

# **WILL: Cautions WEC on implementation guidelines in response to ruling on ballot return assistance**

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The News: Federal Judge James Peterson ruled Wednesday that under the Voting Rights Act, disabled voters who require third-party assistance with returning their absentee ballots to a municipal clerk “must be permitted that assistance.” WILL is [requesting](#) that WEC adopt a new rule implementing Judge Peterson’s decision in a way consistent with election integrity measures.

The Quote: WILL Deputy Counsel, Luke Berg, said, “We don’t disagree with Judge Peterson’s legal logic and feel this is an important issue to have clarity on going forward. But, it is crucial that the Wisconsin Elections Commission does not implement this ruling in a way that creates a loophole that could compromise election integrity - we are taking action today to make sure the commission is aware of this risk, and applies the law faithfully.”

Background: The lawsuit by Law Forward was filed after the Wisconsin Supreme Court [held](#) that absentee ballot drop boxes, used widely in the 2020 election, have no statutory basis and that Wisconsin Elections Commission guidance encouraging their use was unlawful.

The Decision: In his decision Wednesday in [Carey v. WEC](#), 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. WILL agrees with that decision but [points out](#) that the exception noted 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\(4\)\(b\)\(1\)](#), meaning by the voters themselves. The obvious challenge is how to determine if a ballot presented to the clerk's office by a third-party 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 rule that parallels the certification already used for other voting assistance for individuals with a disability.

The certification, which would be on the absentee ballot envelope, would state that the person delivering the ballot certifies that the voter is unable to deliver the absentee ballot due to a disability and that the third-party is delivering or mailing the ballot at the voter's request. This process ensures individuals with disabilities the right to vote while maintaining election integrity.

Judge Peterson gave WEC until September 9, 2022, to issue additional guidance about his order to clerks.

Read More:

- [WILL Response Letter](#), September 1, 2022

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