

FILED

FEB 17 2022

**SUPREME COURT OF WISCONSIN
NO. 2022AP000091****CLERK OF SUPREME COURT
OF WISCONSIN**

Richard Teigen and Richard Thom,
Plaintiffs-Respondents-Petitioners,

v.

Wisconsin Elections Commission,
Defendant-Co-Appellant,

Democratic Senatorial Campaign Committee,
Intervenor-Defendant-Co-Appellant,

Disability Rights Wisconsin, Wisconsin Faith
Voices for Justice and League of Women
Voters of Wisconsin,
Intervenors-Defendants-Appellants.

Appeal from a Final Order of the Circuit Court for Waukesha County,
The Honorable Michael O. Bohren, Presiding,
Circuit Court Case No. 2021CV958

**MOTION FOR LEAVE TO SUPPLEMENT THE RECORD BY
INTERVENORS-DEFENDANTS-APPELLANTS, DISABILITY RIGHTS
WISCONSIN, LEAGUE OF WOMEN VOTERS OF WISCONSIN, AND
WISCONSIN FAITH VOICES FOR JUSTICE**

Intervenors-Defendants-Appellants, Disability Rights Wisconsin, League of
Women Voters of Wisconsin, and Wisconsin Faith Voices for Justice ("DRW")
move this Court for leave to supplement the record. DRW respectfully requests that
the Court grant leave to supplement the record for the following reasons:

1. Immediately after the circuit court issued its oral ruling granting motions to intervene by DRW and Intervenor-Defendant-Co-Appellant Democratic Senatorial Campaign Committee (“DSCC”), Plaintiffs-Respondents-Petitioners Richard Teigen and Richard Thom (“Teigen”) asked the circuit court to set an expedited briefing schedule on his forthcoming motions for temporary injunctive relief and for summary judgment. Teigen filed his opening brief on both motions the following day. (Cir. Ct. Dkt. 62-68)¹ The circuit court afforded DRW (along with Defendant-Co-Appellant Wisconsin Elections Commission (“WEC”) and DSCC) only 30 days in which to simultaneously brief opposition to both motions and to conduct discovery. (Cir. Ct. Dkt. 60) At the request of Teigen’s counsel, DRW’s depositions of Mr. Teigen and Mr. Thom were scheduled near the very end of that narrow window for discovery. Teigen conducted no discovery and produced only a handful of documents in response to DRW’s discovery requests.

2. In support his motion for summary judgment, Teigen provided only a complaint with naked allegations, the two WEC memoranda at the heart of this dispute, and two boilerplate affidavits from Mr. Teigen and Mr. Thom (which preceded Mr. Teigen and Mr. Thom’s depositions and were, in some aspects, contradicted by their deposition testimony). (J. App. 6-26; Cir. Ct. Dkts. 64-66) Aside from these documents, Teigen submitted no evidence to support his summary

¹ Because the circuit court has not yet compiled the record for appeal, citations to docket materials that are not included in Appellants’ Joint Appendix are cited to the circuit court docket number.

judgment motion and his request that the circuit court enter final judgment in his favor.

3. As the plaintiff and the party moving for summary judgment, Teigen bore the burden to demonstrate that there were no disputes of material fact in order to succeed on summary judgment. Wis. Stat. § 802.08(2) (“The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”); *see also, e.g., Peninsular Carpets, Inc. v. Bradley Homes, Inc.*, 58 Wis. 2d 405, 410, 206 N.W.2d 408 (1973) (“The burden of proof rests with the movant ... and if there are any material facts in dispute or any reasonable inferences that might be drawn from undisputed facts which point to a result contrary to the one sought by the movant, the motion must be denied.”).

4. Teigen’s burden on summary judgment included a burden to submit admissible evidence to support Teigen’s allegations in his complaint that municipal clerks throughout the State of Wisconsin relied on the challenged WEC Guidance. (J. App. 6-23) Yet, Teigen presented no evidence to support his allegations that municipal clerks (or anyone else, for that matter) actually relied on the WEC guidance in making decisions to allow the return of absentee ballots to drop boxes or to allow ballot-return assistance, and, therefore, no facts for the circuit court to consider, let alone for DRW, WEC, and DSCC to dispute.

