



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 East Kilbourn Ave., Suite 725, Milwaukee, Wisconsin 53202
414-727-WILL
Fax 414-727-6385
www.will-law.org

June 8, 2020

Wisconsin Elections Commission
212 East Washington Avenue, Third Floor
P.O. Box 7984
Madison, Wisconsin 53707-7984

Via First Class Mail and Email to:
Meagan.Wolfe@wi.gov

RE: Submission of a Petition for Rulemaking

Dear Commissioners,

We represent five petitioners: Ardis Cerny, Annette Kuglitsch, Jayne Gohr, Barbara Struck, and Christopher Kliesmet. We are writing today to address issues related to so-called “ballot harvesting” in Wisconsin. In this context, “ballot harvesting” means a third party requesting an absentee ballot for an elector, and/or returning an absentee ballot on behalf of the elector after it has been completed. The legality of ballot harvesting varies from state to state. Wisconsin law makes it illegal, and we submit the attached Petition for Rulemaking to request that this Commission adopt rules to enforce the statutory prohibitions.

Some municipalities in Wisconsin have already announced plans to distribute absentee ballot applications and information to electors in their municipalities. The Commission plans to take similar action on a statewide basis. All of this will surely lead to a continued increase in voting via absentee ballot this fall. Due to this massive increase, it is more important than ever to have clear laws and regulations in place for all to follow regarding who may request and submit an absentee ballot in Wisconsin.

“Ballot harvesting” can begin when a third party requests an absentee ballot on behalf of an elector. Such a third party request is clearly unlawful in Wisconsin. Wis. Stat. § 6.86(1)(a) states that: “Any elector of a municipality who is registered to vote whenever required and who qualifies under ss. 6.20 and 6.85 as an absent elector may make written application to the municipal clerk of that municipality for an official ballot.” Under this statute, only the voters, themselves, are authorized to make the written application for a ballot. No third person is authorized to make the request. The Petitioners we represent request a rule clarifying that any request for an absentee ballot must come directly from the elector and not from or through any third party.

With respect to the second half of “ballot harvesting,” i.e., a third party *returning* a completed absentee ballot, Wisconsin law is also clear. Wis. Stat. § 6.87(4)(b)1 provides that electors must place their ballot in an envelope and follow certain procedures, and that “[t]he envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.”

The statute obviously means that the *elector* shall mail it, or the *elector* shall deliver it “in person.” But because some might argue that the statute means that the *elector* shall mail it, or a third person may deliver it “in person,” the Commission should adopt a rule making it clear that whatever means is used to “vote” the ballot, i.e., deliver it to the municipal clerk, the voting of the ballot must be done by the elector and not by a third party.

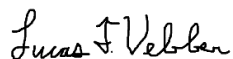
Given that the Commission has explicit statutory rulemaking authority here, *see* Wis. Stat. 5.05(1)(f), we are submitting herewith a Petition for Rulemaking requesting that the Commission adopt rules that prohibit the ballot being requested or being voted – i.e., delivered – by a third party.

Specifically, as laid out in the attached Petition for Rulemaking, the Petitioners request that WEC adopt a rule creating a new chapter of the Wisconsin Administrative code entitled “Methods for obtaining an absentee ballot and absent voting procedure” – which would provide (a) that only the elector may request an absentee ballot and the request must come directly from the elector (absent the circumstances set forth in Wis. Stat. 6.86 (3)); (b) that the phrase “the envelope shall be mailed by the elector” as used in Wis. Stat. 6.87 means that the elector and not a third party must place the envelope in the mail; and (c) that the phrase “delivered in person” as used in Wis. Stat. 6.87, means that an elector must return the ballot in person, and that a third party may not to do so on behalf of the elector.

Petitioners ask that the Commission take up the attached Petition for Rulemaking and immediately begin the rule promulgation process. Given the timeliness of this matter, using the emergency rulemaking process under Wis. Stat. § 227.24 would be appropriate.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Lucas Vebber
Attorney for Petitioners

Enclosure