

League of Women Voters of Wisconsin: Case to provide Wisconsin voters with fail-safe for absentee voting reaches U.S. Supreme Court

Posted on Tuesday, Oct 13, 2020

>> 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.](#)

[WASHINGTON] — Seeking to protect the health of Wisconsin voters put at risk by the COVID-19 pandemic, an application was filed today in the U.S. Supreme Court that would restore the back-up option for voters who do not receive their absentee ballots in the mail. The application was submitted on behalf of the League of Women Voters of Wisconsin, the Wisconsin Alliance for Retired Americans and eight individual Wisconsin voters, who are looking to protect the lower court ruling they won that allowed Wisconsin voters an option to receive a replacement absentee ballot by email or online, should their originally-requested ballot not arrive in the mail in time for the November 3 general election.

Representing the plaintiffs, Fair Elections Center filed an application to vacate the stay issued by the U.S. Court of Appeals for the Seventh Circuit that blocks a September ruling from the U.S. District Court for the Western District of Wisconsin.

The case, Gear v. Bostelmann, was brought against the Wisconsin Elections Commission in June following Wisconsin's disastrous April 7 election, in which thousands of voters reported not receiving their mail-in absentee ballot in time for

the election or even at all. Ahead of the November general election, plaintiffs sought additional ways for voters to be able to receive their mail-in absentee ballot, including online access at myvote.wi.gov and email delivery. Voters would still return these ballots through the mail or drop them off at polling places or municipal clerks' offices.

The [September 21 ruling](#) in U.S. District Court for the Western District of Wisconsin — which offered a limited time window as a necessary fail-safe for voters who do not receive their absentee ballot in the mail — was reversed by the Seventh Circuit last week.

Gear v. Bostelmann was consolidated with three other cases brought by the Democratic National Committee and other groups that focused on mail-in absentee ballot receipt deadlines and poll worker recruitment. The fail-safe ballot delivery option that the district court ordered in Gear v. Bostelmann has been suspended pending resolution of the merits of the appeal. Plaintiffs' application to the U.S. Supreme Court seeks to lift that stay.

Delivery of absentee ballots to voters via email is not a new phenomenon for Wisconsin voters. Previously, the state offered email ballot delivery for all voters, including for the 2016 presidential election. During that election, the state issued nearly 10,000 ballots to voters by email, and more than 7,000 were cast and returned by mail. Two federal elections and many other state and local elections were conducted using email delivery without incident or dispute. However, this summer, the Seventh Circuit's decision in Luft v. Evers reinstated a statutory ban on electronic delivery of absentee ballots to domestic civilian voters and, given the pandemic's persistent threat to voters, Plaintiffs were compelled to take action.

While the issue of ballot delivery and receipt is being hashed out in the courts, COVID-19 transmission in Wisconsin has continued to rise at an alarming rate.

“Electronic ballot delivery is not new in Wisconsin. We had the option for years until our legislature recently blocked its usage. In fact, Wisconsinites serving overseas in the military are receiving their ballots online right now for the 2020 general election,” said Debra Cronmiller, executive director of the League of Women Voters of Wisconsin. “Given the thousands of voters who were disenfranchised or forced to vote in person in April, the courts must recognize the risk of delayed mail ballot delivery, acknowledge the threat of this pandemic on voters’ safety, and reinstate electronic replacement ballot delivery for the general election.”

“Wisconsin seniors take voting seriously. If a ballot doesn’t reach a voter in time, despite the voter taking all the steps they should within the deadlines, they should not be disenfranchised,” said Gary Mitchell, President of the Wisconsin Alliance for Retired Americans. “We hope the Supreme Court agrees with the lower court, and allows a fail safe option for voters to get the ballots they requested.”

Read the application at: <https://bit.ly/3iXhpFW>