

FILED
02-19-2024
CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN

No. 24AP232

KENNETH BROWN,

Plaintiff-Respondent,

v.

WISCONSIN ELECTIONS COMMISSION AND TARA McMENAMIN,

Defendants,

CITY OF RACINE,

Appellant,

WISCONSIN ALLIANCE FOR RETIRED AMERICANS,
BLACK LEADERS ORGANIZING FOR COMMUNITIES
AND DEMOCRATIC NATIONAL COMMITTEE,

Intervenors-Co-Appellants.

JOINDER IN PETITION TO BYPASS

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**Admitted pro hac vice by the circuit court*

*Attorneys for Intervenor–Co-
Appellant Democratic National
Committee*

Intervenor–Co-Appellant Democratic National Committee (“DNC”) joins the Petition for Bypass filed by Intervenor–Co-Appellant Black Leaders Organizing for Communities (“BLOC”). DNC agrees with BLOC that the general criteria set forth in section III.B.2 of this Court’s Internal Operating Procedures are satisfied.

In particular, DNC highlights the applicability of the provision of the Internal Operating Provisions that “a petition for bypass will be granted where there is a clear need to hasten the ultimate appellate decision.” IOP, § III.B.2. The circuit court’s Amended Decision and Order holds that the Wisconsin Elections Commission (“WEC”) erred in its interpretation of Wis. Stat. § 6.855(1)’s prohibition on alternate absentee voting sites that “afford[] an advantage to any political party.” (Dkt. 99 at 15) In so doing, the circuit court broadly accepted allegations made by Plaintiff Brown that were not tested in a contested-case hearing before WEC, which dismissed Brown’s administrative complaint under Wis. Stat. § 5.06(1) for lack of “probable cause to believe that a violation of law or abuse of discretion occurred.” (Dkt. 59 at 47, 60) The circuit court relied on a deeply flawed “statistical study” Brown had submitted to WEC without addressing the many “compelling arguments” spelled out in WEC’s dismissal order for rejecting that study. (Dkt. 99 at 15; Dkt. 59 at 56-57) Nor did the circuit court provide any guidance on how a municipality may exercise its authority under Wis. Stat. § 6.855(5) to provide multiple alternate absentee ballot sites distributed throughout its jurisdiction without running afoul of Brown’s reading of the “no political advantage” language in § 6.855(1). The circuit court’s ambiguous decision is an

open invitation for challenges to any Wisconsin municipality that offers multiple alternate absentee ballot sites, which will only result in further confusion and uncertainty in election administration, this year and beyond.

The deadline is quickly approaching by which municipalities must designate alternate absentee ballot sites for the August and November 2024 elections. Wis. Stat. §§ 6.855(1), 7.15(1)(cm) (deadline this year is June 12, 2024). Once that deadline passes, our statutes do not anticipate municipalities altering the list of alternate sites for the remainder of this year's elections. The process of designating alternate sites requires legislative action by each municipality that elects to offer this method of voting. Given the process and timeline, it is essential that the judiciary provide clear guidance before the end of May, so that municipalities have the opportunity to assimilate that guidance and implement it in making designations of alternate absentee voting sites for the August and November elections. Because the proper application of the prohibition on alternate sites that afford political advantage is a question of first impression, it will not be settled until and unless this Court rules. As such, the Court should accept BLOC's petition and set an expedited briefing schedule so that the Court may hear argument by the end of April and issue a decision providing clear guidance for municipalities before the end of May.

The novelty and import of the legal question presented here, paired with the imminence of the deadline for designations that will apply for the August and November elections this year, militate in favor of this Court granting bypass and adjudicating this appeal on an expedited basis.

Dated: February 19, 2024.

Respectfully submitted,

Electronically signed by Jeffrey A. Mandell

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