

No. 2024AP166

In the Wisconsin Court of Appeals

DISTRICT I

LEAGUE OF WOMEN VOTERS OF WISCONSIN,
PLAINTIFF-APPELLANT-CROSS-RESPONDENT,

v.

WISCONSIN ELECTIONS COMMISSION, DON MILLIS, JULIE
M. GLANCEY, ROBERT F. SPINDELL, JR., MARK L.
THOMSEN, ANN S. JACOBS, MARGE BOSTELMANN, AND
MEAGAN WOLFE,
DEFENDANTS-RESPONDENTS,

WISCONSIN STATE LEGISLATURE,
INTERVENOR-RESPONDENT-CROSS-APPELLANT.

On Appeal From The Dane County Circuit Court,
The Honorable Ryan D. Nilsestuen, Presiding
Case No. 2022CV2472

**INTERVENOR-RESPONDENT-CROSS-
APPELLANT'S MOTION TO EXPEDITE
CONSIDERATION OF ITS (1) EMERGENCY
MOTION FOR STAY PENDING APPEAL, AND
(2) EMERGENCY MOTION TO DISMISS
PLAINTIFF-APPELLANT-CROSS-RESPONDENT'S
NOTICE OF APPEAL AND TO TRANSFER VENUE**

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ARGUMENT

Pursuant to Wis. Stat. § (Rule) 809.82(2)(a), Intervenor-Respondent-Cross-Appellant the Wisconsin State Legislature (“Legislature”) respectfully requests that this Court expedite consideration of the Legislature’s contemporaneously filed: (1) Emergency Motion For Stay Pending Appeal of the Circuit Court’s January 30, 2024 injunctive and declaratory-judgment order—which order the Legislature has already appealed to the Court of Appeals, see Legislature’s Notice Of Appeal at 1, *League of Women Voters of Wis. v. Wis. Elections Comm’n*, No.2024AP166 (Wis. Ct. App. Jan. 30, 2024); and (2) Emergency Motion To Dismiss Plaintiff-Appellant-Cross-Respondent’s Notice Of Appeal And To Transfer Venue. The Legislature respectfully requests that this Court grant this Motion so that it can rule on the Legislature’s Emergency Motion For Stay Pending Appeal by no later than **February 9, 2024**, given that the ongoing Spring Primary Election will be held on February 20, 2024, only two weeks away, and that the Circuit Court’s order requires the Wisconsin Elections Commission (“WEC”) to disseminate its decision to clerks

across Wisconsin by February 9. App.81–82; App.97* (citing Deadlines for the February 20, 2024 Spring Primary Election, MyVote Wis.†).

1. The Circuit Court’s January 30 Order declared that the Materiality Provision of the federal Civil Rights Act of 1964 preempted Wis. Stat. § 6.87’s witness-address requirement in certain respects and ordered associated injunctive relief. App.80. Specifically, the January 30 Order declared that Section 6.87’s witness-address requirement is preempted by the Materiality Provision as to four particular categories of absentee ballots; enjoined WEC to disseminate a copy of the Circuit Court’s January 30 Order and guidance on its implementation to “all county clerks, all municipal clerks, the Milwaukee County Election Commission, and the Milwaukee City Election Commission” by “*February 9, 2024*”; and enjoined WEC from taking any action inconsistent with this order. App.80–82 (emphasis added).

* “App.” refers to the Legislature’s Appendix filed with its contemporaneously filed Emergency Motion For Stay Pending Appeal.

† Available at <https://myvote.wi.gov/en-us/Voter-Deadlines> (last visited Feb. 6, 2024).

2. Both the Legislature and the League filed notices of appeal on January 30, 2024, immediately after the Circuit Court's entry of its January 30 Order, selecting different Districts of this Court as the appellate venue to hear their appeals under Wis. Stat. § 752.21(2). *See* Order at 1–2, No.2024AP166 (Feb. 1, 2024). The parties then filed correspondence with the Court disputing which party's appellate-venue selection controls and thus which District of the Court of Appeals is the proper venue for this case. *Compare* Legislature's Letter RE Notice Of Appeal, No.2024AP166 (January 31, 2024), *with* League's Letter RE Notice Of Appeal, No.2024AP166 (January 31, 2024).

3. The Legislature's Emergency Motion For Stay Pending Appeal merits this Court's expedited consideration in light of Wisconsin's ongoing Spring Primary Election, which will take place in two weeks—on February 20, 2024. *See* App.97. As the Legislature discusses at length in its Emergency Motion For Stay Pending Appeal, the Legislature, the State, and the public will all suffer irreparable harm if this Court does not stay the Circuit Court's January 30 Order before WEC must begin complying with the Circuit Court's order on February 9, 2024. Without a stay

pending appeal, the January 30 Order will cause substantial clerk and voter confusion, as it requires WEC to issue new guidance to all clerks less than two weeks before the February 20 election—guidance that will have to be rescinded if the Legislature prevails on appeal here. Further, and without a stay pending appeal, the Legislature and the State—whose interests the Legislature represents in this case, *Dem. Nat’l Comm. v. Bostelmann*, 2020 WI 80, ¶ 8, 394 Wis. 2d 33, 949 N.W.2d 423—as well as the public as a whole will also suffer irreparable harm from the January 30 Order because it enjoins the operation of one of the State’s duly enacted election laws.

4. Plaintiffs, for their part, will not suffer undue prejudice from this Court’s expedited consideration of the Legislature’s Emergency Motion For Stay Pending Appeal and related Emergency Motion To Dismiss Plaintiff-Appellant-Cross-Respondent’s Notice Of Appeal And To Transfer Venue (which will presumably decide the District that will decide the Legislature’s emergency stay-pending-appeal motion). The Legislature informed Plaintiffs and the Circuit Court that it would seek expedited consideration of a motion for stay pending appeal during

the Circuit Court's February 2, 2024 hearing on the Legislature's motion for a stay pending appeal filed below. Accordingly, the Legislature provided Plaintiffs with as much advance notice as possible of its Emergency Motion For Stay Pending Appeal before filing with this Court, given the circumstances.

5. The Legislature filed its Emergency Motion For Stay Pending Appeal with this Court as expeditiously as possible under the circumstances. The Circuit Court denied the Legislature's stay-pending-appeal motion—a motion that the Legislature had to file first before this Motion, per Wis. Stat. § (Rule) 809.12—during its February 2, 2024 hearing on the motion, and the Legislature has filed this Motion with this Court only two business days later. Further, the Legislature only chose to file today, rather than yesterday, Monday, February 5, 2024, to afford the Circuit Court's court reporter time to produce the transcript of the February 2, 2024 hearing. Unfortunately, despite the Legislature making an expedited request to the Circuit Court for the transcript of the Court's February 2, 2024 hearing at the hearing itself—a request that the Circuit Court granted—and the Legislature's repeated follow-up communications with the court reporter on Monday,

February 5, the transcript has still not been produced. Given the exigencies of this case, the Legislature filed its Emergency Motions today without the transcript and will provide the transcript to this Court as soon as it is produced by the court reporter.

CONCLUSION

For the foregoing reasons, the Legislature respectfully requests that this Court grant this Motion and (1) expedite consideration of the Legislature's Emergency Motion For Stay Pending Appeal, and (2) expedite consideration of the Legislature's Emergency Motion To Dismiss Plaintiff-Appellant-Cross-Respondent's Notice Of Appeal And To Transfer Venue, adjudicating both these Emergency Motions by February 9, 2024.

Dated: February 6, 2024

Respectfully submitted,

Electronically signed by Misha Tseytlin

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