5. Despite the lack of any record evidence on this conclusory allegation in his complaint that is critical to his claim, the circuit court made no effort to hold Teigen to his burden of proof, and awarded summary judgment to Teigen with no record evidence to support this allegation.

6. There is no colorable argument that DRW should have known or anticipated that the circuit court would assume the truth of Teigen's allegations without any record evidence to establish them and award judgment to Teigen, effectively placing the burden of proof upon DRW, WEC, and DSCC at the hearing with respect to Teigen's motion for summary judgment.

7. DRW's express denial of Teigen's allegations in its Answer joined these factual issues in dispute, as would the denial of any party to a proceeding. *See Zellner v. Herrick*, 2009 WI 80, ¶22, 319 Wis. 2d 532, 770 N.W.2d 305 (quoting *Kohler Co. v. Sogen Int'l Fund, Inc.*, 2000 WI App 60, ¶11, 233 Wis. 2d 592, 608 N.W.2d 746.).

8. Because of how the circuit court chose to proceed, followed by the expedited bypass determination, this is the first opportunity DRW has had to correct the record and to present evidence that contradicts Teigen's false *ipse dixit* that the use of drop boxes for the return of absentee ballots began with the pandemic and stemmed solely from WEC's August 2020 memorandum. When drop boxes were first used in Wisconsin elections is an issue of fact—and one directly relevant to the declaration of law made by the circuit court and under review here.

9. DRW now moves this Court to supplement the record so that it may consider actual facts and history, rather than follow the circuit court in being led astray by Teigen's repeated and unsupported falsehoods.

10. The circuit court disregarded the burden of proof and accepted without any proof Teigen's conclusory allegation that the WEC memoranda instigated the use of absentee-ballot drop boxes in Wisconsin. Had the circuit court held Teigen to his burden of proof and required that Teigen submit evidence to support the conclusory allegation in his complaint, it would have learned that the use of drop boxes for the return of absentee ballots predates the pandemic by years, and even decades, in some municipalities.

11. A sample of municipal clerks within Dane County have provided affidavits, attached hereto, that illustrate the historical inaccuracy of Teigen's conclusory allegations and assertions that (1) municipal clerks offered drop boxes as a way to return an absentee ballot only after WEC issued its August 2020 memo; and (2) drop boxes did not predate the pandemic. (J. App. 10-11, 13-14, 91, 567-568)

12. As the attached proffered affidavits attest, nine municipal clerks—a tiny sample of the 1,850 municipal clerks who administer Wisconsin elections—testify that their communities have used drop boxes for the return of absentee ballots for years, long predating the COVID-19 pandemic. For example, the Town of Westport has been using a drop box since the 1980s. (Aff. of Bob Anderson, ¶4) Likewise, the Village of Black Earth and the Village of Cottage Grove have been

using a secure drop box since the early 1990s. (Aff. of Shellie Benish, ¶2; Aff. of Lisa Kalata, ¶4) Each of the nine clerks avers that their community has consistently accepted absentee ballots returned to the local drop box and have recognized those absentee ballots as validly cast ballots for years. Having done so, they could **not** have relied upon the guidance issued by WEC in August 2020 to begin allowing eligible voters to return their absentee ballots via drop box, which many of the clerks expressly state. (Aff. of Bob Anderson, ¶3; Aff. of Shellie Benish, ¶5; Aff. of Candee Christen, ¶3; Aff. of Candie Jones, ¶3; Aff. of Katie Zelle, ¶5) It is critical that the Court hear the truth from the local officials, the boots on the ground, who are involved in election administration year after year and who have the relevant, requisite historical knowledge about the use of drop boxes in Wisconsin.

13. Had the circuit court held Teigen to his burden of proof as Wis. Stat. § 802.08(2) requires, rather than rushing headlong into summary judgment without an evidentiary basis, a broader search would undoubtedly uncover many more similar evidence from not only Dane County municipal clerks, as the attached affidavit of Dane County Clerk Scott McDonell demonstrates, but statewide.

