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August 31, 2022

VIA ELECTRONIC MAIL TO: elections@wi.gov

Meagan Wolfe, Administrator
Don M. Millis (Chairperson)
Marge Bostelmann
Julie M. Glancey
Ann S. Jacobs
Robert F. Spindell, Jr.
Mark L. Thomsen

RE: Casey v. WEC, Case #3:22-cv-00402

Dear Commissioners and Administrator Wolfe:

I am writing to you regarding the Order just issued by Judge Peterson in the above-referenced case. Pursuant to that Order, Judge Peterson concluded that the Voting Rights Act requires that voters who, by reason of disability, require third-party assistance with returning their absentee ballots to a municipal clerk, must be permitted that assistance. Judge Peterson further ordered that WEC must, by September 9, 2022, “provide written instructions to all Wisconsin municipal clerks that the Voting Rights Act requires that any Wisconsin voters who require assistance with mailing or delivering their absentee ballots to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.”

The requirement by Judge Peterson is consistent with 52 U.S.C. 10508, which provides that:

Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.

That provision of federal law is implemented in Wisconsin by Wis. Stat. 7.15(14), which provides that:

Each municipal clerk shall make reasonable efforts to comply with requests for voting accommodations made by individuals with disabilities whenever feasible.

We have no quarrel with any of the above and I am just setting it forth as background for the rest of this letter.

The purpose of this letter is to remind you of the requirements of Wis. Stat. 6.87(4)(b)(1) and the Wisconsin Supreme Court's decision in *Teigen v. WEC*, 2022AP91 (July 8, 2022) and to propose some suggestions for how WEC may and should comply with both Judge Peterson's Order in *Carey* and Section 6.87(4)(b)(1) as interpreted by the Wisconsin Supreme Court's decision in *Teigen*. We recall that Administrator Wolfe testified before the Wisconsin Assembly's Committee on Campaigns and Elections that WEC supports both making voting easier and maintaining election integrity. This is an example of a situation where the Commission can show support for both.

As you know, Wis. Stat. 6.87(4)(b)(1) provides that the only two ways to lawfully cast an absentee ballot in Wisconsin are for the voter to personally deliver the ballot to the municipal clerk or to personally place it in the mail. Judge Peterson's Order points out, however, that voters who are unable to comply with this requirement due to a disability are entitled to assistance in delivering their ballot to the clerk.

The exception pointed out by Judge Peterson is only available to individuals who cannot personally deliver their ballot or personally mail their ballot based on a disability, i.e., voters like the plaintiffs in the *Carey* case. Subject to this exception, municipal clerks are still obligated to make sure that all other ballots are cast consistently with Section 6.87(4)(b)(1).

The obvious challenge is how to determine if a ballot presented to the clerk's office by a third person is, in fact, a ballot being voted by an individual who, due to a disability, is unable to personally mail or deliver the ballot. The simple solution is to promulgate a permanent and emergency rule (so that it is in effect immediately) that parallels the certification already used for other voting assistance for individuals with a disability. The current absentee ballot certificate has the following section:

CERTIFICATION OF ASSISTANT (if applicable) - assistant may also be witness

I certify that the voter named on this certificate is unable to sign his/her name or make his/her mark due to a physical disability and that I signed the voter's name at the direction and request of the voter.

X _____
▲ Signature of Assistant ▲

WEC can and should adopt a rule that adds a similar section as follows for assistance in delivering a ballot:

CERTIFICATION OF ASSISTANT (if applicable) - assistant may also be witness

I certify that the voter named on this certificate is unable to personally deliver or mail his/her absentee ballot to the clerk due to a physical disability and that I am delivering or mailing the ballot at the request of the voter.

X _____
▲ Signature of Assistant ▲

Municipal clerks should then be instructed that an individual may only mail or deliver their own ballot or the ballot of a person who cannot, because of a disability, deliver their own ballot, and only if the person delivering the ballot has signed a certification like the one provided above. That process would comply with Judge Peterson's Order in *Carey*, the Wisconsin Supreme Court's decision in *Teigen*, and Wis. Stat. 6.87. It would make it easier for individuals with disabilities to vote and maintain election integrity.

Sincerely,

A handwritten signature in black ink, appearing to read "Luke Berg". The signature is written in a cursive style with a large initial "L" and a long, sweeping underline.

Luke Berg
Deputy Counsel



Law Forward Inc.
222 West Washington Avenue, Suite 250
Madison, WI 53703-2725

September 1, 2022

VIA EMAIL

Wisconsin Elections Commission
c/o Assistant Attorney General Thomas C. Bellavia
201 West Washington Ave.
Madison, WI 53703
bellaviatc@doj.state.wi.us

Re: *Carey v. Wisconsin Elections Commission*
Case No. 3:22-cv-402-jdp (W.D. Wis.)

Dear Commissioners,

As you know, yesterday Chief Judge Peterson entered a declaration of law and imposed a permanent injunction requiring the Wisconsin Elections Commission (WEC) to take specific steps to protect the rights of Wisconsin voters with disabilities. Hours later, Attorney Luke Berg sent a letter to WEC on behalf of the Wisconsin Institute for Law & Liberty (WILL) regarding Judge Peterson's order. Neither Mr. Berg nor WILL has appeared as counsel in *Carey*. I write in response on behalf of the plaintiffs in that case.¹

WILL recommends that the Commission promulgate emergency and permanent rules altering the Certification of Assistant on the Absentee Ballot Application/Certification, form EL-122 (Certificate). While WILL describes this as a "simple solution," it is, in effect, a request that this Commission ignore Wisconsin statutes, federal law, and Judge Peterson's order; thus, following this "simple solution" would unduly disrupt absentee voting in the imminent November 2022 election. WILL's advice to the Commission is contrary to law for at least four reasons.

First, adopting WILL's proposal would violate the Voting Rights Act and necessarily preclude WEC from complying with Judge Peterson's injunction. In relevant part, the Court enjoined WEC as follows:

Defendants may have until September 9, 2022, to provide *written instructions* to all Wisconsin municipal clerks that the Voting Rights Act requires that any Wisconsin voters who require assistance with mailing or delivering their absentee ballots to the municipal clerk because of *a disability* must be permitted to receive such assistance *by a person of the voter's choice*, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

Carey v. Wis. Elec. Comm'n, Dkt. 40, No. 3:22-CV-402-jdp (W.D. Wis. Aug. 31, 2022) (emphases added). Judge Peterson also specified, as does the Voting Rights Act, that voters with disabilities are entitled to

¹ Law Forward represents the plaintiffs in *Carey*, along with our co-counsel at Stafford Rosenbaum LLP and Wilmer Cutler Pickering Hale and Dorr LLP.

assistance from a person their choice (with limited exceptions), not assistance from a person of their choice only from among those also willing and able to sign a certification as a condition of assisting the voter. That additional qualification appears nowhere in the order, and nowhere in the Voting Rights Act that the order vindicates. As the additional qualification suggested by WILL would narrow the rights afforded to voters with disabilities under the Voting Rights Act, such qualifications would be pre-empted and thus invalid. 52 U.S.C. § 10508; *Carey; Disability Rts. N. Carolina v. N. Carolina State Bd. of Elections*, No. 5:21-CV-361-BO, 2022 WL 2678884, at *5 (E.D.N.C. July 11, 2022) (“[S]tates may not impose additional limits on disabled voters’ choice of assistant, other than the two excluded groups in the text of Section 208.”).

Second, the proposed additional Certificate language would violate other federal laws, including the Americans with Disabilities Act (ADA) and its accompanying regulations. Pursuant to the ADA, voters with disabilities are entitled to full access to the voting process. 42 U.S.C. § 12132. “Title II of the ADA requires state and local governments ... to ensure that people with disabilities have a full and equal opportunity to vote.” U.S. Dep’t of Justice, “The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities.”² This necessarily includes the opportunity to vote via absentee ballot and return that ballot to the municipal clerk, with the assistance guaranteed by the Voting Rights Act and Judge Peterson’s order. Pursuant to federal regulation, the Commission and the municipal clerks may not “impose or apply eligibility criteria that screen out or tend to screen out” people with disabilities from “fully and equally enjoying” the programs, services, or activities of state and local governments. 28 C.F.R. § 35.130(b)(8). WILL’s proposal would do just that, by requiring voters with disabilities to find a witness who, in addition to the requirements of Wis. Stat. § 6.87(4)(b), would also swear to the nature and extent of the voter’s disability. This type of screening is squarely foreclosed by federal law.

This is not the only way WILL’s letter deviates from the federal law to which it claims fidelity. WILL proposes a definition of “disability” more restrictive than the order in *Carey* and the Voting Rights Act permit. Under the Voting Rights Act, “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or an agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508. The statutory protection is not limited to physical disability. Neither was Judge Peterson’s order so limited. Yet WILL’s proposal seeks to impose this restriction. The result would be inconsistent with federal law, requiring that municipal clerks not accept, or not count, an absentee ballot from a voter who meets the definition of “disability” under the Voting Rights Act, but does not meet the cramped interpretation conjured by WILL.

Third, the additional certification WILL asks WEC to adopt would exceed Wisconsin law. The right to vote is paramount. The Constitution and federal law limit how states may regulate its exercise. WILL’s letter flips this equation on its head. As they have it, the right to vote is a narrow statutory creation that does not exist outside the procedures expressly spelled out by the Legislature. WILL is wrong. There are boundaries on state regulation of the franchise. For example, as the Commission knows well, it has the authority to create and approve forms, as long as those forms meet specific requirements found in statute. That is certainly the case with the Certificate, the contents of which are prescribed by Wis. Stat. § 6.87. WILL cites

² Available at https://www.ada.gov/ada_voting/ada_voting_ta.htm.

no statute that permits, much less requires, WEC to add to the Certificate requirements not set out in statute. WEC has no such authority and would exceed its lawful role by adding such requirements or promulgating such a rule. *See* Wis. Stat. § 227.11(2)(a)3 (“A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate ... a rule that contains a standard, requirement, or threshold that is more restrictive.”); *Wisconsin Legislature v. Palm*, 2020 WI 42, ¶ 51, 391 Wis. 2d 497, 942 N.W.2d 900.

