



# Wisconsin Elections Commission

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**DATE:** July 29, 2020

**TO:** All Wisconsin Election Officials

**FROM:** Meagan Wolfe  
Administrator

**SUBJECT:** 7th Circuit Court of Appeals Ruling in One Wisconsin Institute Case Now in Effect

A mandate was issued today by the 7<sup>th</sup> Circuit Court of Appeals in the One Wisconsin Institute case meaning that this ruling is now in effect. Please review the summary of changes below to determine how this decision impacts voting laws and procedures and how you will need to update any training and documentation provided to your staff and election inspectors for the upcoming August and November elections.

On June 29, 2020 the 7<sup>th</sup> Circuit Court of Appeals issued its ruling in the One Wisconsin Institute case that had been on appeal since 2016. WEC provided further guidance on July 2, 2020 that the Wisconsin Department of Justice determined that the 7<sup>th</sup> Circuit decision was not in effect until the mandate was issued. All aspects of the ruling are now in effect and should be applied to the deadlines and procedures used to administer the August 11, 2020 Partisan Primary:

- **In-Person Absentee Voting:** The Court determined that limitations on days, hours and locations for in-person absentee voting contained in the current statute are permissible, and that the requirements established by 2017 Wisconsin Act 369 are constitutional and enforceable. For the August 11 Primary, you are now within the 14-day window for offering in-person absentee voting in your municipality for that election as permitted by the statute.

Effective immediately:

- In-person absentee voting may be conducted beginning no earlier than 14 days prior to each election and ending no later than the Sunday prior to election day. No in-person absentee voting is allowed on the Monday prior to election day. Wis. Stat. § 6.86(1)(b).
- There is no limit contained in the current law on the maximum number of hours that can be offered for in-person absentee voting and the law also does not establish a minimum number of hours that must be offered (although opportunities for in-person absentee voting must be offered). In-person absentee voting hours are also not required to be offered on each day of this time period.
- Municipalities are permitted to designate multiple sites for in-person absentee voting. Wis. Stat. § 6.855(5). Additional in-person absentee sites are required to be established by the municipal governing body for a primary and general election at least 14 days prior to when ballots are available for the primary. Wis. Stat. § 6.855(1). For the August 11, 2020 Partisan Primary and

*Wisconsin Elections Commissioners*

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

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the November 3, 2020 General Election those sites were required to be designated by June 11, 2020.

- **Voter Residency:** The Court determined that the State's 28-day residency requirement for voter registration was constitutional. WEC has updated the voter registration form and will be updating the online voter registration process on MyVote to reflect the change to 28 days. If you are using the current version of the form for in-person registration, please have the voter or clerk cross out the reference to 10 days and write in 28 days and then initial by the change.

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

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

Effective immediately: Clerks may not send absentee ballots to regular absentee voters via fax or email delivery. Clerks must continue to send absentee ballots to military and overseas voters via fax or email delivery if either of those methods are requested by the voter.

- **Absentee Ballot Certificate Envelope:** State law requires the certification language on the absentee ballot return envelope to include the residency requirement in the voter affirmation section. Wis. Stat. § 6.87(2). Existing stock of return envelopes that list the 10-day residency reference may still be used, but the clerk should manually change the reference to the 28-day residency requirement, and initial this change, before issuing the return envelope to an absentee voter.
- **Student ID as Photo ID:** There were two challenges to the use of university, college, or technical college ID cards as proof of identification that the Court ruling impacted. The first challenge was to the requirement that the student ID can only qualify as acceptable photo ID if it contains an issuance date, an expiration date no more than two years after issuance and was currently unexpired. The Court ruled that the expiration date requirement could be supplemented by a proof of enrollment document,

The second issue was regarding the requirement that the use of the student ID as photo ID was contingent on the voter providing a proof of enrollment document, such as a tuition fee receipt or course schedule, along with the ID. The Court ruled that requiring a proof of enrollment document in addition to providing a qualifying unexpired student ID was unconstitutional and cannot be enforced.

Effective immediately: If a qualifying student ID used for the purposes of meeting the photo ID requirement is unexpired, the proof of enrollment document accompanying a student ID is no longer required. If the student ID is expired, the voter must also provide the valid proof of enrollment document. If the voter has an expired student ID and does not have a valid proof of enrollment document, they should not be permitted to vote a regular ballot unless they can provide another

acceptable form of photo ID. If a voter is unable to meet the photo ID requirement, and they are otherwise qualified, they shall be permitted to vote a provisional ballot. For the provisional ballot to be counted, the voter must provide an acceptable form of photo ID prior to 4:30 p.m. on the Friday after the election. Wis. Stat. § 6.97.

<b>Student ID Expired?</b>	<b>Proof of Enrollment?</b>	<b>Does this work as photo ID?</b>
<b>No</b>	<b>Not necessary</b>	<b>Yes</b>
<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Yes</b>	<b>No</b>	<b>No</b>

- **College or University Housing List as Proof of Residence:** State law allows for a college or university to provide a certified housing list that can be used as proof of residence for students to use as proof of residence when registering to vote at the polls on election day, but statute also requires the list to include citizenship status of each student on the list. The Court ruled that the citizenship requirement on the certified housing list was in violation of federal student privacy laws and, therefore, should not be enforced.

Effective immediately: Certified housing lists provided by colleges or universities do not need to contain citizenship status and may be used a proof of residence without that information.

- **ID Petition Process:** The Court remanded the legal challenge to the ID Petition Process administered by the Wisconsin Department of Motor Vehicles (DMV) back to District Court for further deliberations. This process was created to provide voters without access to the supporting documents necessary to obtain a state ID card with a process for the DMV to verify their personal information and issue them a state ID that can be used to satisfy the photo ID requirement when voting. The receipt issued by the DMV to the voter may still be used as acceptable photo ID for voting until the voter receives their ID card from the DMV.

We appreciate your attention to these changes and your patience as we develop additional guidance regarding the Court decision's impact. WEC is in the process of posting updated forms (prioritizing high frequency and most relevant), training materials, reference documents and process flows and instructions on our websites to assist your efforts in preparation for the remainder of the 2020 election cycle and to inform voters of the changes in some requirements. Please contact us at [elections@wi.gov](mailto:elections@wi.gov) or call us at (608)261-2028 with any questions you may have.