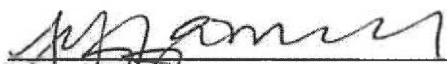
14. Appellants also seek leave to supplement the record with the memorandum issued by WEC to municipal clerks statewide on February 16, 2022, in compliance with the Circuit Court's order issued on January 19, 2022. (Aff. of Scott McDonell, ¶5, Ex. A)

15. For all of these reasons, DRW respectfully requests that the Court grant this motion for leave to supplement the record and accept the attached materials.

Dated: February 17, 2022

Respectfully submitted,

STAFFORD ROSENBAUM LLP



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Appellants*

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AFFIDAVIT OF BOB ANDERSON

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Bob Anderson, being first duly sworn on oath, depose and state as follows:

1. I am the Deputy Clerk Treasurer for the Town of Westport (“Westport”), and have been for almost 32 years. I have personal knowledge and belief as to the matters set forth below.

2. Westport has one secure drop box that is built into the Kennedy Administration Building.

3. Westport did not rely on the guidance issued by the Wisconsin Elections Commission in 2020 in first using its secure drop box to allow eligible voters to return their absentee ballots to the Kennedy Administration Building.

4. Westport has been using the secure drop box since the building was constructed in 1983 or 1984.

5. Westport has consistently accepted those absentee ballots returned to that drop box since I started working for Westport.

6. Westport has consistently recognized those absentee ballots cast via drop box to be validly cast ballots since I started working for Westport.

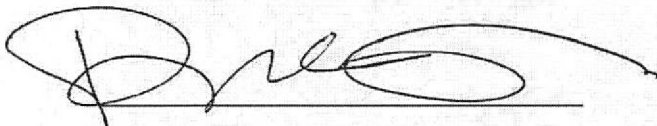
7. I have understood the return of absentee ballots by drop box to be in compliance with state law. Until after the 2020 General Election, no one has challenged the practice or suggested that it was not permitted by Wisconsin law.

Date: February 16, 2022



Bob Anderson

Subscribed and sworn to before me
this 16 day of February, 2022.



Notary Public, State of Wisconsin
My commission expires Sept. 4, 25



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AFFIDAVIT OF SHELLIE BENISH

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Shellie Benish, being first duly sworn on oath, depose and state as follows:

1. I am the Administrator/Clerk/Treasurer for the Village of Black Earth ("Black Earth"), and have been since 2013. I have personal knowledge and belief as to the matters set forth below.

2. Village of Black Earth has one secure, locked drop box that is built in to the Village Hall Building. The locked drop box was installed upon the construction of the Municipal building in 1990.

3. Village of Black Earth secured lock drop box is staffed by the clerk and is directly connected to the Clerk's Office.

4. Village of Black Earth secured lock drop box is handicap accessible and is utilized for utility payments, real estate tax payments, licensing and other payments received by the Village.


5. Black Earth did not rely on the guidance issued by the Wisconsin Elections Commission in 2020 in first using its secure drop box to allow eligible voters to return their absentee ballots to the Village Hall Building.

6. Black Earth has consistently accepted those absentee ballots returned to that drop box since at least 2013, when I was appointed Administrator/Clerk/Treasurer.

7. Black Earth has consistently recognized those absentee ballots cast via drop box to be validly cast ballots since at least 2013, when I was appointed Administrator/Clerk/Treasurer.


8. I have understood the return of absentee ballots by drop box to be in compliance with state law. Until after the 2020 General Election, no one has challenged the practice or suggested that it was not permitted by Wisconsin law.

Date: February 16, 2022



Shellie Benish, WCMC

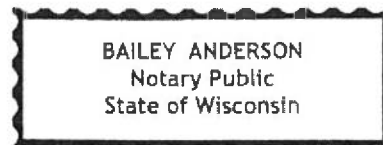
Subscribed and sworn to before me
this 16 day of February, 2022.



Bailey Anderson

Notary Public, State of Wisconsin

My commission expires: 12/23/2025



**SUPREME COURT OF WISCONSIN
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AFFIDAVIT OF MARY JO MICHEK

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Mary Jo Michek, being first duly sworn on oath, depose and state as follows:

1. I am the Clerk/Treasurer for the Village of Blue Mounds. I have personal knowledge and belief as to the matters set forth below.

