



Federal Court Actions Affecting the April 7, 2020 Spring Election

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On March 12, 2020, in response to the COVID-19 pandemic, Governor Tony Evers signed [Executive Order #72](#), declaring a state of emergency relating to public health and designating the Department of Health Services (DHS) as the lead agency to respond to this emergency. On March 24, 2020, the Governor and Secretary-Designee of DHS Andrea Palm issued [Emergency Order #12: Safer at Home Order](#), directing all residents to stay within their places of residence except to perform essential duties.

The Governor and the Wisconsin Elections Commission (WEC) stated that Emergency Order #12 was not intended to affect in-person absentee voting or voting at a polling place on Election Day.¹ However, the Governor, the WEC, and DHS have strongly encouraged voters to vote by absentee ballot in the spring election, scheduled for April 7, 2020. Requests for absentee ballots for the spring election have exceeded one million.²

FEDERAL LAWSUITS FILED

Between March 18, 2020, and March 26, 2020, three lawsuits were filed in the District Court for the Western District of Wisconsin;³ the cases were consolidated by the court. Plaintiffs include municipal clerks and other elections officials, voters who self-identify as at risk for contracting COVID-19, civic groups, and the Democratic National Committee and the Democratic Party of Wisconsin. The plaintiffs sought the following:

- Postponement of the April 7, 2020 spring election.
- Relief from the requirement that requests for absentee ballots be accompanied by proof of identification.
- Extension of the deadline for mail-in registration and elimination of the requirement for proof of residence.
- Relief from the requirement that absentee ballots be signed by a witness.
- Extension of the deadline to receive absentee ballots in order to count them at the spring election.

The defendants in the consolidated lawsuits are the six members of the WEC and its administrator. The Republican National Committee and the Republican Party of Wisconsin were added as defendants in one action; the Joint Committee on Legislative Organization, on behalf of the Wisconsin Legislature, sought to be added to the lawsuits, but were denied.

FEDERAL COURT DECISIONS

After oral arguments on April 1, 2020, the district court issued an order granting in part and denying in part, the requested relief.⁴ The court reserved the question, until after the election is held, of whether actual voter turnout, ability to vote on Election Day, or overall Election Day conduct undermined the right to vote in the state. On April 2, 2020, the Republican National Committee and the Republican Party of Wisconsin filed to appeal this decision.

Relief Granted by the District Court and Subsequent Treatment on Appeal

The district court granted the plaintiffs' requests to extend, for a period, the deadline for receiving absentee ballots and to waive, for certain voters, the requirement that an absentee ballot be signed by a witness. The 7th Circuit Court of Appeals upheld the order in part and reversed in part; the court also added the Legislature as a party to the actions. Its decision was appealed to the U.S. Supreme Court.

Extending the Deadline for Receiving Absentee Ballots

Under current law, absentee ballots must be received by 8:00 p.m. on Election Day in order to be counted.⁵ The court agreed to extend that deadline until 4:00 p.m. on April 13, 2020,⁶ noting that the increased number of requests for absentee ballots, combined with a processing backlog and slower mail delivery than usual is likely to disenfranchise voters who wish to cast an absentee ballot by mail. The court declined to require that ballots be postmarked by a certain date, ordering only that ballots received by April 13, 2020, must be counted. The 7th Circuit agreed, declining to require that ballots be postmarked by April 7, 2020, in order to be counted. That issue was appealed to the U.S. Supreme Court, which reversed, holding that ballots must be postmarked or received by clerks by 8:00 p.m. on April 7, 2020, in order to be counted.

Waiving the Requirement for a Witness Signature on Absentee Ballots

Under current law, a voter who submits an absentee ballot must have a witness sign the envelope containing the ballot, attesting that the vote complies with elections law.⁷ The court found that, while many voters are able to comply with this requirement while still observing the Safer at Home directives, voters who are not able to do so would be disenfranchised if their votes were not counted for failure to have a witness signature. The court ordered that the witness requirement be waived for any voter who attests that he or she was unable to obtain a witness to sign the ballot envelope, despite the voter's reasonable attempt to do so. The 7th Circuit disagreed, finding that the WEC provided voters with adequate alternative means of obtaining a witness signature, particularly in light of the extended deadline to receive absentee ballots.

Relief Denied

The court refused to postpone the April 7, 2020 election or to waive the statutory requirement that a request for an absentee ballot be accompanied by proof of identification. The court also denied the request to extend the deadline for registering to vote by mail.

Postponing the April 7, 2020 Election

Noting that the right to vote is fundamental and that any infringement of that right is subject to careful and meticulous scrutiny, the court weighed the potential harms of holding the election as scheduled against the potential harms of delaying a scheduled election. The court acknowledged the seriousness of the potential health risks associated with Election Day voting, but also acknowledged the efforts by the WEC and municipal clerks to maintain polling places in the safest manner possible. The court declined to take what it characterized as the extraordinary step of delaying the election, holding that the balance of interests weighs in favor of holding the election on April 7, 2020.

Waiving the Proof of Identification Requirement When Requesting an Absentee Ballot

Under current law, with certain limited exceptions, a first-time applicant for an absentee ballot must provide proof of identification in order to receive a ballot⁸. The court did not waive this requirement for the April 7, 2020 election, holding that, with reasonable effort, most voters can satisfy this requirement and that state law provides an exception for voters indefinitely confined due to age, illness, or disability. The court cited election commission guidelines⁹ that a person may self-designate as indefinitely confined and that a person need not be permanently disabled or totally unable to leave his or her home in order to identify as indefinitely confined.

Extending the Deadline to Register by Mail

The court declined to extend the deadline to register as a voter by mail or lift the requirement for proof of residence, deciding that the requested relief would come too late to benefit voters in the April 7, 2020 election.

¹ Wisconsin Elections Commission: [Emergency Order #12 Does Not Eliminate In-Person Absentee Voting – COVID-19](#).

² Wisconsin Elections Commission: [Absentee Ballot Requests for April 7 Exceed 1 million – COVID-19](#).

³ The consolidated cases are: *Democratic National Committee et al. v. Marge Bostelmann et al.*, 3:20-cv-00249-wmc; *Sylvia Gear et al. v. Knudson, Dean et al.*, 3:20-cv-00278-wmc; and *Greg Lewis et al. v. Dean Knudson et al.*, 3:20-cv-00284-wmc.

⁴ *Democratic National Committee et al. v. Marge Bostelmann et al.*, 3:20-cv-00249-wmc Opinion and Order, p. 26.

⁵ Section 6.86 (1) (b), Stats.

⁶ The court also extended, by one day, the deadline to request an absentee ballot.

⁷ Section 6.87 (2), Stats.

⁸ Sections 6.86 (2) (a), 6.87 (1), and (4) (b), Stats.

⁹ Wisconsin Elections Commission: [Guidance for Indefinitely Confined Electors – COVID-19](#).