

Wisconsin Democracy Campaign: Big victory for voters with disabilities in Wisconsin!

Posted on Thursday, Sep 1, 2022

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MADISON—Yesterday was a day for celebration!

Federal Judge James Peterson ruled that a recent decision by the Wisconsin Supreme, along with a state statute, violated the rights of four voters with severe physical disabilities to obtain assistance in the delivery of their absentee ballots.

He granted summary judgment to these plaintiffs who brought the case (Carey v. WEC) and ruled that any disabled voter who needs assistance in the delivery of their absentee ballot can't be denied such assistance.

At issue was a state statute that said that an absentee ballot must be "delivered in person, to the municipal clerk." Also at issue was the Wisconsin Supreme Court July decision in the Teigen case that said voters themselves had to deliver that ballot to the clerk. The Wisconsin Supreme Court had also left unclear, in that decision, whether voters could get assistance in putting their absentee ballots in the mail.

Now voters with disabilities, if they need it, will be able to get assistance both in delivering their absentee ballot to the clerk and in putting their absentee ballot in the mail.

Judge Peterson, the chief judge of the U.S. District Court for the Western District of Wisconsin, pointed out that the Wisconsin statute and the decision by the Wisconsin Supreme Court had left voters with physical disabilities in a quandary.

He noted that they risked "imminent injury regardless of what they do. If they choose to comply with [the statute], they will have to forfeit their right to vote or

attempt to vote in person with great difficulty and perhaps even at risk to their health and safety. But if plaintiffs violate [the statute] by obtaining assistance to vote absentee, their vote could be rejected, and they could be sanctioned for violating the law.”

This is an unacceptable bind to put any voter in, Judge Peterson ruled.

And he explained that the Wisconsin statute and the ruling by the Wisconsin Supreme Court collide head on with the protections under the Voting Rights Act.

“The Voting Rights Act is clear: disabled voters who need assistance in returning an absentee ballot are entitled to ask a person of their choosing for that assistance,” he wrote. He quoted the relevant section of the Voting Rights Act, which states:

“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.”

This conflict between federal law and state law also put voters with disabilities in a bind, the judge said. “Voters shouldn’t have to choose between exercising their federal rights and complying with state law,” he wrote. “But that is the position that plaintiffs find themselves in.”

But they no longer are in that position now because Judge Peterson pointed out that federal law takes precedent over state law. As he put it, the Voting Rights Act “preempts” the state statute.

And so he issued a summary judgment in favor of the plaintiffs, ruling that Wisconsin must provide “third-party ballot-return assistance to disabled voters who require such assistance.”

This is a tremendous victory for voters with disabilities, for disability rights activists, and for our fundamental freedom to vote.

And it’s a bracing defeat for the rightwing justices on the Wisconsin Supreme Court who so cavalierly dismissed the rights of disabled voters in Wisconsin.

It’s also an embarrassing defeat for the rightwing Wisconsin Institute for Law and Liberty, which brought the Teigen case in the first place in an effort to erect barriers

for all of us to have to clear in the exercise of our freedom to vote.

I send my congratulations to the four plaintiffs who courageously came forward and to Law Forward, the great pro-democracy law firm that represented the plaintiffs so brilliantly. And I send my congratulations to Disability Rights Wisconsin and the Wisconsin Disability Vote Coalition, which has pushed so hard on this issue.

It's a big victory, well-earned.