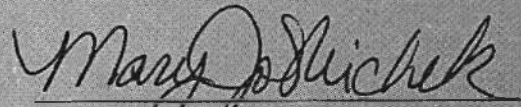
2. The Village of Blue Mounds has, for decades, used a drop box inside of our village offices building. Residents would, on occasion, use this to drop off

their absentee ballots. The box was also used for other general purposes. When the village offices moved into a new building, a secure drop box, located on the outside of the building, was used in the same fashion.

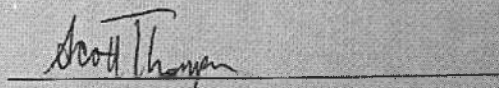
3. The Village of Blue Mounds has consistently accepted those absentee ballots returned to those drop boxes since for decades, long before the pandemic began.

4. The Village of Blue Mounds has consistently recognized those absentee ballots cast via drop box to be validly cast.

5. I have understood the return of absentee ballots to those drop boxes to be in compliance with state law.


Mary Jo Michiek
Clerk/Treasurer
Village of Blue Mounds

Subscribed and sworn to before me
this 16 day of February, 2022.



Notary Public, State of Wisconsin
My commission expires: NEVER



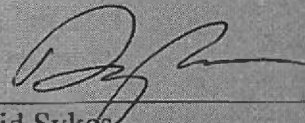
2. The Village of Shorewood Hills has a drop box located in the parking lot of our Village Hall.

3. I am personally aware that the Village of Shorewood Hills has been using this drop box since at least 2016. I believe the drop box may have been in place before then.

4. The Village of Shorewood Hills has consistently accepted absentee ballots returned to that drop box since at least 2016.

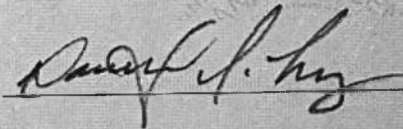
5. The Village of Shorewood Hills has consistently recognized those absentee ballots cast via drop box to be validly cast ballots since at least 2016.

6. I have understood the return of absentee ballots by drop box to be in compliance with state law.



David Sykes

Subscribed and sworn to before me this 14 day of February, 2022.



Notary Public, State of Wisconsin
My commission expires: is permanent



**SUPREME COURT OF WISCONSIN
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AFFIDAVIT OF RHONDA L. WIEDENBECK

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Rhonda L. Wiedenbeck, being first duly sworn on oath, depose and state as follows:

1. I am the clerk for the Town of Sun Prairie. I have personal knowledge and belief as to the matters set forth below.

2. The Town of Sun Prairie has a drop box located directly outside the front door of Town Hall.

3. The Town of Sun Prairie has been using this drop box since at least 2003.

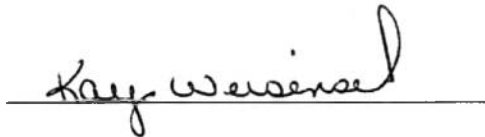
4. The Town of Sun Prairie has consistently accepted those absentee ballots returned to that drop box.

5. The Town of Sun Prairie has consistently recognized those absentee ballots cast via drop box to be validly cast ballots since at least 2003.

6. I have understood the return of absentee ballots by drop box to be in compliance with state law. Until after the 2020 General Election, no one has challenged the practice or suggested that it was not permitted by Wisconsin law.


Rhonda L. Wiedenbeck

Subscribed and sworn to before me
this 16th day of February, 2022.



Notary Public, State of Wisconsin
My commission expires: May 27, 2025

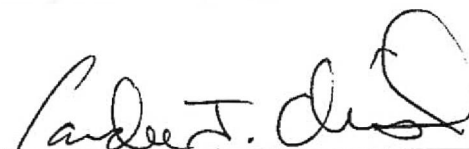
3. The City of Stoughton did not rely on the guidance issued by the Wisconsin Elections Commission in 2020 in first using a secure drop box to allow eligible voters to return their absentee ballots to the City of Stoughton Clerk's office.

4. The City of Stoughton has been using this secure drop box since 2019.

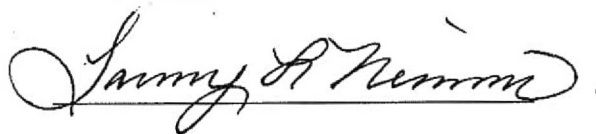
5. The City of Stoughton has consistently accepted those absentee ballots returned to that drop box since 2019.

