



Wisconsin Elections Commission

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Wisconsin Elections Commission
Special Teleconference Meeting
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
6:00 p.m. September 6, 2022

Open Session Minutes

Present: Commissioner Marge Bostelmann, Commissioner Julie Glancey, Commissioner Ann Jacobs, Commissioner Don M. Millis, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, all by teleconference.

Staff present: Sharrie Hauge, Brandon Hunzicker, Robert Kehoe, Anna Langdon, Sara Linski, Kelly McCormick, Riley Vetterkind, Riley Willman, Jim Witecha, and Meagan Wolfe, all by teleconference.

A. Call to Order

Commission Chair Millis called the meeting to order at 6:00 p.m. and called the roll. All Commissioners were present.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Meagan Wolfe informed the Commission that proper notice was given for the meeting.

C. Discussion and Action on What Guidance to Provide to Municipal Clerks Following the Federal Court Order in *Carey v. Wisconsin Elections Commission* Concerning Absentee Ballot Return Assistance under the Voting Rights Act

Staff Attorney Jim Witecha provided the Commission with procedural history relating to the memo before them.

MOTION: The document provided to all members of the Commission, entitled "Jacobs Motion" be adopted as the guidance of the Commission as ordered by Judge Peterson.

Moved by Commissioner Jacobs. Seconded by Commissioner Thomsen.

Discussion.

FRIENDLY AMENDMENT: In the second bullet point on the first page, change "she" and "her" to "he or she" and "their" to make the language gender neutral.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Proposed by Commissioner Glancey. Seconded by Commissioner Jacobs and Commissioner Thomsen.

Discussion.

AMENDMENT: Adopt the attestation on the third from last page of the staff memo. The agent's address will be included on the attestation.

Moved by Commissioner Spindell. Seconded by Commissioner Bostelmann.

Discussion.

FRIENDLY AMENDMENT: Next to the circle on the attestation after the word "because," replace "of a disability" with "I require assistance to return or mail my absentee ballot due to a disability."

Proposed by Chair Millis. Accepted by Commissioner Spindell and Commissioner Bostelmann.

Discussion.

Roll call vote:	Bostelmann:	Aye	Glancey:	No
	Jacobs:	No	Spindell:	Aye
	Millis:	Aye	Thomsen:	No

Motion failed 3-3.

Discussion.

AMENDMENT: Supplement the pending guidance to direct clerks to direct the person to fill out the attestation on the second to last page of the staff's memo when an absentee ballot is returned by someone other than the voter. Following the reference to the Voting Rights Act language will be inserted: "because the voter requires assistance to return the absentee ballot." The address of the agent will be included on the attestation.

Moved by Chair Millis. Seconded by Commissioner Bostelmann.

Discussion.

Chair Millis clarified that this amendment does not apply to mailing an absentee ballot back to the clerk and does not require any indication from the voter, while the previous proposed amendment did.

Roll call vote:	Bostelmann:	Aye	Glancey:	No
	Jacobs:	No	Spindell:	Aye
	Millis:	Aye	Thomsen:	No

Motion failed 3-3.

AMENDED MOTION: The document provided to all members of the Commission, entitled “Jacobs Motion” be adopted as the guidance of the Commission as ordered by Judge Peterson. In the second bullet point on the first page, “she” and “her” is changed to “he or she” and “their” to make the language gender neutral.

(See Appendix A for full amended motion.)

Roll call vote:	Bostelmann:	Aye	Glancey:	Aye
	Jacobs:	Aye	Spindell:	No
	Millis:	No	Thomsen:	Aye

Motion carried 4-2.

D. Adjourn

MOTION: To adjourn.

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

Roll call vote:	Bostelmann:	Aye	Glancey:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

The Commission adjourned at 7:51 p.m.

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September 6, 2022 Wisconsin Election Commission meeting minutes prepared by:



Anna Langdon, Help Desk Staff

September 8, 2022

September 6, 2022 Wisconsin Election Commission meeting minutes certified by:

A handwritten signature in black ink that reads "Julie Glancey". The signature is written in a cursive style with a large, looping 'J' at the beginning and a long, sweeping tail that ends in a small hook.

Julie Glancey, Commission Secretary

November 30, 2022

Appendix A to September 6, 2022 Wisconsin Elections Commission Meeting Minutes: Jacobs Proposed Motion (Amended):

The United States District Court for the Western District of Wisconsin entered an Opinion and Order, as well as a Permanent Injunction and Declaration, in the matter of Timothy Carey et al. v. Wisconsin Elections Commission et al. (22-cv-402jdp) on August 30, 2022. These materials have been attached for your consideration. In his decision, Judge James Peterson clarified how the Voting Rights Act applies to Wisconsin voters who require assistance with mailing or delivering their absentee ballot (“ballot return assistance”) because of a disability.

