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August 31, 2022

VIA ELECTRONIC MAIL TO: elections@wi.gov

Meagan Wolfe, Administrator
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Mark L. Thomsen

RE: Carey v. WEC, Case #3:22-cv-00402

Dear Commissioners and Administrator Wolfe:

I am writing to you regarding the Order just issued by Judge Peterson in the above-referenced case. Pursuant to that Order, Judge Peterson concluded that the Voting Rights Act requires that voters who, by reason of disability, require third-party assistance with returning their absentee ballots to a municipal clerk, must be permitted that assistance. Judge Peterson further ordered that WEC must, by September 9, 2022, “provide written instructions to all Wisconsin municipal clerks that the Voting Rights Act requires that any Wisconsin voters who require assistance with mailing or delivering their absentee ballots to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.”

The requirement by Judge Peterson is consistent with 52 U.S.C. 10508, which provides that:

Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.

That provision of federal law is implemented in Wisconsin by Wis. Stat. 7.15(14), which provides that:

Each municipal clerk shall make reasonable efforts to comply with requests for voting accommodations made by individuals with disabilities whenever feasible.

We have no quarrel with any of the above and I am just setting it forth as background for the rest of this letter.

The purpose of this letter is to remind you of the requirements of Wis. Stat. 6.87(4)(b)(1) and the Wisconsin Supreme Court's decision in *Teigen v. WEC*, 2022AP91 (July 8, 2022) and to propose some suggestions for how WEC may and should comply with both Judge Peterson's Order in *Carey* and Section 6.87(4)(b)(1) as interpreted by the Wisconsin Supreme Court's decision in *Teigen*. We recall that Administrator Wolfe testified before the Wisconsin Assembly's Committee on Campaigns and Elections that WEC supports both making voting easier and maintaining election integrity. This is an example of a situation where the Commission can show support for both.

As you know, Wis. Stat. 6.87(4)(b)(1) provides that the only two ways to lawfully cast an absentee ballot in Wisconsin are for the voter to personally deliver the ballot to the municipal clerk or to personally place it in the mail. Judge Peterson's Order points out, however, that voters who are unable to comply with this requirement due to a disability are entitled to assistance in delivering their ballot to the clerk.

The exception pointed out by Judge Peterson is only available to individuals who cannot personally deliver their ballot or personally mail their ballot based on a disability, i.e., voters like the plaintiffs in the *Carey* case. Subject to this exception, municipal clerks are still obligated to make sure that all other ballots are cast consistently with Section 6.87(4)(b)(1).

The obvious challenge is how to determine if a ballot presented to the clerk's office by a third person is, in fact, a ballot being voted by an individual who, due to a disability, is unable to personally mail or deliver the ballot. The simple solution is to promulgate a permanent and emergency rule (so that it is in effect immediately) that parallels the certification already used for other voting assistance for individuals with a disability. The current absentee ballot certificate has the following section:

CERTIFICATION OF ASSISTANT (if applicable) - assistant may also be witness

I certify that the voter named on this certificate is unable to sign his/her name or make his/her mark due to a physical disability and that I signed the voter's name at the direction and request of the voter.

X _____
▲ Signature of Assistant ▲

WEC can and should adopt a rule that adds a similar section as follows for assistance in delivering a ballot:

CERTIFICATION OF ASSISTANT (if applicable) - assistant may also be witness

I certify that the voter named on this certificate is unable to personally deliver or mail his/her absentee ballot to the clerk due to a physical disability and that I am delivering or mailing the ballot at the request of the voter.

X _____
▲ Signature of Assistant ▲

Municipal clerks should then be instructed that an individual may only mail or deliver their own ballot or the ballot of a person who cannot, because of a disability, deliver their own ballot, and only if the person delivering the ballot has signed a certification like the one provided above. That process would comply with Judge Peterson's Order in *Carey*, the Wisconsin Supreme Court's decision in *Teigen*, and Wis. Stat. 6.87. It would make it easier for individuals with disabilities to vote and maintain election integrity.

Sincerely,

A handwritten signature in black ink, appearing to read "Luke Berg". The signature is written in a cursive style with a large initial "L" and a long, sweeping underline.

Luke Berg
Deputy Counsel