



Wisconsin Elections Commission

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DATE: June 30, 2020

TO: All Wisconsin Election Officials

FROM: Meagan Wolfe
Administrator

SUBJECT: UPDATED: 7th Circuit Court of Appeals Ruling in One Wisconsin Institute Case

On June 29, 2020 the 7th Circuit Court of Appeals issued its ruling in the One Wisconsin Institute case that had been on appeal since 2016. WEC staff are in contact with the Wisconsin Department of Justice and are currently analyzing the details of the ruling and will be providing comprehensive guidance regarding the impacts of the decision soon. In the interim, we wanted to emphasize several aspects of the ruling which are clear and of immediate concern to administering the August 11, 2020 Partisan Primary:

- **In-Person Absentee Voting:** The Court determined that limitations on days, hours and locations for in-person absentee voting contained in the current statute are permissible under the law and that the requirements established by 2017 Wisconsin Act 369 are constitutional and enforceable. For the August 11 Primary you may not begin conducting in-person absentee voting until Tuesday, July 28. Type E notices should be modified accordingly and may need to be republished with amended hours.

Effective immediately:

- In-person absentee voting may be conducted beginning no earlier than 14 days prior to each election and ending no later than the Sunday prior to election day. No in-person absentee voting is allowed on the Monday prior to election day. Wis. Stat. § 6.86(1)(b).
 - There is no limit contained in the current law on the maximum number of hours that can be offered for in-person absentee voting and the law also does not establish a minimum number of hours that must be offered (although opportunities for in-person absentee voting must be offered). In-person absentee voting hours are also not required to be offered on each day of this time period.
 - Municipalities are permitted to designate multiple sites for in-person absentee voting. Wis. Stat. § 6.855(5).
- **Voter Residency:** The Court determined that the State's 28-day residency requirement for voter registration was constitutional. WEC will be modifying the voter registration form and online voter registration process to reflect the change to 28 days. If you are using the current version of the form for in-person registration, please have the voter and clerk cross out the reference to 10 days and write in 28

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days and then initial by the change. We will let you know when the updated form is available. We are also working to update the residency certification in the online voter registration workflow on MyVote.

Effective immediately: Voters must have resided at their current address for 28 days prior to election day in order to register at that address. Voters who do not meet the 28-day requirement at their new address are eligible to participate at their former address. Wis. Stat. § 6.02(1) and (2).

- **Electronic Ballot Delivery:** The Court determined it was constitutional for the State to restrict the use of fax and email delivery of absentee ballots to only military and overseas (permanent and temporary) voters. Wis. Stat. §§ 6.22(2)(e) and 6.24(4)(e).

Effective immediately: Clerks may not send absentee ballots to regular absentee voters via fax or email delivery. Clerk must continue to send absentee ballots to military and overseas voters via fax or email delivery.

- **Absentee Ballot Certificate Envelope (Updated):** State law requires the certification language on the absentee ballot return envelope to include the residency requirement in the voter affirmation section. Wis. Stat. § 6.87(2). Existing stock of return envelopes that list the 10-day standard may still be used, but the clerk should manually change the reference to the 28-day residency requirement, and initial this change, before issuing the return envelope to an absentee voter.
- **Other Changes to Election Law:** The Court's decision also affects several other changes to elections law that WEC staff is currently analyzing to determine their impact, including issues with university ID cards as proof of identification, and the ID Petition Process administered by the Wisconsin Department of Motor Vehicles.

We appreciate your attention to these changes and your patience as we develop guidance regarding the Court decision's impact. We will be providing updated information, training materials and reference documents to assist your efforts in preparation for the remainder of the 2020 election cycle. Please contact us at elections@wi.gov or call us at (608)261-2028 with any questions you may have.