The additional requirement WILL urges WEC to adopt is found nowhere in Wisconsin’s “comprehensive absentee voting law.” *Teigen v. Wis. Elec. Comm’n.*, 2022 WI 64, ¶178, ___ Wis.2d ___, 976 N.W.2d 519 (Hagedorn, J. concurring). WILL provides no rationale for how this Commission can, or why it even should, integrate into the Certificate additional requirements that the Legislature has not prescribed.³ The Wisconsin Constitution vests the authority to create and amend election procedures, including laws pertaining to the absentee-ballot process, in the Legislature, subject to the Governor’s veto. Wis. Const. art. III, § 2; Wis. Const. art. V, § 10; *State ex rel. La Follette v. Kohler*, 200 Wis. 518, 548, 228 N.W. 895 (1930).⁴ There is no basis for the Commission to freelance by imposing an additional requirement not set out in statute.

Fourth and finally, WILL’s proposal invites WEC to disrupt voting procedures for an election that will already be in progress. Public reporting suggests the Commission intends to meet after business hours on September 6, to address the *Carey* order. Municipal clerks must begin mailing absentee ballots for the November 2022 election to voters with applications on file no later than September 22. Wis. Stat. §§ 7.10(3), 7.15(1)(c), (cm). As the Commission knows, but WILL elides, even an emergency rule⁵ requires several steps and takes considerable time. Much of the process, and the time required, is outside the Commission’s control. Wis. Stat. § 227.24(1). Even under optimal conditions, the statutory process takes several weeks, which would mean the emergency rule would take effect *after* absentee ballots had already been sent to voters and well after the Certificate for each ballot has been printed. This would cause undue confusion and prejudice to clerks and voters of the exact same type as the Wisconsin Supreme Court has disapproved of in the past. *See, e.g., Hawkins v. Wis. Elec. Comm’n.*, 2020 WI 75, ¶ 8, 292 Wis. 2d 629, 948 N.W.2d 877.

³ This is a remarkable reversal for WILL, which represented the plaintiffs in *Teigen* and argued strenuously that anything not specifically authorized by the Legislature—like drop boxes or absentee ballot return assistance—is necessarily prohibited. *Teigen v. Wis. Elec. Comm’n.*, No. 22-AP-91, Response Brief at 16, 21-22. WILL has also objected to the Commission promulgating rules that, in WILL’s judgment, do not comport precisely with statutory text. *See, e.g.,* <https://will-law.org/wp-content/uploads/2022/07/WILL-Letter-to-JCRAR-July-20.pdf>

⁴ The Commission has recently reminded the municipal clerks, in a separate context, that additional voting procedures may be imposed only through the legislative process. *See, e.g.,* WEC, *Face Coverings on Election Day*, available at <https://elections.wi.gov/node/1221>; *see also* WEC, *Face Coverings While Voting and Conducting Elections* (July 31, 2020), available at <https://elections.wi.gov/media/11301/download>.

⁵ WILL also fails to describe what emergency, if any, their proposed emergency rule would address. *See* Wis. Stat. § 227.24(1) (emergency rules permitted only for “preservation of the public peace, health, safety, or welfare”).



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Both on timing and on substance, were WEC to adopt WILL's proposal, it would violate the Court's order and sow confusion in the middle of an election.⁶

In sum, Judge Peterson's order, federal statutes, and bedrock principles of Wisconsin law all clearly prohibit what WILL has now proposed. Furthermore, before WEC accepts any proposal from WILL, it should consider that WILL engineered and prosecuted *Teigen v. Wisconsin Elections Commission*, in which WILL pressed the Supreme Court of Wisconsin to reach the precise result that necessitated the *Carey* lawsuit and the permanent injunction Judge Peterson issued yesterday. If the Commission follows WILL's recommendations, it does so at its own peril.

We and our clients appreciate the ongoing efforts of the Commission and election officials statewide in administering Wisconsin's safe, secure, and transparent elections. We trust you will adhere to Judge Peterson's order and federal law to ensure that voters with disabilities can exercise their rights. If you have any questions or concerns, or if I can provide additional information to the Commission in advance of or at next Tuesday's meeting, please do not hesitate to contact me at sthompson@lawforward.org.

Sincerely,

A handwritten signature in black ink that reads "Scott Thompson".

Scott Thompson
Staff Counsel

cc: Counsel of Record in *Carey* at Wisconsin Department of Justice
Counsel of Record in *Carey* at Stafford Rosenbaum, LLP
Counsel of Record in *Carey* at Wilmer Cutler Pickering Hale and Dorr LLP
Atty. Luke Berg at Wisconsin Institute for Law & Liberty

⁶ WILL is also incorrect that Wis. Stat. § 7.15(14) "implements" federal protections. No Wisconsin state court has interpreted Wis. Stat. § 7.15(14) in this way, and Judge Peterson specifically held that the opposite is true; Wis. Stat. § 7.15(14) is not broad enough to avoid conflict preemption by the Voting Rights Act. *Carey*, Dkt. 39, slip op. at 18-19 (W.D. Wis. Aug. 31, 2022).



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September 6, 2022

VIA ELECTRONIC MAIL TO: elections@wi.gov

Meagan Wolfe, Administrator
Don M. Millis (Chairperson)
Marge Bostelmann
Julie M. Glancey
Ann S. Jacobs
Robert F. Spindell, Jr.
Mark L. Thomsen

RE: *Carey v. WEC*, W.D. of Wisconsin Case No. 3:22-cv-00402-jdp

Dear Commissioners and Administrator Wolfe:

This letter is in reply to the letter that Law Forward sent on September 1, 2022 in response to my letter to WEC on August 31.

The Commission, of course, should exercise its own best judgment as to future steps to be taken based on Judge Peterson's Decision in *Carey*, but Law Forward's comments regarding our letter and proposal are misguided and the Commission should not be persuaded by them.

First, nothing in our proposal conflicts with Judge Peterson's Decision. He decided (and we agree that his decision is correct) that under the Voting Rights Act, voters who, due to a disability, need assistance to deliver their ballot are entitled to receive such assistance. But Judge Peterson, in rejecting an order proposed by the Plaintiffs in *Carey*, also made clear that this does not mean that *every* voter who wants such assistance is entitled to have it. Our proposal is designed to effectuate that distinction.

Law Forward's claim that any attempt to ensure that the limited exception ordered by Judge Peterson is outside of and somehow violates the Voting Rights Act is preposterous. Virtually any law mandating an accommodation for persons with disability permits reasonable steps to ensure that only those entitled to the accommodation receive it. Our proposal is quite modest. It does not require a voter to "prove" his or her disability. He or she need not provide medical documentation or even explain what the disability is. A voter need only genuinely have such a disability and the assistant attest to that fact.

Consider this analogy. The Voting Rights Act also allows voters who cannot sign their own name to receive assistance and have a person of their choosing sign their name for them. In effectuating that requirement, Wis. Stat. § 6.87(5) permits the voter to choose a person to sign their

name for them and then that person signs the certificate/envelope for the voter and also signs in a second place certifying as follows:

CERTIFICATION OF ASSISTANT (if applicable) - assistant may also be witness

I certify that the voter named on this certificate is unable to sign his/her name or make his/her mark due to a physical disability and that I signed the voter's name at the direction and request of the voter.

X

▲ Signature of Assistant ▲

To our knowledge, no one – not Law Forward or anyone else - has contested or could reasonably contest, that such a process violates the Voting Rights Act. Instead, it ensures that the rights provided under that Act are being exercised by those entitled to them and not others. Our proposal to have a virtually identical certification process for voters who require assistance to deliver their ballot likewise does not violate the Voting Rights Act in any way, but simply ensures that the rights available under that law are only being exercised by those entitled to them.

As pointed out in my previous letter, WEC and the municipal clerks remain bound by Wis. Stat. § 6.87(4)(b)(1) and the Wisconsin Supreme Court's decision in *Teigen v. WEC*, 2022AP91 (July 8, 2022). It is not inconsistent with Judge Peterson's decision for local clerks to implement a process for determining whether a person who is delivering someone else's ballot is doing that on behalf of a person who cannot deliver their own ballot due to a disability. Indeed, the Court's recognition that the requirement of assistance for disabled persons does not mean assistance for all *requires* such a process. A federal order that went beyond the Voting Rights Act and permitted all state residents to have someone else deliver their ballot would effectively gut Wis. Stat. § 6.87(4)(b)(1) and the Wisconsin Supreme Court's decision in *Teigen v. WEC*, 2022AP91 (July 8, 2022). That would raise grave federalism concerns.

There may be multiple ways to verify that the exception goes no further than federal law requires, but our proposal is simple and consistent with the method the State already uses for voters who cannot sign their own name.

Second, Law Forward quarrels with the language we proposed for our certification that refers to a "physical disability." Our proposed language was as follows:

CERTIFICATION OF ASSISTANT (if applicable) - assistant may also be witness

I certify that the voter named on this certificate is unable to personally deliver or mail his/her absentee ballot to the clerk due to a physical disability and that I am delivering or mailing the ballot at the request of the voter.

