

# WISCONSIN ELECTIONS COMMISSION

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## MEMORANDUM

**DATE:** August 2, 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:** Federal Court Decision in *One Wisconsin Institute* Case – No Impact on August 9, 2016 Partisan Primary, Absentee Certificate Envelopes and Other Forms May Change for General Election

As we communicated late on Friday afternoon, Federal District Judge James Peterson of the Western District of Wisconsin issued a decision concluding that six separate legislative actions were unconstitutional, in addition to an aspect of the Photo ID Law's implementation by the Division of Motor Vehicles. The Photo ID Law itself was not overturned by the Court.

Specifically, the decision found the following provisions to be unconstitutional:

1. The restriction limiting municipalities to one location for in-person absentee voting.
2. The limits on the time for in-person absentee voting, except for the prohibition applicable to the Monday before Election Day.
3. The requirement that dorm lists (which are used to accompany a student ID as proof of residence) include citizenship information.
4. The change in the residency requirement from 10 days to 28 days.
5. The prohibition on distributing absentee ballots by fax or email to voters other than military electors and permanent overseas electors.
6. The prohibition on using expired, but otherwise qualifying, student ID cards.

7. Components of the Department of Motor Vehicles' ID petition process. That petition process allows individuals to receive a temporary identification receipt that is valid for voting while the individual's petition is pending. The Court ordered that DMV promptly issue a voting credential to individuals with a petition pending or who enter that process. The court's order would require that such credential be valid for the same time period as a driver license or State ID card.

We expect that the Department of Justice will appeal the decision and request an expedited stay of Judge Peterson's order. Until further notice, therefore, the Elections Commission is providing the following guidance regarding the Court's decision in *One Wisconsin Institute v. Thomsen*:

1. As stated in our original communication, Judge Peterson's decision specifically states that it **IS NOT INTENDED TO IMPACT THE PARTISAN PRIMARY AND HAS NO EFFECT ON THAT ELECTION**. The laws and procedure for registration and voting remain the same for the August 9, 2016 Partisan Primary, and municipalities may not implement provisions of the Court order for that election.
2. Due to the Partisan Primary and the possibility of an expedited ruling regarding a stay of the Court's order, the Commission is not issuing specific guidance regarding the implementation of the Court's decision at this time. We are reviewing the decision and will consult with the Department of Justice regarding the rules that will be in effect in the event that a stay of the decision is not issued.
3. We are making the preparations necessary to comply with Judge Peterson's order, with the understanding that it is possible that courts will issue a stay pending appeal. If Judge Peterson's decision is not stayed and remains in effect, several forms will need to be revised for the General Election, and clerks should be mindful of that possibility in printing forms. For example, the Absentee Ballot Request (EL-121), the Absentee Certificate (EL-122), and the Voter Registration Application (EL-131), would need to be revised to reflect a change in the elector's residency requirement from 28 days to 10 days. Any other form or instruction that refers to a 28-day residency requirement would also need to be revised.

We recently posted new versions of the Absentee Ballot Request and the Absentee Certificate to reflect recent legislative changes related to the witness address requirement and the three-day window to return absentee ballots after Election Day. Those forms continue to reflect a residency requirement of 28 days. **Please note** that it may be necessary to print new forms in light of the court's decision. You may consider waiting to print such forms until there is a decision regarding a stay of the Court decision.

We will provide further guidance as soon as we are able based on additional developments. In the meantime, if you have questions or concerns related to the Court's decision in this matter or its impact on the fall elections, please contact the Elections Commission HelpDesk at [elections@wi.gov](mailto:elections@wi.gov) or at (608) 261-2028.