6. The City of Stoughton has consistently recognized those absentee ballots cast via drop box to be validly cast ballots since 2019.

7. I have understood the return of absentee ballots by drop box to be in compliance with state law. Until after the 2020 General Election, no one has challenged the practice or suggested that it was not permitted by Wisconsin law.


Candee J. Christen

Subscribed and sworn to before me
this 16th day of February, 2022.



Tammy L. Nimmo
Notary Public, State of Wisconsin

Notary Public, State of Wisconsin
My commission expires: 12/20/2024

**SUPREME COURT OF WISCONSIN
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Intervenor-Defendant-Co-Appellant,

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Voices for Justice and League of Women
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Intervenors-Defendants-Appellants.

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AFFIDAVIT OF CANDIE JONES

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Candie Jones, being first duly sworn on oath, depose and state as follows:

1. I am the current Clerk for the Village of Oregon and have been employed with the Village of Oregon since April 15, 2013. I have personal knowledge and belief as to the matters set forth below.

2. The Village of Oregon has a secure, locked drop box that is located in the municipal parking lot of the Village Hall.

3. The Village of Oregon did not rely on the guidance issued by the Wisconsin Elections Commission in 2020 in first using its secure, locked drop box to allow eligible voters to return their absentee ballots outside of the Village Hall.

4. The Village of Oregon has consistently accepted those absentee ballots returned to that secure, locked drop box since at least April 15, 2013, when I began my employment with the Village of Oregon.

5. The Village of Oregon has consistently recognized those absentee ballots cast via drop box to be validly cast ballots since at least April 15, 2013.

6. I have understood the return of absentee ballots to the secure, locked drop box to be in compliance with state law. Until after the 2020 General Election, no one has challenged the practice or suggested that it was not permitted by Wisconsin law.

Date: February 16, 2022

Candie Jones

Candie Jones

Subscribed and sworn to before me this 16th day of February, 2022.

DJ Hanson

Notary Public, State of Wisconsin
My commission expires: 10/14/2023



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AFFIDAVIT OF KATIE ZELLE

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Katie Zelle, being first duly sworn on oath, depose and state as follows:

1. I am the clerk for the Town of Vermont (“Vermont”), and have been since 2019. I have personal knowledge and belief as to the matters set forth below.

2. Vermont has one secure, locked drop box located at the Town Hall. This drop box was installed just a few months ago, after the 2020 elections.

3. The Town Hall is not open to the public on a regular basis. For at least as long as I have been a clerk, Vermont has accepted absentee ballots delivered while the building was closed via a slot in the locked Town Hall front door, effectively making the Town Hall a drop box.

4. Collecting absentee ballots by drop box is more secure than by mail. The Town Hall's mailbox is located out at the road, does not lock, and is not emptied every day. For example, mail delivered on Saturday is not collected until Monday.

5. Vermont did not rely on the guidance issued by the Wisconsin Elections Commission in 2020 in first using the Town Hall as a secure drop box to allow eligible voters to return their absentee ballots to the Vermont Clerk's office.


6. Vermont has consistently accepted those absentee ballots returned to that drop box since at least 2019.

7. Vermont has consistently recognized those absentee ballots cast via drop box to be validly cast ballots since at least 2019.

8. I have understood the return of absentee ballots by drop box to be in compliance with state law. Until after the 2020 General Election, no one has challenged the practice or suggested that it was not permitted by Wisconsin law.

Date: February 16, 2022




Katie Zelle

Subscribed and sworn to before me
this 16th day of February, 2022.

Elizabeth Field

Notary Public, State of Wisconsin
My commission expires: 3/18/2025

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AFFIDAVIT OF LISA KALATA

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Lisa Kalata, being first duly sworn on oath, depose and state as follows:

1. I am the Clerk for the Village of Cottage Grove (“Cottage Grove”), and have been since 2016. I have personal knowledge and belief as to the matters set forth below.