Pursuant to the Voting Rights Act, any Wisconsin voter who requires assistance with mailing or delivering their absentee ballot 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.

In administering future elections, all municipal clerks and their staff should comply with the above statutory requirement. The remainder of this memorandum addresses some questions that have arisen in light of the recent rulings in Carey and other court cases. The Commission suggests that you discuss this guidance and any other questions you may have with local legal counsel.

Do I need to confirm a person’s disability if they are being provided voting assistance, and if so, how?

No. Municipal clerks do not need to confirm that a voter utilizing ballot return assistance is a voter who requires ballot return assistance due to a disability. A Wisconsin voter may self-identify as requiring ballot return assistance due to a disability. This approach is consistent with previous court decisions holding, in analogous contexts, that voters may personally determine whether they fall within a particular statutory category. See, e.g., *Jefferson v. Dane Cnty.*, 2020 WI 90, 394 Wis. 2d 602 (allowing voters to self-identify indefinitely confined status).

When a clerk is presented with an absentee ballot delivered in-person to the clerk’s office, the Commission believes that the clerk may ask the following questions

- Are you the voter? *If not, then:*
- Are you delivering the voter’s ballot because the voter has determined that he or she requires assistance returning their ballot due to her disability? *If yes, then:*
- Are you someone other than the voter’s employer, an agent of that employer, or an officer or agent of the voter’s union? *If yes, then the ballot can be accepted.*

Additionally, as in all cases, any person who commits voter fraud or violates any statutory voting requirement may be subject to legal remedies in a criminal or civil proceeding.

Do I need to confirm the disabled voter or agent’s identity, or otherwise request additional information?

No. If the agent answers the above bullet-point questions correctly, the ballot should be accepted. Nothing in the statutes provides for otherwise confirming the agent’s identity or requesting

additional information. As for the disabled voter, she will have provided any statutorily necessary identification and residency information prior to the absentee ballot request. The statutes do not require a second presentation of that information.

Did the Carey case overrule Teigen v. Wisconsin Elections Commission (976 N.W.2d 519)?

No. The Carey decision did not overrule or invalidate any portion of the Wisconsin Supreme Court's decision in Teigen. The Teigen court did not decide whether voters with disabilities may be entitled to absentee ballot return assistance. The Teigen court also did not decide whether voters in general may have someone else return a ballot through the U.S. Mail.

Who can provide a disabled voter with absentee ballot return assistance?

Under the Voting Rights Act, a voter requiring ballot return assistance due to a disability may select any person to serve as their agent providing ballot return assistance, provided that the person is not the voter's employer, an agent of their employer, or an officer or agent of the voter's union.

Can a single agent provide assistance to more than one disabled absentee voter?

Yes. As stated above, a voter requiring ballot return assistance due to a disability may select any person to serve as their agent providing ballot return assistance, provided that the person is not the voter's employer, an agent of their employer, or an officer or agent of the voter's union. It is possible that more than one voter might select the same agent.

What constitutes a permissible absentee ballot "mailing," and when has the agent's "assistance" stopped?

The Commission recommends treating the following as circumstances constituting "mailing" with respect to returning an absentee ballot on behalf of a voter requiring ballot return assistance due to a disability:

- A lawful agent places the absentee ballot in the voter's residential mailbox.
- A lawful agent places the absentee ballot in a United States Postal Service or similar parcel carrier's mailbox or delivers it to a designated drop facility for such parcel carriers.
- A lawful agent turns over custody of the absentee ballot directly to a postal or parcel carrier's employee/agent.
- A lawful agent places the absentee ballot into a reasonable, legitimate, and legally compliant stream of mail delivery services (e.g. care facilities, jails and correctional institutions, military installations, and other similar institutions and organizations often have a designated clerk or courier service responsible for collecting or otherwise delivering mail to postal officials or mail carriers).

The agent's assistance is complete when that party lawfully returns the absentee ballot to the appropriate clerk's office or deposits the absentee ballot into the stream of mail services discussed above (including any other lawful means of providing the ballot to a designated mail

carrier, mailbox, or mail facility).

If election officials have any questions about this guidance, they may discuss them local counsel or contact the Commission Help Desk at elections@wi.gov or by phone at (608) 261-2028.

Thank you for your prompt attention to this matter