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# JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR STEVE NASS AND REPRESENTATIVE JOAN BALLWEG

Emergency Rule 2209

## **Report to the Legislature Emergency Rule 2209 The Joint Committee for Review of Administrative Rules**

Produced pursuant to 227.26 (2) (g), Stats.

Emergency Rule 2209, promulgated by the Wisconsin Elections Commission (WEC), provides directives to clerks on the correction of absentee ballot certificate envelopes.

### **Description of Problem**

The Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing on Emergency Rule 2209, relating to the correction of absentee ballot certificate envelopes, on July 20, 2022, at the request of Senator Steve Nass to review concerns that the rule violates state statutes and conflicts with existing state law.

### **Arguments In Favor of Suspension**

- *Testimony was provided by multiple organizations that demonstrated that a significant portion of the rule's directives to clerks relating to the correction of absentee ballot certificate envelopes were in direct conflict with existing state statutes. This analysis was further confirmed by Legislative Council staff.*
- *The rule must be suspended because it directs clerks to violate state law in how they should process and add missing information to absentee ballot certificate envelopes. If the rule remains in effect it will create great confusion and inconsistency in our election process that damages public confidence in our system.*
- *If changes or clarifications to existing election law are desired, they must be made through the proper legislative process by enacting a bill. State law cannot be altered or ignored by an unelected agency based simply on its desire to have state law changed.*

### **Arguments Against Suspension**

- *No one from the Wisconsin Elections Commission attended the public hearing to defend or justify their rationale or demonstrate statutory authority for the rule as promulgated, despite notification and invitation by JCRAR.*

- *Testimony was provided by groups that preferred the rule's policies to those outlined in state statute, and therefore wanted JCRAR to disregard the state law and let the rule remain in place.*

### **Action by Joint Committee for Review of Administrative Rules**

On July 20, 2022, the Joint Committee for Review of Administrative Rules held an executive session on Emergency Rule 2209. The committee passed the following motion on a 6-4 vote, temporarily suspending the rule (YES: Nass, Neylon, Stroebel, Bradley, August, Spiros; NO: Roys, Larson, Hebl, Subeck):

*Moved, that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26 (2) (d), Stats., suspend an emergency rule of the Wisconsin Elections Commission, relating to the correction of absentee ballot certificate envelopes (EmR 2209), on the grounds that the rule conflicts with state law and fails to comply with legislative intent.*

On August 18, 2022, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Nass, Neylon, Stroebel, Bradley, August, Spiros; NO: Roys, Larson, Hebl, Subeck) to introduce LRB 6461/1 and LRB 6490/1, which support the suspension of Emergency Rule 2009 by the joint committee. Pursuant to 227.26 (2) (j), the bills were not introduced during the 2021-22 legislative session, and need to be introduced in the next regular session of the legislature.

On January 12, 2023, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Nass, Neylon, Stroebel, Bradley, Petersen, Spiros; NO: Roys, Larson, Conley, Baldeh) to introduce LRB 1189 and LRB 1207, which support the suspension of Emergency Rule 2209 by the joint committee. The bills were introduced as Senate Bill 5 and Assembly Bill 4 in the 2022-23 legislative session.

Passage of one of these bills in support of the JCRAR suspension would permanently remove the Wisconsin Elections Commission's ability to promulgate Emergency Rule 2209.