

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