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**DISTRICT IV**

**FILED**  
**02-27-2024**  
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February 27, 2024

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You are hereby notified that the Court has entered the following order:

2024AP165

Rise, Inc. v. Wisconsin Elections Commission  
(L.C. # 2022CV2446)

Before Kloppenburg, P.J., Blanchard, and Taylor, JJ.

The appellant Wisconsin State Legislature appeals from a circuit court order and moves for relief pending appeal in the form of an order staying the circuit court's order. We conclude

that the Legislature has not demonstrated that the circuit court erroneously exercised its discretion in denying a stay. Accordingly, we deny the motion for relief pending appeal. Separately, on our own motion, we expedite the briefing schedule for the appeal.

The order on appeal is the circuit court's declaratory judgment and injunction entered on January 30, 2024. By statute, absentee ballots must include a witness certification that includes the "address" of the witness. Ballots that are "missing the address" of the witness "may not be counted." WIS. STAT. § 6.87(6d). Before the circuit court issued its now challenged order, the Wisconsin Elections Commission's guidance specified that, to qualify as an "address," the witness certification had to include three components: street number, street name, and municipality.

Rise, Inc., and Jason Rivera filed suit in September 2022. After considering the arguments of the parties, the circuit court issued a judgment on January 30, 2024, declaring that the Commission's three-component guidance is erroneous because the word "address," as referenced in the statute, does not specify that any particular components or types of information appear in the witness address portion of a returned, witness-certified ballot. The circuit court concludes that an "address" is present "if 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." The court's order directs the Commission to rescind its guidance or revise and reissue it consistent with the order, and to advise municipal and county election officials of the order by February 9, 2024. The order similarly enjoins the defendant clerks in this case. The Legislature appealed the order and, in an oral ruling on February 2, the circuit court denied the Legislature's motion for a stay of the order pending appeal.

The Legislature moves for relief pending appeal under WIS. STAT. RULE 809.12, in the form of an order staying the circuit court's order. In considering a motion for relief pending appeal, this court reviews whether the circuit court erroneously exercised its discretion in deciding the motion. *State v. Gudenschwager*, 191 Wis. 2d 431, 439-40, 529 N.W.2d 225 (1995); *Waity v. LeMahieu*, 2022 WI 6, ¶50, 400 Wis. 2d 356, 969 N.W.2d 263. We affirm the circuit court and deny the motion if the court examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *Gudenschwager*, 191 Wis. 2d at 440. In applying this standard, we “look[] for a reasonable basis to sustain a circuit court’s discretionary decision.” *Doe 1 v. Madison Metro. Sch. Dist.*, 2022 WI 65, ¶31, 403 Wis. 2d 369, 976 N.W.2d 584. The movant must (1) make a strong showing that it is likely to succeed on the merits of the appeal, (2) show that it will suffer irreparable injury unless a stay is granted, (3) show that no substantial harm will come to other interested parties, and (4) show that a stay will do no harm to the public interest. *Id.* These are interrelated considerations that must be balanced together. *Id.* We address these factors in turn.

As to the first factor, although the Legislature has made a showing of at least some likelihood of success on the merits, it has not made a strong showing. To the extent that the Legislature is arguing that it has made a strong showing solely because the appeal presents a novel issue on an issue of law that we will review de novo, we do not agree that this is a proper reading of *Waity*, 400 Wis. 2d 356, ¶¶51-53.

Our assessment of the merits is necessarily a preliminary one, without the benefit of complete briefing. Because briefing is still to occur, we decline to provide a detailed discussion of the merits in a way that would serve as a guide to our views of the strengths and weaknesses of the parties' positions.

As to the second factor, we conclude that the Legislature has not made a sufficient showing that irreparable injury will occur if a stay is not granted. The Legislature, in its role representing the state, argues that injury will occur as a result of the circuit court order because the standard created by the court will cause confusion among election administrators and lead to inconsistent treatment of ballots in different jurisdictions. We acknowledge that, absent a stay, spring elections will be conducted under an interpretation of law which the three defendant clerks are required to adopt and which the Commission will disseminate to election administrators statewide, and that this interpretation could be overruled in the future, requiring the Commission to issue new guidelines.

However, even if the claimed injuries occur, *i.e.*, there are inconsistent interpretations by the three defendant clerks about how to apply the definition of “address” adopted by the circuit court and by other clerks who follow the Commission’s advisory guidance, it is not clear that this situation would be significantly more injurious than the differing interpretations of “address” that were indisputably being applied *before* the circuit court ruling. If the circuit court’s order is stayed, that situation will continue to exist.

Furthermore, because it appears that clerks across the state, other than the three who are parties to this case, are not bound by either the circuit court’s order or the Commission’s guidance, any injury caused by the circuit court’s order would be limited in geographic scope to those jurisdictions that must, or choose to, apply the circuit court’s new standard. In short, these arguments about injury are based mainly on limited information about what has occurred in the past, and speculation about what will occur in the future. As a result, it is difficult to conclude with confidence that the circuit court’s order, if not stayed, will actually cause a significantly more injurious situation across the state than that which previously existed.

We turn to the third and fourth factors, whether a stay would cause substantial harm to other interested parties or the public interest. Respondents Rise and Rivera argue that staying the circuit court order will lead to unnecessary disenfranchisement of voters that the circuit court's order will prevent. This argument is similarly based on limited information and speculation about what actual effects will be caused by the circuit court order, in relation to what occurred before. However, on these factors, the burden is on the movant to show the *absence* of harm to others, and as a result this uncertainty again tends to weaken the movant's showing.

Our discussion above is generally in agreement with the circuit court's analysis of the factors. Accordingly, we conclude that the circuit court did not erroneously exercise its discretion in denying the motion for relief pending appeal.

In the interest of issuing an order addressing the stay motion promptly, we have not attempted here to address every nuance of the parties' arguments or the circuit court decision. However, we have carefully reviewed that material, and we appreciate the parties' thorough presentation of those arguments within a short time period.

Due to the nature of the issues presented in the appeal, and the additional elections later this year, we have concluded that the briefing schedule should be expedited. Extensions to this schedule should not be expected absent unusual circumstances. However, the parties are free, of course, to agree to a more expedited schedule and advise the court accordingly.

IT IS ORDERED that the motion for relief pending appeal is denied.

IT IS FURTHER ORDERED that, on the court's own motion, the briefing schedule is expedited. The appellant's brief shall be filed within thirty days after transmittal of the record to

this court. The respondents' brief shall be filed within twenty-one days after filing of the appellant's brief. The reply brief shall be filed within eleven days after the filing of the respondents' brief.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*

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