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CLERK OF WISCONSIN
SUPREME COURT

No. 2024AP232

In the Supreme Court of Wisconsin

KENNETH BROWN,
Plaintiff-Respondent,

v.

WISCONSIN ELECTION COMMISSION
AND TARA MCMENAMIN
Defendants,

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

CITY OF RACINE,
Appellant.

On Appeal From The Racine County Circuit Court,
The Honorable Eugene A. Gasiorkewicz, Presiding

**INTERVENOR BLACK LEADERS ORGANIZING FOR
COMMUNITIES' MEMORANDUM IN SUPPORT OF
PETITION FOR BYPASS**

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ISSUES PRESENTED

1. Whether the Circuit Court improperly construed the “partisan advantage” language of Wis. Stat. § 6.855(1).
2. Whether the Circuit Court improperly applied Wis. Stat. § 6.84 to prohibit the City of Racine’s Mobile Elections Unit (MEU) under Wis. Stat. § 6.855.

INTRODUCTION

This case is about whether this year’s presidential election will provide Wisconsin voters the degree of ballot access to which they are entitled under law. At issue is Wis. Stat. § 6.855 which prescribes how municipalities designate alternate locations (“alternate sites” or “IPAV sites”) for absentee ballot collection—at stake is access to the franchise for voters who rely upon early in-person absentee voting (“IPAV”) to exercise their constitutional rights.

There are two major pieces to this puzzle. The first concerns the vestiges of the “one-location rule.” As originally drafted, Wis. Stat. § 6.855 constrained municipalities to only one alternate site, “located as near as practicable to the office of the municipal clerk or board of election commissioners and no site may be designated that affords an advantage to any political party.” Wis. Stat. § 6.855 (2015-2016). That subsection of

the statute has since been modified, and Wis. Stat. § 6.855(5) now expressly permits municipalities to designate multiple IPAV sites. *See Luft v. Evers*, 963 F.3d 665, 674 (7th Cir. 2020). Nonetheless, the circuit court held that the City of Racine violated the one-location rule’s second clause concerning partisan advantage. In so doing, the court endorsed a fringe understanding of how (and whether) this clause should be applied—an understanding which effectively narrows Wis. Stat. § 6.855 out of existence.

The circuit court’s extreme construction of Wis. Stat. § 6.855 appears to focus not on the actual “site” as the text requires; instead, it targets the characteristics of people who live by those sites. The circuit court held that the “filings” show that Racine’s IPAV sites provided the Democratic Party with an illegal partisan advantage.¹ Under the circuit court’s construction, a municipality can only satisfy the partisan advantage clause if the voting population of the wards hosting alternate sites carry the exact same partisan² breakdown as the voting population which resides within the ward hosting its municipal clerk’s office. So, by

¹ Ostensibly, this reliance on “filings” refers to Plaintiff-Respondent Kenneth Brown’s arguments and submissions, the only ones that argued the IPAV sites in Racine conferred partisan advantage. It is BLOC’s understanding that the circuit court thus adopted Brown’s position.

² The premise of this argument is belied by Wisconsin practice: there is no party registration for voters, so precisely who is and who is not formally affiliated with any one party is impossible to discern from public information.

showing that the partisan makeup of the wards hosting Racine's alternate sites were not *exactly* the same as the ward hosting Racine's municipal clerk's office, the court found partisan advantage at Racine's alternate sites and held that they were thereby unlawful under Wis. Stat. § 6.855(1).

The circuit court's holding is wrong for several reasons. Most obviously, nothing in the statute anoints ward lines and mirrored vote totals as the standards by which to enforce the partisan advantage clause. That language was invented by Plaintiff-Respondent Kenneth Brown ("Brown"). And applying Brown's standard is, in practice, absurd. Of the 20 largest municipalities, precisely 0 have *any* wards whose partisan makeup is identical to the ward which hosts the municipal clerk's office. So, under this holding, it would be *impossible* for Wisconsin's cities to designate alternate sites anywhere outside the immediate vicinity of the municipal clerk's office. As a result, the holding reads a new subsection into Wis. Stat. § 6.855, severely limiting access to absentee voting by eliminating alternate sites in most places throughout Wisconsin. This cannot be, and this Court should take this case immediately to resolve this burgeoning threat to participatory democracy.

Moreover, the focus on the people who surround the IPAV site, rather than the site itself, threatens to reunite Wis. Stat. § 6.855 with its discriminatory past. This statute was once enjoined in part because of how the one-location rule prejudiced voters of color; yet by limiting the available geography for IPAV sites, the circuit court's holding appears destined to reignite the historical prejudices of Wis. Stat. § 6.855 once again.

The second piece of the puzzle concerns Wis. Stat. § 6.84(2) and a vehicle (a van) that the City of Racine drove to and from its alternate sites to assist in absentee ballot collection. Wisconsin Stat. § 6.84(2) instructs courts how to interpret absentee ballot statutes. It directs that such statutes "shall be construed as mandatory." Wis. Stat. § 6.84(2). Yet the circuit court holding takes this instruction to an extreme, transforming it into an express prohibition on unenumerated conduct. So, because Wis. Stat. § 6.855 does not mention vehicles, the court found that by using one to facilitate an otherwise lawful IPAV program, the City of Racine broke the law. But this is contrary to how the legislature drafted Wis. Stat. § 6.84(2); to "construe as mandatory" is wholly distinct from "that which is unenumerated is prohibited." Lest statutory silence gobble up the authority of Wisconsin's municipalities and their municipal clerks, this Court should take this case to clarify, once and for

all, that Wis. Stat. § 6.84(2) does not prohibit unenumerated conduct like the City of Racine's van.