X

▲ Signature of Assistant ▲

We used that language primarily because it parallels the language used with respect to voters who, due to a disability, cannot sign their own name. But we would have no objection to removing the word “physical” from the new certification.

Third, Law Forward argues that WEC lacks the power to promulgate a rule on this subject. In one of its footnotes, Law Forward contends that by proposing a rule, we are being hypocritical and acting inconsistently with previous positions that Law Forward suggests WILL has taken. Law Forward is wrong on this point as well.

WEC has authority under Wis. Stat. § 5.05(1)(f) to “Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.” In fact, in 2020, WILL asked WEC to use its rule-making power to promulgate a rule prohibiting ballot harvesting, but WEC did not do so, which ultimately led to the *Teigen* case.

We agree with Law Forward that WEC does not have the power to promulgate a rule that conflicts with state law. *See*, Wis. Stat. § 227.10(2). That, for example, is why we opposed WEC’s proposed rule relating to curing of absentee ballot certificates. The question here is whether a rule that adopts the certification language we proposed would conflict with state law. It is easy to see that it does not. In fact, it would implement Judge Peterson’s decision in a way that is most faithful to the requirements in Wis. Stat. § 6.87 regarding absentee ballot return. It would ensure that absentee ballots are delivered only by voters themselves except in instances where the voter is unable, due to disability, to deliver their own ballot. And, as already noted, our proposed language tracks the certification language used for voters who cannot sign their own name. Thus, the certifying language we have proposed is consistent with state law.

Fourth, and finally, Law Forward argues that timing is a problem because municipal clerks must begin mailing absentee ballots no later than September 22. But the time between now and then is sufficient to promulgate the rule proposed by WILL on an emergency basis (to be followed by a permanent rule), and even if that is wrong, WEC should act immediately after the Fall General Election.

Sincerely,



Luke Berg
Deputy Counsel



Law Forward Inc.
222 West Washington Avenue, Suite 250
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September 3, 2022

VIA EMAIL

Wisconsin Elections Commission
c/o Attorney Jim Witecha
201 West Washington Ave.
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james.witecha@wisconsin.gov

Re: Post-*Carey* instructions to election officials

Dear Commissioners,

On behalf of our clients, the plaintiffs in *Carey v. WEC*, we write in response to the Commission's request for comment regarding how the Commission should implement Judge Peterson's summary judgment order and permanent injunction. In considering how to respond, the Commission must be careful to fully comply with both the Judge's order and federal laws that protect voters with disabilities.

Judge Peterson instructed the Commission "to provide written instructions to all Wisconsin municipal clerks that the Voting Rights Act requires that any Wisconsin voters who require assistance with mailing or delivering their absentee ballots to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." *Carey v. Wis. Elec. Comm'n*, Dkt. 40, No. 3:22-CV-402-jdp (W.D. Wis. Aug. 31, 2022). This tracks the applicable language of the Voting Rights Act: "Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508. The VRA's definition of "vote" is expansive and covers the ballot return process. 52 U.S.C. § 10101(e).

All voters with disabilities who need assistance to return their ballots, either to the clerk's office or by mail, are entitled to such assistance from a person of their choice.¹ The VRA's *only* restriction under 52 U.S.C. § 10508 bars a voter's employer or union from providing the requisite assistance. The Commission must not issue any guidance that would leave the door open for election officials to impose further restrictions on voters with disabilities in contravention of the VRA and the injunction in *Carey. Disability Rts. N. Carolina v. N. Carolina State Bd. of Elections*, No. 5:21-CV-361-BO, 2022 WL 2678884, at *5 (E.D.N.C. July 11, 2022) ("[S]tates may not impose additional limits on disabled voters' choice of assistant, other than the two excluded groups in the text of Section 208.").

¹ All Wisconsin voters are entitled to ballot-return assistance through the mail (in other words, a nondisabled person can have their spouse put their ballot in the mailbox). The Wisconsin Supreme Court did not address this issue in its recent *Teigen* decision.

It is each individual voter's right and responsibility to determine if they qualify for assistance under 52 U.S.C. § 10508, and what kind of assistance they require during the voting process, including at the ballot return stage. There is no basis in federal or state law for election officials to require a voter to verify their disability or their need for assistance.² Indeed, that type of screening process is prohibited. Because voters with disabilities are entitled to have a person *of their choice* help them with any part of the voting process with which they need help, officials are also prohibited from adding requirements for those assistants. For example, officials cannot limit how many voters' ballots an assistant may return or require the assistant to sign a certification or attestation about the disability of the voter. Such restrictions would limit the voter's choice of assistants to those individuals willing and able to meet the additional requirements. In effect, this would impermissibly supplant "a person of the voter's choice" with "a person of the voter's choice *subject to official approval*." The VRA does not countenance such restrictions; if codified, they would be pre-empted.³

Nor can any voter with a disability be required to request permission or an accommodation to have a person of their choice return their ballot. Judge Peterson specifically explained that the right to request an accommodation is "a narrower right than the one granted under the VRA, and it wouldn't guarantee that a disabled voter would be allowed to obtain assistance." *Carey v. Wis. Elec. Comm'n*, Dkt. 39, No. 3:22-CV-402-jdp, slip op. at 19 (W.D. Wis. Aug. 31, 2022). Voters with disabilities have an affirmative right to ballot-return assistance. They need not ask election officials for permission to exercise that right, nor negotiate with officials about how they may exercise it.

In sum, the Commission should relay Judge Peterson's clear order to Wisconsin's election officials, and further explain that clerks may not impose any certification, attestation, or evidentiary requirements on disabled voters who require ballot-return assistance, or on the people who assist them.

Thank you for your attention to this vital matter. Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink that reads "Scott Thompson".

Scott Thompson
Staff Counsel

² In the unlikely event that a voter who is not qualified under 52 U.S.C. § 10508 nevertheless used ballot-return assistance to deliver a ballot "in person to the municipal clerk," they could face potential sanctions under state law.

³ See, e.g., *OCA-Greater Houston v. Texas*, 867 F.3d 604, 615 (5th Cir. 2017).



Date: September 2, 2022

To: Wisconsin Elections Commission Staff – Attn: Jim Witecha, Staff Attorney

Submitted via electronically to: james.witecha@wisconsin.gov

Re: Comments relating to implementation of the court order issued in the matter of *Carey v. WEC*

The Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR) is a nonprofit agency committed to supporting the successful delivery of aging programs and services in our service area consisting of 70 counties (all but Dane and Milwaukee) and 11 tribes in Wisconsin. We are one of three Area Agencies on Aging in Wisconsin. Our mission is to deliver innovative support to lead aging agencies as we work together to promote, protect, and enhance the well-being of older people in Wisconsin. There are estimated to be nearly 1.2 million adults aged 60 and older residing in our service area.¹ GWAAR is a member of the Wisconsin Disability Vote Coalition, and I am a member of the Wisconsin Elections Commission’s Accessibility Advisory Committee.

Thank you for this opportunity to provide comments regarding implementation of the court order issued in the matter of *Carey v. WEC*. Many older adults with disabilities do not identify as having disabilities. Yet, “more than 30 percent of Americans over age 65 have some kind of disability, and over 50 percent of those over age 75.”² The ruling in the *Carey v. WEC* case states (among other things):

- Under the Voting Rights Act, 52 U.S.C. §10508, voters who require assistance with mailing or delivering their absentee ballot to the municipal clerk because of a **disability** are entitled to assistance...”

To ensure older adults with disabilities are able to “identify” as covered by this ruling and receive any assistance needed with mailing or delivering their absentee ballots, GWAAR recommends “disability” be defined as it is under the Voting Rights Act (VRA):

“Any voter who requires assistance to vote **by reason of blindness, disability, or inability to read or write** may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.”³

¹ Wisconsin Department of Health Services, Aging: Demographics in Wisconsin, [County Population Projections Through 2040, P00138A](https://www.dhs.wisconsin.gov/aging/demographics.htm); retrieved on Aug. 26, 2022 from <https://www.dhs.wisconsin.gov/aging/demographics.htm>.

² ADA National Network, *Aging and the ADA*, 2018; retrieved on Sept. 2, 2022 from <https://adata.org/factsheet/aging-and-ada>.

³ Cornell Law School, Legal Information Institute, retrieved on Sept. 2, 2022 from <https://www.law.cornell.edu/uscode/text/52/10508>.

The statutory protection is not limited to physical disability, and we do not believe Judge Peterson's order is either.

Additionally, GWAAR recommends:

- Any WEC guidance issued to municipal clerks should not limit the protections of the Voting Rights Act. For example,
 - Limiting how many ballots an assistor can return may prevent a voter from using the assistor of his/her choice because their chosen assistor is already at the cap for returning ballots.
 - The Voting Rights Act also does not say that the disability must definitively prevent the person from returning the ballot themselves.
- As noted by Law Forward, the proposed additional Certificate language suggested by the Wisconsin Institute for Law & Liberty (WILL) would violate other federal laws including the ADA. ...”Pursuant to federal regulation, the Commission and the municipal clerks may not ‘impose or apply eligibility criteria that screen out or tend to screen out’ people with disabilities from ‘fully and equally enjoying’ the programs, services, or activities of state and local governments. 28 C.F.R. § 35.130(b)(8). WILL’s proposal requiring voters with disabilities to find witnesses who, in addition to the requirements of Wis. Stat. § 6.87(4)(b), would also swear to the nature and extent of the voter’s disability, would in fact impose and apply eligible criteria that may screen out or tend to screen out people with disabilities from fully participating in their right to vote. This additional requirement will make it much more difficult for voters with disabilities to identify and access people willing to provide the assistance needed and is likely to turn people away (out of fear and concern) from agreeing to be an assistor. Assistors could be neighbors, housekeepers, service providers, etc. and should not be required to attest to someone else’s level of disability.

