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June 26, 2024

Commissioners Marge Bostleman, Ann Jacobs,
Don Millis, Carrie Riepl, Mark Thomsen, and
Robert Spindell
Administrator Megan Wolfe
Wisconsin Elections Commission
201 West Washington Avenue,
Second Floor,
Madison, WI 53703,

RE: Recall of Robin J. Vos, Petition Filed May 28, 2024.

To Whom It May Concern:

Petitioner is in receipt of a Letter from Speaker Robin Vos's representative dated today that was forwarded by Attorney Hunzicker (the "Letter"). As an initial matter there was no schedule set for "briefing," and no further filings were invited to Petitioner's knowledge. As Speaker Vos's filing is irregular Petitioner asks it be stricken from the record.

In response, Speaker Vos makes several general assertions in the Letter, none of which have merit. Petitioner will address them in order.

Speaker Vos's Assertion that no Recall Election may be called in District 63

First, there's no basis to assert that the decision in *Clarke v. Wisconsin Elections Comm'n, et al.* 2023 WI 79, 410 Wis. 2d 1, 998 N.W.2d 70 prevents Speaker Vos from being recalled in District 63. Wisconsin Elections Commission moved the Wisconsin Supreme Court for clarification on March 15, 2024, asking—

The Commission requests clarification of whether this Court's opinion and order enjoins the Commission from using district maps in effect prior to the enactment of Act 94 for any recall or special election that must be conducted before the 2024 general election.

The Wisconsin Supreme Court declined to further clarify its decision, and further squarely placed the ball in WEC's court, holding—

As a threshold matter, it is WEC, not this court that has the “overall statutory responsibility for the administration of Wisconsin’s elections.” *Democratic Nat’l Committee v. Bostelmann*, 488 F.Supp.3d 776, 796 (W.D. Wis. 2020) (citing Wis. Stat. § 5.05(1)).

The Wisconsin Supreme Court did not say that District 63 could not be used. It said the decision is up to WEC. Further, the Court held—

We will “not depart from our general practice that **this court will not offer an advisory opinion or make a pronouncement based on hypothetical facts.**” *State ex rel. Collison v. City of Milwaukee Bd. of Rev.*, 2021 WI 48, ¶46, 397 Wis. 2d 246, 960 N.W.2d 1. (emphasis added)

Doing so, what the Court was saying is that the injunction is moot. As the Wisconsin Supreme Court previously held—

This court has consistently adhered to the rule that a case is moot when ‘a determination is sought which, when made, cannot have any practical effect upon an existing controversy.’ *Schwarzbauer v. Menasha* (1966), 33 Wis.2d 61, 63, 146 N.W.2d 402; *State ex rel. Hernandez v. McConahey* (1969), 42 Wis.2d 468, 471, 167 N.W.2d 412; *Fort Howard Paper Co. v. Fort Howard Corp.* (1956), 273 Wis. 356, 360, 77 N.W.2d 733; *State v. Zisch* (1943), 243 Wis. 175, 177, 9 N.W.2d 625; *Thoenig v. Adams* (1940), 236 Wis. 319, 322, 294 N.W. 826; *Smith v. Smith* (1932), 209 Wis. 605, 608, 245 N.W. 644. **The general rule is that the court will not determine abstract principles of law.**

In this case we conclude it is apparent that the **question of the right to injunction is moot.**

City of Racine v. J-T Enterprises of America, Inc., 64 Wis.2d 691, 700, 221 N.W.2d 869 (1974)(emphasis added).

The Wisconsin Supreme Court recently noted in its June 24, 2024 Order in *Clarke*—

In the end, it was not necessary for this court to adopt new maps in this case. That was because the political process worked: The legislature enacted new state legislative district maps and the governor signed them into law. See 2023 Wis. Act 94.

The injunction entered in the *Clarke* decision is moot because the case was resolved through the political process. The injunction entered in *Clarke* “cannot have any practical effect” upon any existing controversy in that case. The Court noted as such by highlighting any clarification would be merely “hypothetical.” Speaker Vos’s arguments regarding a purported existing injunction are without legal basis.

Speaker Vos is also wrong that Act 94 “did not expressly prescribe the time it would take effect.” As WEC staff noted in its Memorandum to the Commissioners for the June 27, 2024 Commission Meeting, Section 2 of Act 94 provides—

Section 2 . Initial applicability.

- (1) This act first applies, with respect to regular elections, to offices filled at the 2024 general election.
- (2) This act first applies, with respect to special or recall elections, to offices filled or contested concurrently with the 2024 general election.

This recall election is not being contested “concurrently with the 2024 general election.” Racine Recall filed its CF-1 on March 27, 2024. The Petition was offered for filing on May 28, 2024. Should the Commissioners certify the Petition as sufficient and file it, a recall election will be held on August 6, 2024. None of these dates are “concurrent” with the 2024 general election, which will be held November 5, 2024. As a result the maps enacted through Act 94 are inapplicable and Speaker Vos is wrong that the “old maps functionally no longer exist.” Further, no recall election can be held in the “new” District 33 as that map is not yet in effect.

Speaker Vos’s Assertion regarding the potential Date for a Recall Election

Petitioner agrees with Speaker Vos that, should the Commissioners certify the Petition as sufficient and file it, a recall election (barring a primary) would be held on August 6, 2024.

Speaker Vos’s Assertion that he will file a Writ of Mandamus

Petitioner sees no legitimate purpose to Speaker Vos’s threat to the Commission that he will file a writ of mandamus. Such a process is outlined by statute, and certainly the Commission is aware of it. Should Speaker Vos choose to do so, it is his prerogative. Just as it is the Petitioner’s prerogative to seek sanctions against Speaker Vos for filing such a writ for “an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” Wis. Stat. § 802.05(2)(a).

Speaker Vos ironically seeks to avoid upholding the Wisconsin Constitution. The Commission should not assist him in doing so. Thank you and Petitioner looks forward to appearing tomorrow.

Very truly yours,

THE LAW OFFICE OF KEVIN M. SCOTT LLC



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