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US Supreme Court Declines to Restore Fail-Safe for Wisconsin Absentee Ballots

WASHINGTON—Today, the United States Supreme Court denied the *Gear v. Wisconsin State Legislature* Plaintiffs’ application, declining to restore Wisconsin’s back-up option for voters who do not receive their requested absentee ballots in the mail. The plaintiffs were seeking additional ways for voters to be able to receive their mail-in absentee ballot, including online access at myvote.wi.gov and email delivery.

The case was brought by The League of Women Voters of Wisconsin, the Wisconsin Alliance for Retired Americans, and eight individual Wisconsin voters, with representation from Fair Elections Center and Stafford Rosenbaum LLP.

“Today is another incredibly sad day for democracy and the rule of law. The courts have once again refused to follow their own rules and their own tests for evaluating election law cases,” said **Jon Sherman**, senior counsel at Fair Elections Center. “Not only has the United States Supreme Court denied a back-up ballot delivery method to Covid-19-vulnerable voters who do not receive a timely-requested ballot in the mail, but it has failed to enforce its own precedents to arrive at that unconscionable result.”

“Today’s decision is deeply disappointing. Online ballot delivery has existed in Wisconsin for years—we weren’t asking for anything new or burdensome,” said **Debra Cronmiller**, executive director of the League of Women Voters of Wisconsin. “We’re talking about responsible, proactive voters who are seeking to protect themselves and others from virus transmission by voting at home. To leave these voters without vote-at-home options when their timely requested ballots fail to arrive through no fault of their own is an egregious act of neglect from our government. Our state failed to protect voters during the April primary election, and now we’re seeing much higher spikes in COVID cases ahead of the November election. Voters remain determined to make their voices heard in this election—and now they have more reason to do so: to express their discontent with the negligence of their government to protect them.”

“It is shameful that the court failed to provide a fail-safe method of voting for Wisconsin seniors who did not receive the mail ballot they requested and who do not wish to vote in person due to the risk of contracting COVID-19,” said **Gary Mitchell**, President of the Wisconsin Alliance for Retired Americans. “No one should be forced to choose between casting a ballot and putting their health at risk.”

Attorneys Doug Poland and Jeff Mandell of Stafford Rosenbaum’s Madison office note that “the decisions by the federal court of appeals and Supreme Court to require voters to have asked the courts to order the Wisconsin Elections Commission to provide this fail-safe relief for the November election as early as May makes no sense. Voters had an email ballot delivery option at that time until the federal court of appeals took it away in late June.”

Wisconsin voters can request an absentee ballot until October 29, 2020, and are encouraged to do so as early as possible. Ballots must be received at election offices, not just postmarked, by Election Day in order to be counted. Voters may return completed absentee ballots to municipal clerks’ offices in person and at their polling place using the curbside voting option. Voters who do not receive their mailed ballots in time to cast them can vote in person at early voting sites starting October 20, depending on the rules in their municipality. VOTE411.org has all the information and links voters need to learn their options.

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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.

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.