Thank you for your consideration of these comments regarding implementation of the court order issued in the matter of *Carey v. WEC*.

**Working together to promote, protect, and enhance
the well-being of older people in Wisconsin**

Contact:

Janet Zander

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September 2, 2022

To: Wisconsin Elections Commission
Re: Carey v. WEC Absentee Ballot Return Assistance Guidance

Every eligible voter has the right to cast their ballot and have that ballot counted. Disability, age, injury, or ailment does not take away that right. Additionally, as reaffirmed in Carey v. WEC, voters with disabilities have the right to assistance from the person of their choice to cast their ballot. Judge Peterson's ruling states:

The Voting Rights Act is clear: disabled voters who need assistance in returning an absentee ballot are entitled to ask a person of their choosing for that assistance. The court will issue a declaration of plaintiffs' rights under the VRA and an injunction that ensures their rights will be upheld.

It is now up to the Wisconsin Elections Commission to ensure all clerks are of what accommodations they are required to provide with absentee ballot return assistance under this ruling. Guidance from the WEC should be clear, reaffirm the rights of voters with disabilities, and should not construct new barriers to the right to vote. Guidance should address the need for uniform practice across the state – the ability for disabled voters to have ballot return assistance should not be restricted by where they live.

Under no circumstances should voters with disabilities be required to:

- Provide a doctor's note or other documentation certifying that they have a disability
- Be subject to additional photo ID checks/requirements;
- Submit supplemental documentation naming and/or authorizing their absentee ballot return assistant;
- Provide advanced notice to their municipal clerk that they will have an assistant return their ballot;
- Perform other burdensome tasks that would unduly interfere with their right to vote.

Administrative rules are needed when there is a lack of clarity in the law. In this case an administrative rule may not be the appropriate course of action as the law is quite clear - voters

with disabilities have the right to assistance returning their absentee ballots. The League of Women Voters of Wisconsin highly recommends the WEC consult with and weigh the advice of the members of your Accessibility Advisory Committee above those of third party interests looking to limit access to the right to vote when considering next steps in this matter.

Thank you for your consideration.



**Wisconsin Council of the
Blind & Visually Impaired**

754 Williamson Street, Madison, WI 53703
608-255-1166
WCBlind.org
info@WCBlind.org

September 3, 2022

Wisconsin Elections Commission
201 W. Washington Ave.
Madison, WI 53703

Dear Commissioners,

Thank you for the opportunity to provide comment as you develop guidance regarding absentee ballot return considering Judge Peterson's August 31 decision in *Carey v WEC*.

It is critical that the Commission's guidance be aligned with the federal Voting Rights Act, which states that voters who require assistance to vote because of blindness, disability, or an inability to read or write be given assistance by a person of the voter's choice. The only limitation is that the assistor may not be the voter's employer or union representative. Guidance should be uniform across the state, so that all voters with disabilities have the same access rights no matter where they reside.

Placing any arbitrary limitations on the number of ballots an assistor can return could interfere with a voter's ability to cast their ballot. If the voter's chosen assistor has reached a "cap" on the number of ballots they can return, the disabled voter is then burdened with finding another trusted individual to deliver their ballot.

Voters who use an assistor should be able to follow the same witness guidance as all other absentee voters by having the witness sign the certification envelope. Changing the responsibilities of the witness to include having the witness verify the voter's disability places

inequitable burdens on both the voter and the witness. It is also likely a violation of the Americans with Disabilities Act as this practice would directly impact a specific group of voters.

In closing, I urge you to develop guidance that adheres to the federal Voting Rights Act and is consistent throughout the state to assure that all voters with disabilities can have their ballots returned and counted.

Please reach out to me at the Wisconsin Council of the Blind & Visually Impaired for follow-up or information on other matters pertaining to the voting rights of people with disabilities.

With respect,

Denise Jess
Executive Director

Matthew M. Fernholz

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September 3, 2022

VIA EMAIL TO:

Elections@wisconsin.gov

Wisconsin Elections Commission
201 W. Washington Ave., 2nd Floor
Madison, WI 53703

Re: *Carey, et al. v. Wisconsin Elections Commission*
USDC for Western District of Wisconsin Case No. 3:22-cv-00402

Dear Wisconsin Elections Commission:

This office represents the Republican National Committee and the Republican Party of Wisconsin. I am submitting this letter in response to the recent decision and order issued by Judge Peterson of the United States District Court for the Western District of Wisconsin, in the case of *Carey, et al. v. Wisconsin Elections Commission*, Case No. 3:22-cv-00402. As you know, Judge Peterson's order instructed that, by September 9, 2022, WEC must "provide written instructions to all Wisconsin municipal clerks that the Voting Rights Act requires that any Wisconsin voters who require assistance with mailing or delivering their absentee ballots to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." The purpose of this letter is to offer some suggestions to WEC as it considers promulgating a rule that complies with both Judge Peterson's order, and Wisconsin law.

Relevant Provisions of Wisconsin Election Law

In all other stages of the registration and absentee voting process, including absentee ballot requests, Wisconsin election law requires attestation by an assisting elector to a statement that such assistance has been rendered upon request and by authorization of a named elector who is unable to physically participate in the process (*i.e.*, by signing a form or completing a ballot) due to physical disability. For example, Wis. Stat. § 6.33(2) expressly permits electors with physical disabilities to authorize another elector to sign voter registration forms on his or her behalf, but requires the elector signing the form to "attest to a statement that the application is made upon request and by authorization of a named elector who is unable to sign the form due to physical disability."

Relatedly, § 6.86(1)(ag) expressly permits any elector who is unable to write his or her name due to physical disability to authorize an application to be made by another elector on his or her behalf, but requires that the application “state that it is made on request and by authorization of a named elector who is unable to sign the application due to physical disability.” Section 6.86(2)(a) expressly permits “[a]n elector who is indefinitely confined because of age, physical illness or infirmity or is disabled for an indefinite period” to, “by signing a statement to that effect require that an absentee ballot be sent to the elector automatically for every election.”

Wisconsin Statute § 6.86(3)(a)1. expressly permits “[a]ny elector who is registered and who is hospitalized,” to “apply for and obtain an official ballot by [an] agent[.]” who “may apply for and obtain a ballot for the hospitalized absent elector by presenting a form prescribed by the commission . . . and signed by that elector, unless the elector is unable to sign due to physical disability.” If the elector is unable to sign due to physical disability, “the elector may authorize another elector to sign on his or her behalf.” However, this provision requires that “[a]ny elector signing an application on another elector’s behalf shall attest to a statement that the application is made on request and by authorization of the named elector, who is unable to sign the application due to physical disability.”

A hospitalized elector who is not registered and who is unable to sign a registration form due to physical disability may also enlist another elector to assist him or her in completing and signing registration forms. However, Wisconsin law requires that “any elector signing a form on another elector’s behalf shall attest to a statement that the application is made on request and by authorization of the named elector, who is unable to sign the form due to physical disability.” Wis. Stat. § 6.86(3)(a)2. The agent is required to “present this statement along with all other information required under this subdivision.” *Id.*

Likewise, Wis. Stat. § 6.87(5) expressly permits an elector who “declares that he or she is unable to read, has difficulty in reading, writing or understanding English or due to disability is unable to mark his or her ballot” to “select any individual, except the elector’s employer or an agent of that employer or an officer or agent of a labor organization which represents the elector, to assist in marking the [absentee] ballot[.]” In this case, “the assistant shall then sign his or her name to a certification on the back of the [absentee] ballot, as provided under s. 5.55.” Wis. Stat. § 6.87(5).

Penalties for Violations of Wisconsin Election Law

Wisconsin imposes severe penalties for violations of the attestation requirements under our election laws. Falsification of information on voter registration forms is punishable as a Class I felony. Wis. Stat. §§ 6.33(1), 12.13(1)(b). Under Wisconsin election law, it is also illegal to “make[.] false statements to the municipal clerk, board of election commissioners or any other election official whether or not under oath.” Wis. Stat. § 12.13(1)(b). It is also illegal to “[f]alsely make any statement for the purpose of obtaining or voting an absentee ballot under ss. 6.85 to 6.87.” Wis. Stat. § 12.13(3)(i).

Wisconsin Supreme Court's Teigen Decision

On July 8, 2022, the Wisconsin Supreme Court issued its decision in *Teigen v. Wis. Elections Comm'n*, 2022 WI 64. There, the court held that ballot drop boxes are illegal under the Wisconsin statutes and that “[a]n absentee ballot must be returned by mail or the voter must personally deliver it to the municipal clerk at the clerk’s office or a designated alternate site.” *Id.*, ¶ 4. The Wisconsin Supreme Court held that this was the proper interpretation of the absentee voting requirements under Wis. Stat. § 6.87(4)(b)1.

Suggestions

WEC is now responsible for ensuring that its proposed guidance to clerks complies with Wisconsin election law, *Teigen*, and Judge Peterson’s recent order. This can be done, but WEC should inform clerks that they must ensure there are verifiable attestation requirements in place for any individual who assists a disabled voter with delivering or mailing his or her absentee ballot to the clerk’s office.

A simple solution is to promulgate a rule that requires that a person assisting a disabled voter with delivering or mailing an absentee ballot must sign an attestation form that includes all of the following:

- An attestation that the elector is unable to mail or deliver the absentee ballot to the municipal clerk due to the voter’s physical disability;
- The assistant’s printed name;
- The assistant’s signature;
- The assistant’s home address; and
- The assistant’s certification that he or she is not the voter’s employer or agent of that employer or officer or agent of the voter’s union.