2. Cottage Gove has one secure drop box that is built into the Village Hall Building.

3. Cottage Grove did not rely on the guidance issued by the Wisconsin Elections Commission in 2020 in first using its secure drop box to allow eligible voters to return their absentee ballots to the Village Hall Building.

4. Cottage Grove has been using the secure drop box since the building was constructed in 1993.

5. Cottage Grove has consistently accepted those absentee ballots returned to that drop box since at least 2016, when I was appointed clerk.

6. Cottage Grove has consistently recognized those absentee ballots cast via drop box to be validly cast ballots since at least 2016, when I was appointed clerk.

7. I have understood the return of absentee ballots by drop box to be in compliance with state law. Until after the 2020 General Election, no one has challenged the practice or suggested that it was not permitted by Wisconsin law.

Date: February 16, 2022

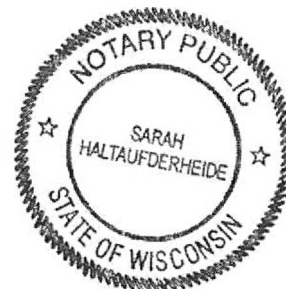
Lisa Kalata

Lisa Kalata

Subscribed and sworn to before me
this 16 day of February, 2022.

Sarah Haltaufderheide

Notary Public, State of Wisconsin
My commission expires: 8/1/2023



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AFFIDAVIT OF SCOTT MCDONELL

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Scott McDonell, being first duly sworn on oath, depose and state as follows:

1. I am the county clerk for Dane County. I have personal knowledge and belief as to the matters set forth below.

2. I began serving as the Dane County Clerk in January 2013 and have served continuously since that time.

3. In my role as Dane County Clerk, I am required to be, and I am, generally aware of practices of municipal clerks with respect to absentee ballots in the municipalities in Dane County.

4. I am personally aware that some municipal clerks in Dane County have been accepting and counting absentee ballots received through night depositories and drop boxes since I took office in January 2013, and continued to do so through the most recent elections in their municipalities

5. Attached hereto as Exhibit A is a true and correct copy of a memorandum from the Wisconsin Elections Commission, dated February 16, 2022, sent to municipal and county clerks in Wisconsin.


Scott McDonell

Subscribed and sworn to before me
this 16th day of February, 2022.



Notary Public, State of Wisconsin
commission expires: 10-4-2023



EXHIBIT A



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: February 16, 2022

TO: Wisconsin Municipal Clerks
City of Milwaukee Election Commission

FROM: Wisconsin Elections Commission

SUBJECT: Statement to Clerks – Notification of WEC’s Interpretation of Wis. Stat. §§ 6.87 and 6.855 Contained in Memoranda Issued March 31, 2020 and August 19, 2020 Declared Invalid by Waukesha County Circuit Court (*Teigen, et al. v. WEC and DSCC, et al.*)

On March 31 and August 19, 2020, WEC issued memoranda that discussed issues related to the mailing or delivery of absentee ballots to municipal clerks and the use of drop boxes by municipal clerks for delivery of absentee ballots.

On January 20, 2022, the Waukesha County Circuit Court issued an Order requiring WEC to withdraw those two memoranda, and to issue a statement notifying clerks that WEC’s interpretation of Wis. Stat. §§ 6.87 and 6.855 in those two memoranda has been declared invalid by that Court, as described in the Court’s Order. The Court also prohibited WEC from issuing any further interpretations that conflict with Wis. Stat. §§ 6.87 and 6.855 as described in the Court’s Order.

The Waukesha County Circuit Court’s Order was subsequently stayed by the Wisconsin Court of Appeals through February 15, 2022. That stay expires, however, on February 16, at which time the Circuit Court Order goes into effect.

Accordingly, pursuant to the Circuit Court Order of January 20, 2022, this communication is hereby issued to give notice that the WEC memoranda of March 31 and August 19, 2020, have been withdrawn, and that WEC’s interpretation of Wis. Stat. §§ 6.87 and 6.855 in those memoranda has been declared invalid by that Court, as described in the Court’s Order, a copy of which is attached to this notice. Any other previous guidance by WEC on the topics discussed in the two withdrawn memoranda should also be disregarded, to the extent that it is inconsistent with the attached Order.

