentee voters. This means that the alternate locations should be designated by the governing body of the municipality no fewer than 14 days prior to the time that absentee ballots are available for in-person absentee voting at the established location. The municipality should comply with the appropriate notice requirements to inform the public of the locations that will be used, as well as the notice requirements under Wis. Stat. § 6.855 which requires a municipal clerk or board of elections commissioners that maintains a website on the internet to post a notice of the absentee voting sites. Any in-person absentee voting sites should be staffed by the municipal clerk or the executive director of the board of election commissioners and their staffs, and the sites shall be accessible to individuals with disabilities.

2) The state-imposed time limits for in-person absentee voting, as well as the restriction on the number of days in-person absentee voting can take place, with the exception of the Monday before the election, have been removed.

The time of day restrictions for when in-person absentee voting can occur (between 8 a.m. and 7 p.m.) are no longer enforceable. Also, the restriction on the number of days that in-person absentee voting can occur prior to an election (3rd Monday preceding an election until the Friday preceding the election) has also been removed, with the exception of the Monday before Election Day when in-person absentee voting cannot occur. In-person absentee applications can be made and accepted on the days and during the hours set and properly noticed by the municipality and the clerk as soon as ballots for the election are available and until the Monday before the election. In addition to publishing standard absentee voting information in a Type E notice 4 weeks prior to an election, municipalities should publicize the days and hours of in-person absentee voting prior to it commencing. Note that the cutoff for registering to vote in-person at the clerk's office, or the office of the board of election commissioners remains 5 p.m. or the close of business, whichever is later, on the Friday preceding the election.

3) Universities, colleges or technical colleges may provide certified "dorm lists" to municipalities used for proof of residence without verifying U.S. citizenship of the students contained on the list.

Any certified, current list of students provided by a university, college, or technical college who reside in housing sponsored by the university, college, or technical college does not need to filter out students that are not U.S. citizens, meaning some non-U.S. students could appear on the list. As with all other voters, there is no separate requirement that students document their citizenship status apart from their sworn certification when signing the voter registration application. More schools may be willing to provide these certified lists now that the citizenship requirement has been removed, as federal confidentiality laws previously prevented that disclosure.

4) The durational residency requirement for voter registration purposes is now 10 days.

For purposes of determining an individual's residency for voting, an individual need only reside in an election district or ward for 10 consecutive days before any election where the individual offers to vote to be eligible. This is a change from the previous 28 day requirement, and it requires changes to several election forms including the Voter Registration Application, the Absentee Ballot Certificate and the Application for Absentee Ballot. A complete list of election forms affected by this aspect of ruling is posted here: <http://www.gab.wi.gov/node/4057>

Printing of election forms for the November election containing the 10 day residency requirement can begin immediately, but please be mindful when ordering a large stock of materials that an appeal of this decision is still pending and could affect forms used for elections after November.

5) The prohibition on distributing absentee ballots by fax or email has been removed.

Absentee ballots may now be distributed/transmitted to voters by fax or email regardless of the "type" of voter that makes the request. A regular absentee voter (non-military, non-overseas) could receive a ballot by fax or email if they request such delivery from the clerk or the board of election commissioners. All voters may request fax or email ballot delivery using the same methods as military and permanent overseas voters, including the MyVoteWI website or a

standard absentee ballot application. Clerks now have the option to honor requests for faxed or emailed ballots.

The Court order did not address the transmission of absentee ballots through the MyVote Wisconsin website, and therefore that method of transmission continues to be restricted to military and permanent overseas voters.

If the option to send ballots by fax or email becomes more widely used by all voters, municipal clerks and election inspectors will need to be prepared to remake an increased number of ballots on Election Day so that those absentee ballots can be counted by voting equipment.

6) University, college or technical college IDs may be presented to satisfy the Photo ID requirement if they are expired, but the ID must meet all other qualifying requirements

For a student ID card to be used for proof of identification, it must still contain the required elements of the statute, meaning it must contain the date on which the card was issued to the student, it must contain a signature of the individual to whom it has been issued and it must contain an expiration date showing that the card expires within two years of the date of issuance. Election officials need to verify that these elements appear on the card, but it shall still be accepted as proof of identification even if it has expired.

Commission staff is currently updating other election forms and instructions to comply with this order, including documents that reference in-person absentee voting requirements, fax and email of absentee ballots and use of student IDs and certified dorm lists. Parallel changes to the WisVote system are also being made, and will be implemented on a rolling basis until they are complete.

If you have questions regarding yesterday's decision or this guidance, please contact the Elections Commission HelpDesk at elections@wi.gov or at (608) 261-2028.