These provisions could be added to the existing absentee ballot certification as follows:

[Image on Next Page]

Ballot Return Assistance
For the elector:
<input type="checkbox"/> By checking this box (or requesting that it be checked), I certify that I have a disability that prevents me from personally mailing or delivering my ballot to the clerk, and that I have asked the undersigned assistant to return my ballot to the clerk on my behalf.
For the assistant:
<input type="checkbox"/> By checking this box, I certify that the elector who voted this ballot asked me to mail or deliver this ballot to the clerk, and that I am not the elector's employer or an agent of that employer, nor am I an officer or agent of the elector's union.

Assistant's Name (Print)

Assistant's Signature

Street Address

City/State/Zip

These requirements will ensure that the assistant can be identified and located in the event that there is a question about the authenticity of the delivered or mailed absentee ballot.

Please let me know if you have any questions. Thank you for your attention regarding this matter.

Sincerely,

s/Matthew M. Fernholz

Matthew M. Fernholz

MMF:tlm

cc: Atty. James C. Witecha (james.witecha@wisconsin.gov)



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September 3, 2022

Don M. Millis, Election Commissions Chairperson
Meagan Wolfe, Administrator
Wisconsin Elections Commission
201 West Washington Avenue, Second Floor
Madison, Wisconsin 53703

Dear Mr. Millis, Ms. Wolfe and members of the Commission:

On behalf of over 800,000 AARP members in Wisconsin, I am writing to encourage you to take a commonsense and clear approach in your guidance to clerks following the recent court decision on Carey v. WEC, so that no voter requiring assistance is deprived of their Constitutional right to vote. AARP has been fighting to protect the rights of all Americans 50+ to vote freely, easily and safely for more than 35 years.

The earlier Wisconsin Supreme Court decision (Teigen v. Wisconsin Elections Commission) banning absentee ballot drop boxes and the subsequent lack of guidance for voters have proven to be very confusing and limiting for older Wisconsinites. ***We urge you to use the new guidance required by the District Court to clarify that older adults “requiring assistance” are also covered by the Carey ruling.***

Older Wisconsinites are reliable, active voters. In fact, 55% of Wisconsin’s registered voters are 50+ while those 50+ are only 38% of Wisconsin’s population. Older adults want to be certain that their votes will count so it is critical that the procedures for returning absentee ballots be very clear.

In your Request for Information dated September 1st, you identified a series of questions that will need to be answered in your guidance. We would like to provide responses to some of those key issues as they impact Wisconsin’s older adults.

Definition of a disability

In his decision, District Judge Peterson recognized that federal law grants voters with disabilities who require assistance in returning their ballot the right to receive such assistance from an agent of their choosing.

It’s important to note that the definition of “***voters requiring assistance***” with mailing or delivering their absentee ballots to the municipal clerk ***because of a disability***” under

the Voting Rights Act Section 208 is necessarily broader than the Americans with Disabilities Act (ADA) definition of “disability.”

Often people who are aging don't think of themselves as having a disability, as defined by the ADA, having a “physical or mental impairment that substantially limits one or more major life activities” entitling them to “reasonable accommodation” in the workplace and “reasonable modification” of policies and procedures that might otherwise deny them access to “programs and activities,” such as voting, operated by state and local governments. As a practical matter, people may have disabilities when age-related (or other health-related) changes in function which make it more difficult to get around at home or participate in community activities, such as voting. These may well be “voters requiring assistance” even if they are not plainly covered by the terms of the ADA.

Determination and verification of a person needing assistance

We urge the Commission to issue guidance that is designed to encourage maximum legal participation in voting. As such, the burden of proof should not be put on the voter to prove that they have a disability or need for assistance. Clerks should accommodate any voter who requires assistance due to disability. In addition, voters should not be forced to take additional steps to prove a disability. The District Court did not require any additional steps or verification from the voter in order to receive assistance and we hope that the Commission will not add any unnecessary barriers for voters.

Lawful assistance

Voters requiring assistance should be allowed to choose anyone outside of an employer or union leader, to assist them with dropping their ballot in the mail or delivering their ballot to a clerk. Additionally, since the Voting Rights Act allows voters the ability to choose their assistor, there should be no restrictions on how many voters can choose one assistor. For example, if multiple voters in a senior apartment building cannot deliver their ballots by mail or in person, they should be able to choose a single resident at their facility to deliver their ballots.

Impact on older Wisconsinites

Clarification of the assistance available to older people is important because many older adults do not identify as having a “disability” even if they have significant limitations. Allow us to share just a few examples of how limited mobility can affect senior's rights to cast their ballot.

- Sam lives alone and is recovering from hip surgery. His daughter is his caregiver helping to bring his groceries and drive him to appointments. Sam requires assistance from his daughter to be able to return his absentee ballot.
- Alice and Bruce are in their 90s, still living in their own home, but are no longer able to drive or get around easily on uneven surfaces. Neighbors look in on them and run errands as needed. Alice and Bruce require assistance from a neighbor to help get their absentee ballots to the post office.

- Nancy is in her 70s and she lives in her own home with her husband, Rich. Nancy is battling cancer and frequently needs a walker to get around. Her husband does the cooking, cleaning, and helps Nancy with bathing and getting dressed. Nancy requires assistance from her husband to get her absentee ballot delivered.

AARP Wisconsin greatly appreciates the Commission's efforts. We hope the upcoming guidance will ensure increased access, fairness, and simplicity; not added complexity, for voters with disabilities as well as Wisconsin's seniors who require assistance. If you have questions, please contact me at mcranley@aarp.org or 608-286-6325.

Sincerely,

Martha Cranley

M. Martha Cranley
AARP Wisconsin State Director

Date: September 3, 2022

To: Wisconsin Election Commission c/o Attorney Jim Witecha

Re: Instruction for Clerks re Ballot Return Assistance as required by Judge Peterson's order

From: Barbara Beckert, Director of External Advocacy Disability Rights Wisconsin
barbarab@drwi.org

Thank you for the September 1st email received from Attorney Jim Witecha to provide "Comments on WEC Guidance". I am pleased to provide these comments on behalf of Disability Rights Wisconsin and as a member of the Wisconsin Elections Commission (WEC) Accessibility Advisory Committee.

Disability Rights Wisconsin (DRW) is the federally mandated Protection and Advocacy system for the State of Wisconsin, charged with protecting the rights of individuals with disabilities and keeping them free from abuse and neglect. DRW is charged with protecting the voting rights of people with disabilities and mandated to help ensure full participation in the electoral process for individuals with disabilities (Help America Vote Act, 42 U.S.C. § 15461 (2002)). DRW staffs a Voter Hotline and assists voters with disabilities and older adults, family members, service providers, and others. Our frontline perspective assisting voters with disabilities will inform these comments.

Judge Peterson's order requires that WEC:

"provide written instructions to all Wisconsin municipal clerks that the Voting Rights Act requires that any Wisconsin voters who require assistance with mailing or delivering their absentee ballots to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." *Carey v. Wis. Elec. Comm'n*, Dkt. 40, No. 3:22-CV-402-jdp (W.D. Wis. Aug. 31, 2022).

Please note that the email requesting input stated that the Commission intends to issue "guidance." We want to point out that Judge Peterson's order specified that the Commission must issue "written instructions." This distinction is important in that it must be made clear that clerks must follow the instructions.

The ability to have a person of their choice return their absentee ballot is important to many people with disabilities and essential to providing them with equitable access to voting. During the past two elections, this right was denied in many communities, and this created confusion and disenfranchisement. Instructions to municipal clerks from WEC as required by Judge Peterson is important to ensure the right to ballot return assistance is consistently available statewide.

The Need for Uniform Practices Statewide

The need for uniform and consistent practice across the state is supported by the chaos and confusion experienced by disabled voters who needed ballot return assistance during the April and August elections. Here are a few examples of the inconsistent practices across the state:

- In Glendale, poll workers (and others who contacted the city) were told that only the voter could return their ballot and that voters with disabilities who had someone else return their ballot would not be accommodated.
- A disabled voter in Suamico was denied a request to have her husband mail or return her ballot.
- In Greenfield, a husband returning a ballot to their polling place for his disabled wife was told he must return the ballot to the clerk's office, and that the ballot would not be accepted at the polling place as is the usual practice.
- A disabled voter in Wauwatosa contacted us because the clerk stated to her that it was illegal for a voter with a disability to have another person return their ballot as an accommodation.
- A voter with a disability in East Troy who needed ballot return assistance was refused. After contacting DRW, the voter tried again using a written request. After initial uncertainty as to whether their vote would be counted, the voter later contacted the clerk and received confirmation that the ballot was accepted.
- A Madison poll worker contacted us to report that a citizen came in to deliver an absentee ballot for a friend who is homebound. The ballot was not accepted. Instead, they were told to send two poll workers to pick up the voter's ballot from her home.
- A Mason disabled voter reported his mailbox is half a mile from his house; he cannot mail his own ballot due to disability and cannot return his own ballot. He had requested an accommodation from the post office to have the mailbox outside his door so he could have his mail delivered and place his ballot and other mail in the box. His requests for an accommodation were turned down multiple times. Because of the *Teigen* restrictions in place in April, he felt he could not have an assistor return his ballot.
- The Waukesha clerk stated that there were no exceptions for voters with disabilities and they must return their ballot by mail or in person – she would not allow a friend or family member to return their ballot.
- The Menomonie clerk's office stated that a voter should present some documentation to show they are indefinitely confined and give consent for someone else to return their ballot.
- In Howard, the clerk goes to the home of people who were not able to get out due to being immunocompromised or disabled. Otherwise only accepts one ballot for a person.

