
**PETITION FOR RULEMAKING
BEFORE THE
WISCONSIN ELECTION COMMISSION**

1. Petitioners Ardis Cerny, Annette Kuglitsch, Jayne Gohr, Barbara Struck and Christopher Kliesmet, by their undersigned counsel, hereby submit this Petition for Rulemaking to the Wisconsin Elections Commission (“WEC”) pursuant to Wis. Stat. § 227.12.

2. Petitioner Ardis Cerny is a person, a resident of Wisconsin, and a registered voter. Petitioner Cerny resides at W233N3037 Oakmont Court, Unit B in the City of Pewaukee, County of Waukesha and State of Wisconsin. Petitioner Cerny has an interest in this rule to clarify the terms of Wisconsin’s absentee voting statutes as a voter and as a taxpayer.

3. Petitioner Annette Kuglitsch is a person, a resident of Wisconsin and a registered voter. Petitioner Kuglitsch resides at 316 East Wabash Avenue in the City of Waukesha, County of Waukesha and State of Wisconsin. Petitioner Kuglitsch has an interest in this rule to clarify the terms of Wisconsin’s absentee voting statutes as a voter and as a taxpayer.

4. Petitioner Jayne Gohr is a person, a resident of Wisconsin and a registered voter. Petitioner Gohr resides at 280 North Mountain Drive in the City of Mayville, County of Dodge and State of Wisconsin. Petitioner Gohr has an interest in this rule to clarify the terms of Wisconsin’s absentee voting statutes as a voter and as a taxpayer.

5. Petitioner Barbara Struck is a person, a resident of Wisconsin and a registered voter. Petitioner Struck resides at 10133 West Hawthorne Road in the City of Mequon, County of Ozaukee and State of Wisconsin. Petitioner Struck has an interest in this rule to clarify the terms of Wisconsin’s absentee voting statutes as a voter and as a taxpayer.

6. Petitioner Christopher Kliesmet is a person, a resident of Wisconsin and a registered voter. Petitioner Kliesmet resides at 9272 North Thrush Lane in the Village of Bayside, County of Milwaukee and State of Wisconsin. Petitioner Kliesmet has an interest in this rule to clarify the terms of Wisconsin's absentee voting statutes as a voter and as a taxpayer.

7. Petitioners hereby request that WEC adopt administrative rules in order to specifically adopt an interpretation of a statute to govern its enforcement and administration of that statute, namely Wis. Stats. §§ 6.86 and 6.87, as laid out herein.

8. Wis. Stats. §§ 6.86 and 6.87 provide the statutory framework for Wisconsin's "Methods for obtaining an absentee ballot" and "Absent voting procedure", respectively, together also known as "absentee voting."

9. WEC has the responsibility for administering Chapters 5 to 10 and 12 of the Wisconsin Statutes. *See* Wis. Stat. § 5.05(1).

10. To carry out this statutory charge, the Legislature has empowered WEC to "Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration." *See* Wis. Stat. § 5.05(1)(f).

11. Petitioners request that WEC promulgate a rule to make it clear that Wisconsin law does not permit so-called "ballot harvesting." In this context, "ballot harvesting" means a third party requesting an absentee ballot for an elector, and/or returning an absentee ballot on behalf of the elector after it has been completed.

12. Wis. Stat. § 6.86(1)(a) provides that "Any elector of a municipality who is registered to vote whenever required and who qualifies under ss. 6.20 and 6.85 as an absent

elector may make written application to the municipal clerk of that municipality for an official ballot.” There are exceptions to this for electors who are hospitalized to allow an agent to request a ballot on their behalf. Wis. Stat. § 6.86(3).

13. Under that statute, only the voters, themselves, are authorized to make the written application for a ballot. No third person is authorized to make the request, except under the statutory exemption for hospitalized electors.

14. Wis. Stat. § 6.87(4)(b)1. provides that electors must place their completed ballot in an envelope and follow certain procedures, and then states that “...The envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots...”

15. That statute obviously means that the *elector* shall mail it, or the *elector* shall deliver it “in person.”

16. To improve clarity and ensure that all electors are aware of exactly what these statutes mean, WEC should adopt a rule making it clear that third parties may not request ballots for someone else, and that whatever means is used to “vote” the ballot, i.e., mail it or deliver it to the municipal clerk, the voting of the ballot must be done by the elector and not by a third party.

17. Given that WEC has explicit statutory rulemaking authority here, Petitioners request that the WEC adopt rules that explicitly interpret the absentee voting procedures statutes to provide that third parties may not request absentee ballots for electors (except in the limited circumstances described in Wis. Stat. § 6.86 (3)), and further that the obligation to mail a ballot or to deliver it in person must be done by the individual elector and not by a third person.

18. Specifically, Petitioners request that the WEC adopt a rule creating a new chapter of the Wisconsin Administrative code entitled “Methods for obtaining an absentee ballot and

absent voting procedure” – which provides (a) that third parties may not request absentee ballots for an elector except as set forth in sec. 6.86(3); (b) that the phrase “the envelope shall be mailed by the elector” as used in Wis. Stat. § 6.87 means that the elector and not a third party must place the envelope in the mail, and (c) that the phrase “delivered in person” as used in Wis. Stat. § 6.87, means that an elector must return the ballot in person, and that a third party may not do so on behalf of the elector.

WHEREFORE, Petitioners, through their undersigned counsel, submit this Petition for Rulemaking to WEC and request the rulemaking proceeding begin as soon as practicable, pursuant to the requirements of Chapter 227 of the Wisconsin Statutes.

DATED this 8th day of June, 2020.

Respectfully submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY

/s/ Signed electronically by Lucas Vebber

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