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VIA ELECTRONIC FILING ONLY

Sheila Reiff
Clerk of the Supreme Court and the
Court of Appeals
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

Re: Braun v. Wisconsin Elections Commission
Waukesha Co. Case No. 2022CV1336
Appeal No. 2022AP_____

Dear Ms. Reiff:

Vote.org submits this letter to explain why it has docketed its Notice of Appeal from the Waukesha County Circuit Court's order denying its motion to intervene in *Braun v. Wisconsin Elections Commission*, No. 2022CV1336, in District IV, rather than in District II, the District that includes Waukesha County.

Under Wisconsin's appellate venue statute, the proper appellate venue depends on the statutory basis for the trial court's venue. *See* Wis. Stat. § 752.21. Generally, appellate venue lies "in the court of appeals district which contains the court from which the judgment or order is appealed." Wis. Stat. § 752.21(1). Where, however, venue in that court was "designated by the plaintiff to the action as provided under [Wis. Stat. §] 801.50(3)(a)," the appellate venue is "selected by the appellant" and may be any district *other than* the one "that contains the court from which the judgment or order is appealed." Wis. Stat. § 752.21(2).

Subsection 752.21(2) applies to this appeal. The trial court's venue is pursuant to Wis. Stat. § 801.50(3)(a) because "the sole defendant is" the Wisconsin Elections Commission, a "state board or commission." Wis. Stat. § 801.50(3)(a). Wis. Stat. § 801.50(3)(a) governs venue in such cases "[e]xcept as provided in pars. (b) and (c)" of that subsection. Paragraph (c) involves prisoner litigation and is inapplicable here. *See id.*

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§ 801.50(3)(c). Paragraph (b) covers “actions relating to the validity or invalidity of a rule or guidance document.” Wis. Stat. § 801.50(3)(b). That paragraph, too, is inapplicable here because this case does not relate to “the validity or invalidity of a rule or guidance document.”¹

This case concerns the use of the National Voter Registration Application Form (the “National Form”) in Wisconsin. The National Form was prepared by the U.S. Election Assistance Commission; it is not a Commission document at all, much less a “rule or guidance document.” And in asserting that the National Form’s use violates Wis. Stat. § 6.33, Plaintiff admits that he does not know when or how the Commission approved the form’s use. Compl. ¶19. Plaintiff therefore does not challenge any particular rule or guidance document, but rather *the practice* of using the National Form to register voters in Wisconsin. The legality of that practice is a statutory question turning on the meaning of Wis. Stat. § 6.33, not a challenge to a rule or guidance document under Section 227.40. The mere mention in the Election Administration Manual that Wisconsin accepts the National Form does not change that, as Plaintiff does not contend that the Manual constitutes the Commission’s approval of the National Form, which is what Plaintiff challenges.

Because Plaintiff’s case does not challenge a rule or guidance document, it is properly venued in Waukesha, if at all, only under Wis. Stat. § 801.50(3)(a). Accordingly, the venue provisions of Subsections 227.40(1) and 801.50(3)(b) are inapplicable, and Vote.org as appellant is required to designate a District other than District II for this appeal. Wis. Stat. § 752.21(2). Vote.org designates District IV.

Sincerely,



Diane M. Welsh
PINES BACH LLP

¹ This venue issue in this case is distinct from the issue in *State ex rel. Kormanik v. Brash*, 2022 WI 67, 404 Wis. 2d 568, 980 N.W.2d 548, which concerned whether a case may be venued in a circuit court under both Paragraph (a) and Paragraph (b) concurrently, *see id.* ¶¶8, 13, and held that those venue provisions are mutually exclusive, *see id.* ¶¶21–24. Here, the issue is which of the mutually exclusive provisions applies.