These examples support the need for consistent uniform practices across the state. The right to vote and to access ballot return assistance should **not** vary depending on where a disabled voter lives. Instructions should ensure that the rights of voters with disabilities are uniformly protected and enforced across our state. Instructions from the Commission should make it clear that clerks may not create additional

requirements or require documentation from voters with disabilities who need ballot return assistance or from their assistors.

Response to WEC Questions

Attorney Witecha's email noted that staff intend to provide a Q & A style instructions document and listed some of the questions to be addressed. The questions are listed below with responses from DRW:

Disabled voters' rights to assistance with absentee ballot return?

Judge Peterson's order in *Carey v. WEC* stated clearly that disabled voters have a right to assistance by the person of their choice (except for their employer or union representative) to return their absentee ballot by mail or in person. "The court concludes that the VRA requires that plaintiffs be allowed to choose a person to assist them with mailing or delivering their absentee ballot. Wisconsin state courts have construed § 6.87(4)(b) 1 as prohibiting voters, including disabled voters like plaintiffs, from receiving such assistance, so that portion of § 6.87(4)(b) 1 is preempted by the VRA." *Carey v. WEC* No. 22-CV-402-JDP, 2022 WL 3910457 at *9 (W.D. Wis. Aug. 31, 2022).

As analyzed by the court, Section 208 of the Voting Rights Act affords voters who are entitled to vote absentee the right to receive the assistance they need due to disability, including delivering their completed ballot to be counted: "Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508.

Because delivering one's completed absentee ballot is an "action necessary" for "having such ballot counted properly," 52 U.S.C. § 10310(c)(1), voters who require assistance in delivering their ballot due to disability must be allowed to obtain such assistance from an assistor of their choice under Section 208. The Act defines the terms "vote" and "voting" broadly to encompass "all action necessary to make a vote effective," including "casting a ballot[]" and having such ballot counted properly." Id. § 10310(c)(1). The VRA's definition of "vote" is expansive and covers the ballot return process. 52 U.S.C. § 10101(e).

Thus, instructions issued by the Commission may not limit this assistance beyond the limitations contained in the VRA. See *Disability Rts. N. Carolina v. N. Carolina State Bd. of Elections*, No. 5:21-CV-361-BO, 2022 WL 2678884, at *5 (E.D.N.C. July 11, 2022) ("[S]tates may not impose additional limits on disabled voters' choice of assistant, other than the two excluded groups in the text of Section 208.").

What the definition of a disability is?

The VRA language is inclusive of all types of disabilities and not limited to physical disability as incorrectly stated in the August 31 letter from WILL. The statutory protection is not limited to physical disability, and Judge Peterson's order was not limited to physical disability. "Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508.

There is no definition of disability in Section 208 and thus, consistent with Judge Peterson's order, the voter must be allowed to determine if they require assistance returning an absentee ballot due to a disability. This is consistent with the Wisconsin Supreme Court's decision in *Jefferson v. Dane Cnty.*, which held that "...each elector make an individual assessment to determine whether he or she qualifies as indefinitely confined or disabled for an indefinite period." 2020 WI 90, 394 Wis. 2d 602, 616-617, 951 N.W.2d 556.

The Commission should reject the limitation proposed by WILL in its letter of August 31, 2022 that the rights conferred by Judge Peterson's decision apply only to people with physical disabilities. This limitation is not permitted by Judge Peterson's order, nor would it survive legal challenge under the Americans with Disabilities Act (ADA) or the Constitution.

Specifically, among other protections, ADA regulations prohibit state and local governments from: denying qualified individuals an equal opportunity to participate in their programs (28 C.F.R. § 35.130(b)(1)(i)-(iv), (vii)); using eligibility criteria that screen out classes of people with disabilities unless the criteria are necessary to the program being offered (28 C.F.R. §35.130(b)(8)); and utilizing criteria or methods of administration that discriminate (28 C.F.R. § 35.130(b)(3)). The ADA's provisions apply to all aspects of voting, including voter registration, site selection, and the casting of ballots, whether on Election Day or during an early voting process." USDOJ, *The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities (USDOJ Voting Guidance)*, <https://www.justice.gov/file/69411/download/at/1>. See also Law Forward letter, dated September 1, 2022, which addresses this point re ADA.

As to the constitutionality of such a limitation, a court in Texas held that a Texas law extending voter assistance to voters with physical disabilities, but not to voters who could not read or write, violated equal protection. *Garza v. Smith*, 320 F. Supp. 131, 133-139 (W.D. Tex. 1970) vacated on other grounds, 401 U.S. 1006 (1971).

***How to determine if the voter is disabled and entitled to assistance?
Whether any additional steps are or should be required to verify disability
or the right to assistance?***

Election officials cannot inquire into a voter's disability status and no additional steps may be taken to verify disability or right to assistance. It is up to the voter to make a disability determination and determine what assistance they need. There is no basis in state law or federal law for election officials to require a voter to verify their disability or their need for assistance. See discussion above, which also applies to this question. See also *In re State*, 602 S.W.3d 549, 550-551 (Tex. 2020) ("The decision to apply to vote by mail based on a disability is the voter's, subject to a correct understanding of the statutory definition of "disability".")

Voters should not be required to request an accommodation to have a person of their choice return their ballot. Judge Peterson explained that the right to request an accommodation is "a narrower right than the one granted under the VRA, and it wouldn't guarantee that a disabled voter would be allowed to obtain assistance." *Carey v. Wis. Elec. Comm'n*, Dkt. 39, No. 3:22-CV-402-jdp, slip op. at 19 (W.D. Wis. Aug. 31, 2022). Voters with disabilities have an affirmative right to ballot return assistance. Voters cannot be required to ask election officials for permission to exercise that right, nor negotiate with officials about how they may exercise it.

Instructions from the Commission should make it clear that clerks may not create additional requirements or documentation for voters with disabilities who need ballot return assistance or for their assistors. Indeed, the Wisconsin Supreme Court explicitly rejected the idea that a clerk may make a determination about disability accommodations. *Jefferson v. Dane Cnty* at 616-617.

Moreover, instructions issued by the Commission may not exceed requirements established by the Legislature, including certification or other documentation requirements as proposed by WILL. "...Wisconsin law established no method for a clerk to demand proof of a voter's individual situation." *Trump v. Wisconsin Elections Comm'n*, 983 F.3d 919, 923 (7th Cir. 2020), cert. denied, 141 S. Ct. 1516, 209 L. Ed. 2d 253 (2021) (citing *Jefferson v. Dane Cnty*) Courts have struck down state law assistor certification or oath requirements that interfere with the voter's right to choose their assistor under Section 208. In 2017, the Fifth Circuit Court of Appeal struck down a Texas state law requirement that interpreters for voters must be registered to vote in the same county as the voter. *OCA-Greater Houston v. Texas*, 867 F.3d 604, 615 (5th Cir. 2017). The district court subsequently issued an injunction holding that the residency requirement "is inconsistent with and preempted by Section 208." *OCA Greater Houston v. Texas*, No. 1:15-CV-679-RP, 2018 WL 2224082 at *2 (W.D. Tex. May 15, 2018), modified in part, No. 1:15-CV-679-RP, 2022 WL 2019295 (W.D. Tex. June 6, 2022). In a recent decision modifying the 2018 injunction in light of Texas law S.B.1, the court banned enforcement of S.B. 1's state law voter assistance restrictions that ran afoul of Section 208, holding that that S.B.1 modified provisions of the Election Code in contravention of the court's 2018 injunction with respect to: limiting voter

assistance to “marking or reading” a ballot and requiring assistors to take an oath attesting to providing impermissibly narrow types of assistance. *OCA Greater Houston v. Texas*, No. 1:15-CV-679-RP, 2022 WL 2019295 at *3 (W.D. Tex. June 6, 2022),

What constitutes lawful assistance?

All voters with disabilities who need assistance to return their ballots, either to the clerk’s office or by mail, are entitled to such assistance from a person of their choice. Judge Peterson’s order is clear, and the Commission may not define or limit the types of “assistance” voters with disabilities avail themselves of.

The VRA’s only restriction under 52 U.S.C. §10508 is that a voter’s employer or union may not provide assistance. The Commission must not issue any instructions that would allow election officials to enact further restrictions on voters with disabilities in contravention of the VRA and the injunction in *Carey. Disability Rts. N. Carolina v. N. Carolina State Bd. of Elections*, No. 5:21-CV-361-BO, 2022 WL 2678884, at *5 (E.D.N.C. July 11, 2022) (“[S]tates may not impose additional limits on disabled voters’ choice of assistant, other than the two excluded groups in the text of Section 208.”).

Whether a single assistor can return multiple ballots?

The Commission’s instructions may not limit the protections of the Voting Rights Act. Limiting how many ballots an assistor can return may prevent a voter from using the assistor of his/her choice because their chosen assistor is already at the cap for returning ballots. The only restrictions are that the assistant cannot be the voter’s employer or union representative. A 2020 case in Arkansas is instructive. In that case, a federal court found that a state law that capped the number of voters who could receive assistance by certain individuals “impermissibly narrow[ed] § 208's dictate that a voter may be assisted ‘by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.’” *Arkansas United v. Thurston*, No. 5:20-CV-5193, 2020 WL 6472651 (W.D. Ark. Nov. 3, 2020).

Whether other voters are entitled to similar assistance?

Section 208 of the Voting Rights Act states that “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508. We note that all Wisconsin voters are entitled to ballot return assistance from a person of their choice through the mail. The issue of assistance with mailing a ballot was not addressed by the Wisconsin Supreme Court in the

Teigen decision. Thus, our comments here are limited by the directions of Judge Peterson's order which applies specifically to voters with disabilities covered by the VRA.

