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October 6, 2021

Supreme Court of Wisconsin
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688
Clerk@wicourts.gov

RE: *Billie Johnson, et al. v. Wisconsin Elections Commission, et al.*
Appeal No. 2021AP001450-OA

To The Court:

Pursuant to the Court's September 22, 2021 Order (as amended on September 24, 2021) granting the petition for leave to commence an original action, Petitioners Billie Johnson, Eric O'Keefe, Ed Perkins and Ronald Zahn ("Petitioners") submit this letter brief addressing the Court's inquiry:

When (identify a specific date) must a new redistricting plan be in place, and what key factors were considered to identify that date.

Petitioners submit that **April 15, 2022** is the date on which a new redistricting plan must be in place. In light of that date, the Court should hold a status conference after the Legislature has adopted a redistricting plan which has either been signed into law by the Governor or vetoed, but no later than **January 14, 2022**, at which time the Court should determine the steps necessary to move forward. The key factors considered to identify these dates are discussed herein.

The April 15, 2022 Deadline

Petitioners discussed the importance of the April 15 deadline in both their petition (*see* Pet. at ¶ 45) and their memorandum in support of that petition (*see* Mem. in Supp. of Pet. at 11).

The Fall 2022 general election will be held on November 8, 2022, which is the Tuesday after the first Monday in November. Wis. Stat. § 5.02(5). The partisan primary for that election will be held on August 9, 2022, which is the second Tuesday in August. Wis. Stat. § 5.02(12s).

In order to ensure an orderly election, of course, there must be candidates on the ballot. Candidates seeking to appear on the ballot for the Fall 2022 general election may begin circulating nomination papers on April 15, 2022 and may submit those papers no later than June 1, 2022. Wis. Stat. § 8.15(1).

This Court has previously noted that the circulation of nomination papers is the “official commencement of the next election season.” *Jensen v. Wisconsin Elections Bd.*, 2002 WI 13, ¶ 12, 249 Wis. 2d 706, 639 N.W.2d 537. As a result, this is the date Petitioners believe a redistricting plan must be in place in order to ensure candidates have ample opportunity to circulate nomination papers to seek ballot access.

In coming to the April 15, 2022 date, Petitioners considered several other matters, including what work must be done by Respondents (hereinafter “WEC”) to prepare for the election, statutory notice deadlines¹, and the possibility that the Court may delay the statutory timelines leading up to the next election.

In their Response to the petition in this action, WEC claimed the April 15, 2022 date “would allow no time for the Elections Commission and local clerks to take the necessary steps for candidates to begin circulating papers by the statutorily-set date.” (Resp. to Pet. at 5). However, any work WEC needs to do could be done simultaneously with the circulation of nomination papers. Once the district boundaries are known, potential candidates may seek nomination signatures from within those boundaries, and then must submit those to WEC no later than June 1, 2022. Any work WEC needs to do to review nomination forms for ballot access could be done during that time frame, and does not need

¹ *See, e.g.*, Wis. Stat. § 10.06 (requiring various notices to be sent to clerks and published ahead of nomination papers being circulated).

to be completed *prior to* the circulation of those nomination forms on April 15, 2022.

Petitioners also considered whether certain statutory notice deadlines should be the date on which a new plan *must* be in place. As noted *supra*, this Court has acknowledged the nomination paper circulation as the “official commencement of the next election season” and this weighed against selecting the earlier notice dates. While the notice requirements are important, there is past precedent for delaying those dates by other Courts which have considered redistricting matters. *See, e.g., Wisconsin State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 639 (E.D. Wis. 1982) (Ordering that “[a]ll deadlines, relating to such matters as notice of elections, and the circulating and filing of nomination papers for the full election are relaxed to the extent necessary to permit the elections to take place as scheduled. The defendant Elections Board, if necessary, may set new dates that are not inconsistent with the purpose of this order, to wit: the election of legislators in the fall.”)

Lastly, and related to those considerations—Petitioners considered whether a *later* date would be possible given the same precedent of reviewing courts “relaxing” certain deadlines to ensure the election itself can take place as scheduled. Ultimately, the importance of maintaining the statutorily established start to the election cycle (i.e., April 15, 2022) was Petitioners’ overriding concern, as that date would allow the election process to occur with minimal confusion and inconvenience for candidates and electors alike

Petitioners do note that we would not oppose a later date, so long as the chosen later date still allowed enough time for nominating and ballot access requirements to be met ahead of the Fall election, but Petitioners continue to believe having maps in place by April 15, 2022 would best ensure that the Fall 2022 elections would take place as scheduled with minimal interruption to the regular process.

Timeline for Litigation

In light of the need to have a final redistricting in place no later than April 15, 2022, and given the constitutional responsibility of the Legislature and Governor to adopt such a plan in the first instance, this Court should adopt a timeline which allows the Legislature and Governor the opportunity to fulfil that constitutional responsibility.

To that end, Petitioners submit this Court should hold a status conference after the Legislature adopts a redistricting plan and the Governor either signs that plan into law, or vetoes it, but no later than January 14, 2022.

On January 14, 2022 (or earlier as may be the case), this Court's status conference can be used for purposes of establishing a schedule for the litigation to move forward. If the Legislature and the Governor have agreed on a plan the Court would set a briefing schedule for any party to argue that the approved plan is unconstitutional. If the Legislature and the Governor have not agreed on a plan then the Court would set a schedule for interested parties to submit proposed maps along with supporting materials in favor of their proposed map.

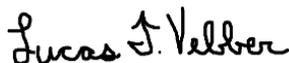
We anticipate the litigation—which would focus on the submission of proposed maps and expert commentary on those maps—would take a total of eight weeks from beginning to end. This timeline would allow the Court enough time to make its findings in order to ensure any final approved redistricting is in place no later than April 15, 2022.

Conclusion

For the reasons herein, Petitioners submit in response to the Court's inquiry that April 15, 2022 would be the date on which a new redistricting plan must be in place, and that to ensure this Court has sufficient time to review this matter, a status conference should be held no later than January 14, 2022.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
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CERTIFICATE OF SERVICE

I, Lucas T. Vebber, attorney for Petitioners in this matter, hereby certify that a true and correct paper copy of the foregoing letter brief, along with a copy of this certificate, will be served upon all of the following, by sending the same via U.S. Mail, first class, addressed as noted below. I further certify that PDF copies of the foregoing letter brief, along with this certificate, will be e-mailed to each party at the e-mail addresses noted below:

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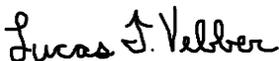
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Dated this 6th day of October, 2021,



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