A copy of the Order is attached to this notice. Please review this notice and the attached Order with your municipal attorney to determine if any changes to your ballot collection procedures are required.

Please contact the WEC Help Desk at elections@wi.gov or by phone at (608)261-2028 with any questions you may have. Thank you for your prompt attention to this matter.

CC: Wisconsin County Clerks
Milwaukee County Election Commission

Attachment: Order, Waukesha County Circuit Court

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

FILED
01-20-2022
Clerk of Circuit Court
Waukesha County
2021CV000958

DATE SIGNED: January 19, 2022

Electronically signed by Michael O. Bohren
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 1

WAUKESHA COUNTY

RICHARD TEIGEN, et al.,

Plaintiffs,

v.

Case No. 21-CV-958

WISCONSIN ELECTIONS COMMISSION,

Defendant,

and

DEMOCRATIC SENATORIAL CAMPAIGN
COMMITTEE, et al.,

Defendant-Intervenors.

**ORDER GRANTING SUMMARY
JUDGMENT FOR PLAINTIFFS**

Plaintiffs filed this action seeking declaratory and injunctive relief on June 28, 2021. They challenge the legal interpretations of several Wisconsin statutes by Defendant Wisconsin Elections Commission (“WEC”) contained in two written memos, one dated March 31, 2020, attached to Plaintiffs’ complaint as Exhibit A, (“March Memo”), and one dated August 19, 2020, attached to Plaintiffs’ complaint as Exhibit B, (“August Memo”) (collectively, “Memos”).

Plaintiffs filed a motion for summary judgment and a motion for preliminary injunction on October 15. Defendant Wisconsin Elections Commission, and Defendant-Intervenors Democratic Senate Campaign Committee (“DSCC”), Disability Rights Wisconsin, Wisconsin Faith Voices for Justice, and League of Women Voters of Wisconsin filed briefs in opposition on November 15, requesting summary judgment in their favor. Plaintiffs filed a reply on November 24. This Court heard arguments on the motions on January 13, 2022.

Having considered the parties briefs, affidavits, and arguments, and for the reasons stated on the record during the January 13 hearing, the Court HEREBY ORDERS that the Plaintiffs’ Motion for Summary Judgment is **GRANTED** on all claims, Plaintiffs’ Motion for a Preliminary Injunction is **DENIED** as moot, and Defendant’s and Defendants-Intervenors’ request for summary judgment in their favor is **DENIED**.

The Court HEREBY ISSUES a declaratory judgment and permanent injunction as follows:

DECLARATORY JUDGMENT

For the reasons set forth by the Court on the record at the January 13, 2022 hearing, the Court hereby declares that WEC’s interpretation of state statutes in the Memos is inconsistent with state law, to the extent they conflict with the following: (1) an elector must personally mail or deliver his or her own absentee ballot, except where the law explicitly authorizes an agent to act on an elector’s behalf, (2) the only lawful methods for casting an absentee ballot pursuant to Wis. Stat. § 6.87(4)(b)1. are for the elector to place the envelope containing the ballot in the mail or for the elector to deliver the ballot in person to the municipal clerk, (3) the use of drop boxes, as described in the Memos, is not permitted under Wisconsin law unless the drop box is staffed by the clerk and located at the office of the clerk or a properly designated alternate site under Wis. Stat. § 6.855.

The Court further declares that WEC's Memos are administrative rules under Chapter 227 of the Wisconsin statutes and are invalid not only for the reasons described above, and but also because they should have been, but were not, promulgated as rules.

PERMANENT INJUNCTION

Defendant Wisconsin Elections Commission is HEREBY permanently enjoined as follows:

1. The Wisconsin Elections Commission shall not issue any further interpretations, to municipal clerks or anyone else, that conflicts with Wis. Stat. §§ 6.87 and 6.855, as described above.

2. No later than January 27, 2022, the Wisconsin Elections Commission shall withdraw the Memos and issue a statement to clerks notifying them that WEC's interpretation of Wis. Stat. §§ 6.87 and 6.855 in the Memos has been declared invalid by this Court, as described above.

THIS IS A FINAL JUDGMENT FOR PURPOSES OF APPEAL