In closing, we ask the Commission to provide Wisconsin election officials with Judge Peterson's order and with instructions that require uniform practice across the state; the ability for disabled voters to have ballot return assistance should not be restricted by where they live. Election officials should be informed that they may not add additional requirements or require documentation from voters with disabilities who need ballot return assistance or from their assistors. As required by Judge Peterson, the rights of disabled voters must be upheld.

Please contact me with any questions. I may be reached at barbarab@drwi.org or 414-292-2724. Thank you for your consideration and the opportunity for comment.



Date: September 3, 2022

To: Wisconsin Elections Commission

From: Jenny Neugart, Grassroots Community Organizer for the WI Board for People with Developmental Disabilities, Co-Lead of the Disability Vote Coalition, Member of WEC Accessibility Advisory Committee

Re: Instructions to municipal clerks regarding Carey v. WEC order

Thank you for the opportunity to comment on guidance to municipal clerks regarding the order from Chief U.S. District Judge James Peterson in Carey v. WEC. BPDD was thrilled with the decision that voters with disabilities can receive assistance in returning their absentee ballots.

As you develop guidance for municipal clerks there are several points BPDD would like to highlight for the commission to ensure voters rights are upheld.

- Being able to choose who returns your ballot is an important decision and should remain that of the voter with a disability. Voters with disabilities should be able to choose someone they fully trust so they have the utmost confidence that their ballot will be delivered, and their vote counted. The only restriction is that the assistor may not be the voter's employer or union representative. Due to all the confusion in the past two elections about returning absentee ballots, voters with disabilities are rightfully confused and many feel disenfranchised. Allowing voters to uniformly choose will help restore faith in the elections process and will, once and for all, end the confusion.
- One of the most important concerns BPDD has is that voters with disabilities **do not** have to prove under any circumstance that they have a disability. This should not be a determination that an election official makes and voters with disabilities should not have an additional barrier of having to provide disability documentation. Voters with disabilities are protected under the Voting Rights Act and the circumstances of their disability and its impact should remain private and confidential.
- Guidance from the Wisconsin Election Commission should be clear enough that it does not allow for variations by local municipalities. In other words, there needs to be uniform practices statewide that ensure no voters with disabilities are disenfranchised because of where they live.

- Guidance should not limit the protections of the Voting Rights Act. For instance, limiting how many ballots an assistor can return may prevent a voter from using the assistor of their choice because that person is already returning ballots for someone else. There should also not be an additional barrier that requires a written accommodation request.

I hope you will consider these comments as these are all issues we have heard repeatedly from the many voters with disabilities we work with. If you have any questions, please do not hesitate to contact me at jennifer.neugart@wisconsin.gov or at 608-266-7707.

Thank you for your consideration.

From: [Woodall-Vogg, Claire](#)
To: [Witecha, James - ELECTIONS](#)
Cc: [Zapata, Kimberly](#); [Block, Kathryn](#)
Subject: Re: Time Sensitive: Request for Comment/Questions on WEC Guidance
Date: Friday, September 2, 2022 3:28:08 PM
Attachments: [image001.png](#)

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Hi Jim,

The bullets of what the memo will address look good.

I would also ask if there is any necessary documentation to record that someone had an assistant return the ballot? In August, we collected the agent/assistant name and the voter's phone number. We wanted to make sure we had a good phone number for the voter in the event of a challenge on Election Day. Often times we are talking about voters who have been registered at the same address for decades, so we don't necessarily have updated contact info.

Anecdotally, we found that many couples who were disabled due to age shared an agent - usually a child, grandchild, neighbor, etc. delivering for a disabled, aging couple.

Thanks,
Claire

From: Kehoe, Robert Y - ELECTIONS <robert.kehoe@wisconsin.gov>
Sent: Friday, September 2, 2022 3:06 PM
Cc: Witecha, James - ELECTIONS <james.witecha@wisconsin.gov>
Subject: Time Sensitive: Request for Comment/Questions on WEC Guidance

Good afternoon,

This is an invitation to provide feedback on an upcoming Commission decision regarding absentee voting. The Commission has scheduled a meeting next Wednesday, September 6, 2022, to discuss this matter. We would appreciate any feedback you can provide immediately (**before 4pm Saturday**) but welcome feedback at any time. I recognize it's Friday afternoon before a holiday weekend, but the Commission is moving fast on this.

Your questions and comments will be shared with the Commission if you desire.

The following message from Attorney Jim Witecha describes the issue.

As you may already be aware, an order was filed by U.S. District Court Judge

James Peterson on August 31, 2022, in the matter of *Carey v. WEC* (22-cv-402-jdp). At its core, the following quote from the judge most adequately summarizes the findings (see the complete documents attached above): “The Voting Rights Act is clear: disabled voters who need assistance in returning an absentee ballot are entitled to ask a person of their choosing for that assistance. The court will issue a declaration of plaintiffs’ rights under the VRA and an injunction that ensures their rights will be upheld.”

The Wisconsin Elections Commission was given until September 9, 2022, to “provide written instructions to all Wisconsin municipal clerks that the Voting Rights Act requires that any Wisconsin voters who require assistance with mailing or delivering their absentee ballots to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” The Commission members met on August 31, 2022, and directed staff to begin drafting the associated clerk guidance, and to bring the draft back to the Commission for review and approval at a special meeting on Tuesday, September 6, 2022.

Commission staff intend to provide the Commission with a written summation of the court’s decision, as well as a “Q&A-style” guidance document that includes necessary information for clerks, in accordance with the court’s order. It is our intention to address:

1. disabled voters’ rights to assistance with absentee ballot return;
2. what the definition of a disability is;
3. how to determine if the voter is disabled and entitled to assistance;
4. what constitutes lawful assistance;
5. whether any additional steps are or should be required to verify disability or the right to assistance;
6. whether a single assistor can return multiple ballots, whether other voters are entitled to similar assistance; and
7. any additional issues similar to those presented here.

Your feedback, recommendations, and questions will be critical in ensuring a sound, comprehensive, and inclusive draft.

If you have any comment that you wish to submit on these or other related topics, or you wish to offer suggestions on procedural implementation of this judicial decision, please reply to this message by Saturday, September 3, at 4pm to ensure consideration and possible inclusion. Comments submitted after that time will be reviewed and shared with the Commission but may not be incorporated into the initial draft for the public meeting. I apologize for the quick turnaround, but the court’s order leaves little time for staff to solicit feedback and compile a draft for Commission approval and publication before September 9th.

Please reply to james.witecha@wisconsin.gov. His address is also cc’d above.

Thank you!

Robert Kehoe
Deputy Administrator
Wisconsin Elections Commission
Phone - [608.261.2019](tel:608.261.2019)
Fax – [608.267.0500](tel:608.267.0500)
robert.kehoe@wisconsin.gov
<https://elections.wi.gov>



From: Witecha, James - ELECTIONS <james.witecha@wisconsin.gov>
Sent: Friday, September 2, 2022 2:46 PM
To: Kehoe, Robert Y - ELECTIONS <robert.kehoe@wisconsin.gov>
Subject: FW: Time Sensitive: Request for Comment on WEC Guidance
Importance: High

Rob,

We had just been sharing the two attached documents from the USDC with stakeholders for feedback.

Thank you,

Jim Witecha
Staff Attorney
Wisconsin Elections Commission
201 West Washington Avenue
Madison, WI 53703
[608.266.0136](tel:608.266.0136) (direct)
[608.712.8683](tel:608.712.8683) (cell)
[608.267.0500](tel:608.267.0500) (fax)
james.witecha@wisconsin.gov

From: Witecha, James - ELECTIONS
Sent: Thursday, September 1, 2022 5:25 PM

To: rhoyt@cityofmadison.com; namato@cwag.org; barbara.beckert@drwi.org; tonyaw@drwi.org; Zander, Janet <janet.zander@gwaar.org>; bendallin@outlook.com; Endres, Jason <jason54701@gmail.com>; Neugart, Jennifer W - BPDD <Jennifer.Neugart@wisconsin.gov>; jglozier@wcilc.org; kleistk@cilww.com; djess@wcbliind.org; Ryan Retza - Political <RRetza@gop.com>; davidk@wisdems.org

Subject: Time Sensitive: Request for Comment on WEC Guidance

Importance: High

Good afternoon,

You have been identified as a party that may wish to provide feedback or procedural recommendations, or otherwise submit questions for the Commission to address in certain upcoming clerk guidance.

As you may already be aware, an order was filed by U.S. District Court Judge James Peterson on August 31, 2022, in the matter of *Carey v. WEC* (22-cv-402-jdp). At its core, the following quote from the judge most adequately summarizes the findings (*see* the complete documents attached above): “The Voting Rights Act is clear: disabled voters who need assistance in returning an absentee ballot are entitled to ask a person of their choosing for that assistance. The court will issue a declaration of plaintiffs’ rights under the VRA and an injunction that ensures their rights will be upheld.”

The Wisconsin Elections Commission was given until September 9, 2022, to “provide written instructions to all Wisconsin municipal clerks that the Voting Rights Act requires that any Wisconsin voters who require assistance with mailing or delivering their absentee ballots to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” The Commission members met on August 31, 2022, and directed staff to begin drafting the associated clerk guidance, and to bring the draft back to the Commission for review and approval at a special meeting on Tuesday, September 6, 2022.

Commission staff intend to provide the Commission with a written summation of the court’s decision, as well as a “Q&A-style” guidance document that includes necessary information for clerks, in accordance with the court’s order. It is our intention to address disabled voters’ rights to assistance with absentee ballot return, what the definition of a disability is, how to determine if the voter is disabled and entitled to assistance, what constitutes lawful assistance, whether any additional steps are or should be required to verify disability or the right to assistance, whether a single assistor can return multiple ballots, whether other voters are entitled to similar assistance, and any additional issues similar to those presented here. Your feedback, recommendations, and questions will be critical in ensuring a sound, comprehensive, and inclusive draft.

