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## **Ruling Provides Wisconsin Voters with Fail-Safe for Absentee Voting in November**

MADISON, Wis. – In a victory for voters in Wisconsin, the United States District Court for the Western District of Wisconsin gave voters a back-up option to receive mail-in absentee ballots by email or online when they do not receive their previously-requested ballot in the mail in time for the November 3 general election. The Court wrote that “[P]laintiffs are likely to succeed on their claim that limiting receipt of absentee ballots to mail delivery burdens voters’ rights who fail to receive their absentee ballot timely, and that this burden is not outweighed by the interests of the State.”

The ruling, which may still be appealed, provides a fail-safe option from October 22 to 29 for voters who do not receive their requested mail-in ballots on time, including voters who are most at risk from COVID-19 and cannot vote safely in person at a polling place. During the April 7 election, thousands of Wisconsin voters did not receive their requested absentee ballots in the mail.

Judge William Conley found that “the evidence is nearly overwhelming that the pandemic does present a unique need for relief in light of: (1) the experience during the Spring election, (2) much greater projected numbers of absentee ballot requests and votes in November, and (3) ongoing concerns about the USPS’s ability to process the delivery of absentee ballot applications and ballots timely.”

“Wisconsin election officials are now able to email replacement absentee ballots to voters who do not receive their requested ballots in the mail. No one should lose their right to vote due to U.S. Postal Service delivery failures or health concerns,” said Jon Sherman, senior counsel at Fair Elections Center. “The Court’s order will safeguard the voting rights of thousands of

Wisconsin voters during this pandemic, and we will continue to fight to ensure this significant ruling survives any appeal.”

“Today’s decision is a victory that preserves voting rights for Wisconsin voters,” said Debra Cronmiller, executive director of the League of Women Voters of Wisconsin, a plaintiff in the case. “This ruling will ensure that anyone wishing to vote via a timely requested ballot will have a fail-safe way of getting that ballot cast. This is the right move to assure voters that they can have confidence in their vote this year.”

“Eighty percent of Americans who have died from COVID-19 were over the age of 65,” said Gary Mitchell, president of the Wisconsin Alliance for Retired Americans. “Wisconsin seniors, who are at most risk from the coronavirus, should not have to choose between protecting their health and exercising their constitutional right to vote.”

State election officials have said there could be as many as 1.8 million requests for absentee mail-in ballots for the November election. The Wisconsin Elections Commission reports that nearly a million mail-in absentee ballots were requested for the August primary election, which is a typically lower-turnout election. Prior to the April primary, the first election held during the pandemic, typically 4 to 8 percent of Wisconsin voters voted using a mail-in absentee ballot. This spring, that number jumped to 62 percent, representing nearly a million ballots returned.

Delivery of absentee ballots to voters via email is not a new phenomenon for Wisconsin voters. The state had email delivery for everyone, including for the 2016 presidential election, which saw Donald Trump win the Badger State. During that election, the state issued nearly 10,000 ballots to voters by email, and over 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, as the Court recognized.

On June 29 of this year, the U.S. Court of Appeals for the Seventh Circuit issued a ruling saying that it was not unconstitutional for the state legislature to restrict email delivery to just military and overseas voters. That mandate went into effect at the end of July, so email delivery has been “switched off” for only a short time in Wisconsin. Today’s decision once again strikes down the ban for a limited time window as a necessary fail-safe for voters who do not receive their absentee ballot in the mail.

This case was brought by the League of Women Voters of Wisconsin, Wisconsin Alliance for Retired Americans, and eight individual Wisconsin voters, who were represented by Jon Sherman, Michelle Kanter Cohen, and Cecilia Aguilera of Fair Elections Center and Douglas M. Poland, a Partner in Stafford Rosenbaum LLP’s Madison office, and co-chair of the firm’s Election and Political Law practice group.

The order can be seen [here](#).

The Court’s opinion can be seen [here](#).

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*Fair Elections Center is a national nonpartisan and non-profit voting rights and election reform organization based in Washington, DC whose mission is to use litigation, public education and advocacy to remove barriers to registration and voting, and to improve election administration.*

*The League of Women Voters of Wisconsin is a nonpartisan political organization that advocates for informed and active participation in government. There are 20 local Leagues throughout Wisconsin. More information at [lwvwi.org](http://lwvwi.org).*

*The Wisconsin Alliance of Retired Americans is a state affiliate of the national Alliance of Retired Americans established in 2001 to promote the dignity, fulfillment and retirement security of all older Americans.*

*Stafford Rosenbaum LLP is a full-service law firm with offices in Madison and Milwaukee. With a 140-year history of dedication to businesses, governments, non-profit organizations, and individuals, effective client communication continues to be at the heart of our practice.*