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Matthew M. Fernholz

June 26, 2024

**VIA EMAIL TO:**

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Attorney Brandon Hunzicker  
Wisconsin Elections Commission  
201 West Washington Ave., Second Fl.  
Madison, WI 53707-7984

Re: *In RE: the matter of: May 28, 2024 Recall Petition Filed Against Representative Vos*

Dear Attorney Hunzicker:

As you know, this office represents Representative Robin Vos in relation to the above-referenced recall effort. This letter constitutes Representative Vos' letter brief regarding the location and time a recall election should take place if the Commission finds the petition sufficient and accepts it for filing.

Representative Vos addressed the issue of where the recall election should occur in his Verified Challenge and Verified Reply, and he reincorporates those previous arguments on this issue. If a recall election were to occur, it would need to be in the new 33rd Assembly District.

As previously discussed, in December 2023, the Wisconsin Supreme Court enjoined the use of the then-current maps in all future elections. *Clark v. Wisconsin Elections Comm'n*, 2023 WI 79, ¶¶56, 77, 410 Wis. 2d 1, 998 N.W.2d 70. The court found the previous legislative maps violated the Wisconsin Constitution's contiguous territory requirement. *Id.*, ¶¶34, 77. In addition to enjoining WEC from using the then-current maps "in all future elections," the court further provided that remedial maps must be adopted prior to the 2024 elections. *Id.*, ¶¶56, 77. While the court urged the Legislature to pass legislation creating new maps prior to the 2024 elections, the court stated that if the legislative process failed to result in remedial maps, then the court would adopt valid remedial maps. *Id.*, ¶¶57-58. It follows that any elections occurring after *Clarke* would either use new maps created by the Legislature or the court. In other words, regardless of whether the Legislature enacted new maps, the old maps would not be used in any future elections.

Additionally, not only is the court's injunction still in place, but the old maps functionally no longer exist, making it impossible to use these maps for an election. Two things happened when 2023 Wis. Act 94 was signed into law: (1) the Act repealed the former districts that had been

found unconstitutional in *Clarke*; and (2) it enacted new legislative districts. The Act was published on February 20, 2024, and did not expressly prescribe the time it would take effect. Therefore, pursuant to Wis. Stat. § 991.11, the Act became effective the next day, February 21.

The Commission's deadline for issuing a certificate regarding the sufficiency of the recall petition is Friday, June 28, 2024. § 9.10(3)(b). If the petition is found to be sufficient, the Commission must file the petition with the attached certification and call a recall election to be held on the Tuesday after the 6th week commencing after the date of filing the petition. *Id.*; see also [Recall of Congressional, County, and State Officials Manual](#) at 7-8 ("The filing officer shall call a recall election promptly after a certificate of sufficiency is filed. The recall election shall be held on the Tuesday of the 6th week commencing after the date on which the certificate of sufficiency is filed.")

In the rebuttal, the Petitioner asserted the recall election must be called for Tuesday, July 9, 2024. (*See* Rebuttal of Petitioner at 1.) The date was based on their argument that no verified challenge was filed. (*Id.*) It is hard to believe the Petitioner actually wants the recall to occur in less than two weeks, with no possibility for a candidate to file as a challenger. Rather, under Wisconsin law, the soonest a recall election could occur is Tuesday, August 6.

Not only does the recall statute expressly provide that if a recall petition is certified, the election must be "on the Tuesday after the 6th week commencing after the date of filing the petition," but the recall statute further provides that the deadline for nomination papers for a special election is "not later than 5 p.m. on the 4th Tuesday preceding the election." § 9.10(3)(b), (c). If there is another candidate, then a recall primary would occur on the date specified in sub. (b), and the recall election must then be held on the Tuesday of the 4th week commencing after the recall primary. § 9.10(3)(f). Moreover, nomination papers cannot be circulated until after the recall election has been scheduled. *See* § 8.50(3)(a) ("Nomination papers may be circulated no sooner than the day the order for the special election is filed and shall be filed not later than 5 p.m. 28 days before the day that the special primary will or would be held . . .")<sup>1</sup>; [Recall of Congressional, County, and State Officials Manual](#) at 10.

As such, if the Commission certifies the recall petition, the soonest the recall election could occur is Tuesday, August 6. Alternatively, if a recall primary is necessary, that would occur on August 6 and the recall election would occur Tuesday, September 3.

However, in the event the recall petition is certified, Representative Vos will be filing a writ of mandamus with the circuit court, pursuant to § 9.10(3)(bm), for the court to determine whether the recall petition is sufficient. Representative Vos will also request the court stay the Commission's order while the petition is under advisement. *See id.* ("The court may stay the effect of the official's order while the petition is under advisement and may order the official to revise the election schedule contained in the order if a revised schedule is necessitated by judicial review.") While the court "shall give the matter precedence over other matters not accorded similar precedence by law," there are no specific requirements on how much time the court has to

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<sup>1</sup> As to nomination papers for a recall election, pursuant to § 9.10(3)(c), "[c]andidates for the office may be nominated under the usual procedure of nomination for a special election . . .").

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conduct its review. Therefore, if the Commission certifies the recall petition, it should refrain from scheduling the recall election until there has been a final court determination regarding sufficiency of the recall petition.

Sincerely,

*s/Matthew M. Fernholz*

Matthew M. Fernholz

MMF:tlm