If you have any comment that you wish to submit on these or other related topics, or you wish to offer suggestions on procedural implementation of this judicial decision, please reply to this message by Saturday, September 3, at 4pm to ensure consideration and possible inclusion. Comments submitted after that time will be reviewed and shared with the Commission but may not be incorporated into the initial draft for the public meeting. I apologize for the quick turnaround, but

the court's order leaves little time for staff to solicit feedback and compile a draft for Commission approval and publication before September 9th. Feel free to forward this message to any parties you believe appropriate.

Regards,

Jim Witecha

Staff Attorney
Wisconsin Elections Commission
201 West Washington Avenue
Madison, WI 53703
[608.266.0136](tel:608.266.0136) (direct)
[608.712.8683](tel:608.712.8683) (cell)
[608.267.0500](tel:608.267.0500) (fax)
james.witecha@wisconsin.gov

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From: [Kehoe, Robert Y - ELECTIONS](#)
To: [Witecha, James - ELECTIONS](#)
Cc: [Wolfe, Meagan - ELECTIONS](#)
Subject: FW: Time Sensitive: Request for Comment/Questions on WEC Guidance
Date: Friday, September 2, 2022 3:56:25 PM
Attachments: [image001.png](#)
[image002.png](#)

Feedback.

From: McMenamain, Tara <Tara.McMenamin@cityofracine.org>
Sent: Friday, September 2, 2022 3:49 PM
To: Kehoe, Robert Y - ELECTIONS <robert.kehoe@wisconsin.gov>
Subject: RE: Time Sensitive: Request for Comment/Questions on WEC Guidance

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Hi Robert-

My question is, if a assistor is allowable under the law, does the assistor need to provide anything?
Once we determine the voter is eligible for assistance what do clerks need to verify?

1. disabled voters' rights to assistance with absentee ballot return;
2. what the definition of a disability is;
 - Does a indefinitely confined voter automatically qualify to have a assistor?
3. how to determine if the voter is disabled and entitled to assistance;
 - If a assistor comes in and has their spouses ballot and states their husband/wife cannot make it out of the house due to disability can we accept the ballot?
4. what constitutes lawful assistance;
5. whether any additional steps are or should be required to verify disability or he right to assistance;
 - This is extremely hard to keep track of. If there is some sort of verification then do they have that designation forever? If so, can this be added to WisVote like the photo ID button?
6. whether a single assistor can return multiple ballots, whether other voters are entitled to similar assistance; and
 - Sometimes both a husband and wife require assistance from a child/ friend. If there is one assistor but they are returning ballots from one singular household address that would be

extremely helpful.

7. any additional issues similar to those presented here.

Thank you so much for asking us!

Thank you,

Tara McMenamin, CMC
City Clerk/ Treasury Manager
City of Racine
clerks@cityofracine.org
(262) 636-9171



From: Kehoe, Robert Y - ELECTIONS <robert.kehoe@wisconsin.gov>
Sent: Friday, September 2, 2022 3:07 PM
Cc: Witecha, James - ELECTIONS <james.witecha@wisconsin.gov>
Subject: Time Sensitive: Request for Comment/Questions on WEC Guidance
Importance: High

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The following message from Attorney Jim Witecha describes the issue.

As you may already be aware, an order was filed by U.S. District Court Judge

James Peterson on August 31, 2022, in the matter of *Carey v. WEC* (22-cv-402-jdp). At its core, the following quote from the judge most adequately summarizes the findings (see the complete documents attached above): “The Voting Rights Act is clear: disabled voters who need assistance in returning an absentee ballot are entitled to ask a person of their choosing for that assistance. The court will issue a declaration of plaintiffs’ rights under the VRA and an injunction that ensures their rights will be upheld.”

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Thank you!

Robert Kehoe
Deputy Administrator
Wisconsin Elections Commission
Phone - 608.261.2019
Fax – 608.267.0500
robert.kehoe@wisconsin.gov
<https://elections.wi.gov>



From: Witecha, James - ELECTIONS <james.witecha@wisconsin.gov>
Sent: Friday, September 2, 2022 2:46 PM
To: Kehoe, Robert Y - ELECTIONS <robert.kehoe@wisconsin.gov>
Subject: FW: Time Sensitive: Request for Comment on WEC Guidance
Importance: High

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Thank you,

Jim Witecha
Staff Attorney
Wisconsin Elections Commission
201 West Washington Avenue
Madison, WI 53703
608.266.0136 (direct)
608.712.8683 (cell)
608.267.0500 (fax)
james.witecha@wisconsin.gov

From: Witecha, James - ELECTIONS
Sent: Thursday, September 1, 2022 5:25 PM

To: rhoht@cityofmadison.com; namato@cwag.org; barbara.beckert@drwi.org; tonyaw@drwi.org; Zander, Janet <janet.zander@gwaar.org>; bendallin@outlook.com; Endres, Jason <jason54701@gmail.com>; Neugart, Jennifer W - BPDD <Jennifer.Neugart@wisconsin.gov>; jglozier@wcilc.org; kleistk@cilww.com; djess@wcbblind.org; Ryan Retza - Political <RRetza@gop.com>; davidk@wisdems.org

Subject: Time Sensitive: Request for Comment on WEC Guidance

Importance: High

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Regards,

Jim Witecha

Staff Attorney
Wisconsin Elections Commission
201 West Washington Avenue
Madison, WI 53703
608.266.0136 (direct)
608.712.8683 (cell)
608.267.0500 (fax)
james.witecha@wisconsin.gov

From: [Kathy Karalewitz](#)
To: [Witecha, James - ELECTIONS](#)
Cc: [Meg Wartman](#)
Subject: Absentee voting
Date: Monday, September 5, 2022 3:32:18 PM

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

James – I just saw the email regarding absentee voting. Not having the ability to use our drop box has certainly put a burden on the voters in Mukwonago. I think this election will especially be difficult as college kids will be back in school and the ones that come home to vote usually have the parents drop ballot at the hall. With not being able to use to drop box, or having the parents drop their ballot off, will pose a problem for them. Yes, mail is always an option but voters usually don't make sure to allow time for mailing.

I understand not using drop boxes through a municipality, but a drop box that is locked securely, by the entrance of our hall and has a camera on it 24/7 should be acceptable for residents to be able to drop them off. I don't know how much help this email will do, but thank you for the opportunity to weigh in on it.

Thanks.

Kathy Karalewitz,CMC
Administrator/Clerk-Treasurer
Town of Mukwonago
(262)363-4555
Population: 8156

"Grief is like the ocean: it comes in waves ebbing and flowing. Sometimes the water is calm, and sometimes it is overwhelming. All we can do is learn to swim."

*Open Meetings Disclaimer: The email below contains the thoughts, opinions, and commentary of the author alone. It is intended as a one-way transmission of a thought, idea, or information related to my role as municipal official or issues within the municipality, but is not intended to serve as an invitation for reply, rebuttal, discussion, debate or responsive commentary. Please do not respond to this email as it is the author's intention to utilize the informality and convenience of this electronic message while simultaneously avoiding any and all violations of the Wisconsin Open Meetings Law contained in Section 19.81 of the Wisconsin Statutes or elsewhere within Wisconsin law, as applicable to this municipality as described in 66 Op. Att'y Gen. 237 (1977). Specifically, there is no intention on the part of the author to engage in or foster any "governmental business" as defined in State ex.rel. Newspapers v. Showers, 398 N.W.2d 154 (Wis. 1987). **You are specifically requested to refrain***

from forwarding or "replying to all" with regard to its contents, so as to avoid the possible "walking quorum" proscriptions, including those considered in State ex.rel. Lynch v. Conta, 239 N.W.2d 313 (Wis. 1976). It is the author's motive and intent to comply with the overriding policy of the open meetings law - to ensure public access to information about governmental affairs. Your cooperation in accomplishing this end is most appreciated.

From: [Merton Clerk](#)
To: [Witecha, James - ELECTIONS](#)
Subject: absentee voters
Date: Tuesday, September 6, 2022 7:23:13 AM
Attachments: [image001.png](#)
[image004.png](#)

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Absentee if very important to the election process.

I believe the voters signing the absentee ballot and a witness signing certifying who the voter is should be looked at more and talked about more.

This is a legal document and signatures should be required each and every time a ballot is cast.

Use photo id each time a ballot is requested thru absentee even for indefinitely confined then voters.

Not one time and then done?

Thank you

Donna Hann, **WCMC**
Clerk/Deputy Treasurer
Town of Merton
W314N7624 Hwy 83
North Lake, WI 53064
Population 8537
262-966-2651 phone 262-966-2801 fax



**WISCONSIN TOWNS
ASSOCIATION**
Empowering Town Officials

From: [Lori Geyman](#)
To: [Witecha, James - ELECTIONS](#)
Subject: Request for Comment/Questions on WEC Guidance on absentee voting
Date: Tuesday, September 6, 2022 7:47:19 AM

We have many voters who have stated that they should be allowed to have their husband, wife or another drop off their ballots. Their opinions have been that it is their ballot, they should be able to decide how it is delivered; by mail, drop box or by another person. These reasons are based on lack of faith in the USPS, timely delivery by USPS because of timelines of receiving and returning ballots, difficulty returning in person themselves due to timing of office hours, as well as health and/or disability. It is our job to help every qualified elector to vote.

Lori Geyman
Clerk/Treasurer
Town of Ottawa
(262) 965-3228