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**DISTRICT II**

**FILED**  
**09-18-2024**  
**CLERK OF WISCONSIN**  
**COURT OF APPEALS**

September 18, 2024

To:

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Circuit Court Judge  
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Clerk of Circuit Court  
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Milwaukee, WI 53202

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

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2024AP1872

Robert F. Kennedy, Jr. v. Wisconsin Elections Commission  
(L.C. # 2024CV2653)

Before Gundrum, P.J., Neubauer and Lazar, JJ.

Robert F. Kennedy, Jr., petitions for leave to appeal the circuit court's September 16, 2024 order denying Kennedy's request for a temporary injunction. Kennedy originally sought a temporary injunction in the circuit court requiring the Wisconsin Elections Commission ("WEC") "to not include Kennedy as a candidate on the November 5, 2024 General Election ballot and preventing them from mailing any absentee ballots until this Court has issued a ruling on the merits" of his case.

A leave to appeal may be granted by this court when it will materially advance the termination of the litigation or clarify further circuit court proceedings, protect the petitioner from substantial or irreparable injury, or clarify an issue of general importance to the administration of justice. WIS. STAT. § 808.03(2). When deciding whether to grant a permissive appeal, this court must also examine whether the petitioner has a substantial likelihood of success on the merits. *See State ex rel. Hass v. Wisconsin Court of Appeals*, 2001 WI 128, ¶13, 248 Wis. 2d 634, 636 N.W.2d 707.

We recognize that WEC has not yet responded to Kennedy's current petition. However, this court has thoroughly reviewed the response WEC filed to Kennedy's petition in appeal No. 2024AP1798-LV, and we are well aware of WEC's position and arguments. Because of the extreme time pressure on this case, we have decided to review Kennedy's current petition *ex parte*. We are persuaded that sufficient leave criteria are satisfied and grant Kennedy's leave petition. Granting Kennedy's leave petition now will allow briefing on the merits of Kennedy's claim to commence immediately—specifically, whether the circuit court erred by denying Kennedy's motion for a temporary injunction.

Procedurally, entry of this order has the effect of filing a notice of appeal. WIS. STAT. RULE 809.50(3). We will waive the requirements of a docketing statement and the filing of a statement on transcript. Online circuit court entries indicate a transcript of the circuit court's September 16, 2024 oral ruling has already been filed in the circuit court.

The clerk of the circuit court is directed to compile and transmit the record to this court by today, September 18, 2024, at 1:00 p.m. If any transcript is filed after the record is

transmitted, the circuit court clerk shall immediately transmit that transcript as a supplemental return to this court.

Given the time-sensitive nature of this court's review, we also conclude an accelerated briefing schedule is appropriate. *See* WIS. STAT. RULE 809.82(2)(a). Kennedy shall file a memorandum brief by Thursday, September 19, 2024 at 11:00 a.m. WEC shall file a memorandum response by Friday, September 20 at 11:00 a.m. Those briefs shall not exceed 25 pages if a monospaced font is used or 5,500 words if a proportional font is used. Kennedy may file a reply brief by Friday, September 20 at 4:00 p.m. The reply brief shall not exceed 10 pages or 2,220 words.

The parties have discussed Kennedy's requested relief of applying stickers to ballots to cover his name thereon as an alternative to reprinting of ballots with his name removed. In addition to whatever arguments the parties wish to make in their briefs on whether the circuit court erred by denying Kennedy's request for a temporary injunction, the parties shall address the following questions in their briefs:

1. The legislature has permitted applying a sticker to cover the name of a candidate on a ballot when a vacancy is caused by a candidate's death after ballots have been printed. *See* WIS. STAT. §§ 7.37(6), 7.38(3), 8.35(2)(d). In light of this, does it matter if ballots with stickers on them have not been tested with voting equipment?

2. If there was a vacancy in a statewide office race due to the death of a candidate, such as for the Office of Attorney General, and presuming "the chairperson of the committee filling the vacancy" supplied the stickers with the

name of a substitute candidate, see WIS. STAT. §§ 7.37(6) & 7.38(3), would the stickers have to be placed on the ballots statewide?

3. WISCONSIN STAT. § 7.37(6), 7.38(3) & 8.35(2)(d) appear to collectively provide that if a candidate dies after ballots have been printed and if stickers with the name of a replacement candidate have been provided pursuant to those statutory provisions, “the inspectors *shall* ... properly apply the stickers to the official ballots before endorsement” and shall do so “at the direction of the municipal clerk.” (Emphasis added.) Do clerks, as WEC has suggested, have discretion to *not* have the stickers applied to the ballots?

Therefore,

IT IS ORDERED that the petition for leave to appeal is granted. The entry of this order has the effect of the filing of a notice of appeal. WIS. STAT. RULE 809.50(3).

IT IS FURTHER ORDERED that the requirements of a docketing statement and statement on transcript are waived.

IT IS FURTHER ORDERED that the clerk of the circuit court is directed to compile and transmit the record to this court by today, September 18, 2024, at 1:00 p.m. If any transcript is filed after the record is transmitted, the circuit court clerk shall immediately transmit that transcript as a supplemental return to this court.

IT IS FURTHER ORDERED that Kennedy shall file a memorandum brief by Thursday, September 19, 2024 at 11:00 a.m. WEC shall file a memorandum response by Friday, September 20 at 11:00 a.m. Those briefs shall not exceed 25 pages if a monospaced font is used

or 5,500 words if a proportional font is used. Kennedy may file a reply brief by Friday, September 20 at 4:00 p.m. The reply brief shall not exceed 10 pages or 2,220 words.

IT IS FURTHER ORDERED that the parties' briefs also address the questions included in the body of this order.

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