

No. 2024AP165

In the Wisconsin Court of Appeals

DISTRICT IV

RISE, INC. AND JASON RIVERA,
PLAINTIFFS-RESPONDENTS,

v.

WISCONSIN ELECTIONS COMMISSION, MARIBETH WITZEL-
BEHL, CITY CLERK FOR THE CITY OF MADISON,
WISCONSIN; TARA MCMENAMIN, CITY CLERK FOR CITY OF
RACINE, WISCONSIN; AND CELESTINE JEFFREYS, CITY
CLERK FOR THE CITY OF GREEN BAY, WISCONSIN,
DEFENDANTS,

WISCONSIN STATE LEGISLATURE,
INTERVENOR-APPELLANT.

On Appeal From The Dane County Circuit Court,
The Honorable Ryan D. Nilsestuen, Presiding
Case No. 2022CV2446

**INTERVENOR-APPELLANT'S MOTION
TO EXPEDITE CONSIDERATION OF ITS
EMERGENCY MOTION FOR
STAY PENDING APPEAL**

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ARGUMENT

Pursuant to Wis. Stat. § (Rule) 809.82(2)(a), Intervenor-Appellant the Wisconsin State Legislature (“Legislature”) respectfully requests that this Court expedite consideration of the Legislature’s contemporaneously filed 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 this Court, *see* Legislature’s Notice Of Appeal at 1, *Rise, Inc. v. WEC*, No.2024AP165 (Wis. Ct. App. Jan. 30, 2024). The Legislature respectfully requests that this Court adjudicate its 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 that the Wisconsin Elections Commission (“WEC”) rescind its previously issued October 2016 guidance defining the term “address” in Wisconsin’s absentee-ballot statutes or choose to “revise and reissue” new guidance by

February 9, 2024. App.22; App.16* (citing Deadlines for the February 20, 2024 Spring Primary Election, MyVote Wis.†).

1. The Circuit Court’s January 30 Order declared that Wis. Stat. § 6.87’s requirement that an absentee-ballot witness provide her “address” on an absentee ballot’s witness certificate “does not require that any particular components or information be included” by the witness, so long as “the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.” App.21. This new and amorphous “reasonable person” standard is now the governing interpretation of Section 6.87’s witness-address requirement within the jurisdictions of the three Clerk Defendants.

2. The Circuit Court’s January 30 Order then required WEC to “rescind” *or* “revise and reissue” its previously issued October 2016 guidance defining the term “address” to mean a witness’s street number, street name, and municipality, and to notify

* “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).

municipal clerks of the Circuit Court’s interpretation of “address.” App.22–23. Further, the Circuit Court did not purport to—nor could it—bind these non-party clerks to the Circuit Court’s understanding of Section 6.87(6d), so even if WEC chose the option of “revis[ing] and reissu[ing]” its guidance on the meaning of “address” in Section 6.87, the non-party clerks would not be bound by it. App.22–23.

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.16. As the Legislature discusses in its Emergency Motion For Stay Pending Appeal, the Legislature, 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—and the public will all suffer irreparable harm if this Court does not stay the January 30 Order before WEC must begin complying with the Circuit Court’s order on February 9, 2024. App.22.

4. Without a stay pending appeal, the January 30 Order will impose a novel, unadministrable “reasonable person in the

community” standard on the three named Clerk Defendants and then confusingly require WEC to notify all other clerks about the Circuit Court’s view—which view those clerks may accept or not—in the middle of an ongoing election.

5. The unadministrability of the Circuit Court’s injunction highlights the irreparable harm the Legislature and the State will suffer in the absence of a stay, as discussed above.

6. And the State will suffer further irreparable harm in the absence of a stay pending appeal because WEC must now rescind its October 2016 guidance defining the term “address” to mean a witness’s street number, street name, and municipality, and “revise and reissue” new guidance by February 9, 2024 to conform with the Circuit Court’s order, App.22—new guidance that itself will have to be rescinded if the Legislature prevails on the merits of its appeal here.

7. 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. 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.

8. Finally, 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 Motion 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 expedite consideration of the Emergency Motion For Stay Pending Appeal, adjudicating that Emergency Motion by February 9, 2024.

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Dated: February 6, 2024

Respectfully submitted,

Electronically signed by Misha Tseytlin

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