

7th Circuit refuses to ask state Supreme Court for clarity in absentee decision, denying GOP motion

Posted on Wednesday, Sep 30, 2020

The 7th Circuit this morning refused to ask the Wisconsin Supreme Court for clarification on a ruling that played a key part in the appeals court's decision paving the way for an order extending the absentee ballot deadline to take effect.

GOP lawmakers suggested the 7th Circuit Court of Appeals misinterpreted a state Supreme Court ruling that it cited in finding legislators lacked standing to challenge the ruling.

Lawmakers wanted the 7th Circuit to ask the Wisconsin Supreme Court for clarification. In the meantime, it wanted the federal appeals court to put on hold its ruling allowing the new deadline to take effect. The state and national Republican parties filed a separate motion joining the Legislature in its request.

But the court denied the motion in a brief ruling late this morning.

>> WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)

In yesterday's decision, the 7th Circuit Court of Appeals cited a summer Supreme Court ruling largely upholding the lame-duck laws Republicans approved in December 2018. The federal court said that decision allows the Legislature to represent its own interest in lawsuits, but not the state's. The federal court said that means lawmakers aren't entitled to defend the validity of state law, according to the federal court.

In today's filing, a GOP attorney wrote "the Wisconsin Supreme Court would be

surprised, to put it mildly, to learn of this misunderstanding of its careful, narrow decision.”

Republicans wanted the appeals court to ask the state Supreme Court for a definitive ruling on what Wisconsin law means in regards to lawmakers’ standing.

The motion argued the move would provide clarity, particularly with the likelihood that the U.S. Supreme Court will be asked to consider the case “in the very near future.”

The appeals court yesterday also ruled the state and national Republican parties had no grounds to challenge Judge William Conley’s decision because they’d suffered no injury.

Beyond allowing absentee ballots to be counted so long as they’re postmarked by Election Day and received no more than six days later, Conley also extended by one week the deadline to register online or by mail to Oct. 21. He also allowed voters who request absentee ballots but don’t receive them in the mail to get a replacement electronically between Oct. 22 and Oct. 29.

While the court lifted a temporary stay it issued preventing enforcement of Conley’s decision, the 7th Circuit also gave Republicans one week to file follow-up arguments on why the case shouldn’t be dismissed for lack of appellate jurisdiction.

The state and national Republican parties indicated today they plan to file by Oct. 6 their response to the court’s request for arguments on why the case shouldn’t be dismissed.

Read the [ruling](#).

Read the Legislature’s [motion](#).

Read the state and national parties’ [motion](#).