BACKGROUND

On August 10, 2022, Brown filed a complaint with the Wisconsin Elections Commission (“WEC”) seeking declaration that, among other things, Racine’s usage of a vehicle (referred to as Mobile Elections Units or “MEUs”) to service IPAV sites violated Wis. Stat. § 6.855. (Dkt. 56 at 4-14.) On November 4, 2022, the Wisconsin Elections Commission released its written decision, which found there was no probable cause for the claims and dismissed the complaint. (Dkt. 59 at 47-60.) Brown appealed to the Racine County Circuit Court, naming the Wisconsin Elections Commission and the City Clerk of the City of Racine as defendants. (Dkt. 3.) Those defendants moved to dismiss on March 19, 2023. (Dkt. 11.) Between February 10, 2023 and March 1, 2023, three parties moved to intervene: the Democratic National Committee, (Dkt. 18), the Wisconsin Alliance for Retired Americans (Dkt. 26) and Black Leaders Organizing for Communities (BLOC) (Dkt. 46) At a hearing on March 15, 2023, the Racine County circuit court, the Hon. Judge Mark Nielsen presiding, granted all pending motions for permissive

intervention, and granted in part and denied in part the pending motion to dismiss. (Dkt. 82.)

In his substantive briefing before the circuit court, Brown argued that placing an IPAV site in a ward with *any* deviation in partisan makeup from that ward which hosts Racine's municipal clerk's office would violate Wis. Stat. § 6.855's partisan advantage language. (Dkt. 86 at 13; *see also* Dkt 59 at 40 (“the goal is... a ward that has the *same* political makeup as the one in which the clerk's office is located.”) (emphasis in original). BLOC argued to the Court that the entirety of the one-location had been repealed. (Dkt. 94 at 2-15.)

On January 10, 2024, the circuit court issued the decision and order that gives rise to this appeal and petition. (Dkt. 99). Without expressing a standard by which it would apply the partisan advantage clause of Wis. Stat. § 6.855 the circuit court held that “[t]he filings in this case clearly indicate that the alternate sites chosen clearly favored members of the Democratic Party or those with known Democratic Party leanings. In this regard, this Court finds error in interpretation of law by WEC.” (Dkt. 99 at 15.) The circuit court went on to hold that nothing specifically authorizes MEUs: “none of the election statutes allow for the use of a mobile alternate absentee voting vehicle.” (Dkt. 99 at 16.) It concluded that, when read consistent with Wis. Stat. §. 6.84 “mandatory”

construction instruction, that Wis. Stat. § 6.855 prohibits MEUs. (*Id.* at 16-17). The Court thus reversed WEC’s prior ruling as “not in conformity with the elections laws of this state.” (*Id.*)

Intervenor-Defendant-Appellant Black Leaders Organizing for Communities (“BLOC”) appealed and seeks review, de novo, to reverse the lower court decision and affirm WEC’s decision.

LEGAL STANDARD

This Court may accept a Petition for Bypass where 1) a case meets one or more of the criteria for review contained within Wis. Stat. § 809.62, 2) that case would be worthy of review regardless of outcome, and 3) there is value in expedient appellate process. The Supreme Court may grant this petition upon such conditions as it considers appropriate. Wis. Stat. § 809.60(1) (4). *Gabler v. Crime Victims Rts. Bd.*, 2017 WI 67, ¶ 23, 376 Wis. 2d 147, 897 N.W.2d 384. This Court granted bypass when the laws governing absentee ballot collection was subject to novel interpretation by a January circuit court order during an election year. Order, *Teigen v. Wisconsin Elections Comm’n*, No. 2022AP91, *3 (Jan. 28, 2022) (noting that the “February 2022 election process is already underway” in an order accepting a petition to bypass and declining to vacate a stay.).

Pursuant to Wis. Stat. § 809.62(1r), cases worthy of Supreme Court review regard a “real and significant question” of constitutional law, a demonstrated need for the Court’s authority to effect policy, or, an issue the Court can clarify and/or harmonize the law where there is a potential statewide impact based primarily on understanding of law. Wis. Stat. § 809.62(1r)(c)2-3. This case presents only legal questions to be resolved *de novo*. See *Tetra Tech EC, Inc. v. Wisconsin Dep't of Revenue*, 2018 WI 75, ¶ 84, 382 Wis. 2d 496, 564, 914 N.W.2d 21, 54. As this Court’s internal operating procedures explain, this Court should grant bypass, where one of the above criteria are met and there is a need to hasten the appellate process. Sup. Ct. IOP § III.B.2. Such is the case here.

ARGUMENT

Election season is here. In 2024, Milwaukee will decide its Mayor, County Executive, and City Attorney; Dane County will find a new County Executive; and voters throughout the state will determine the Wisconsin legislature, the United States Congress, and the Presidency.³

³ Al Weaver. *Senate GOP looks to Wisconsin to set 2024 candidate map in stone*, The Hill.com (Jan. 29, 2024), <https://thehill.com/homenews/state-watch/4432252-senate-gop-wisconsin-2024-eric-hovde-tammy-baldwin/>; Dabruzzi, Anthony, *A year to go: How Wisconsin could influence the 2024 presidential election*, Spectrum News.com (Nov. 6, 2023), <https://spectrumnews1.com/wi/milwaukee/news/2023/11/05/why-wisconsin-could-be-the-tipping-point-state-in-2024>.

As election cycle⁴ after election cycle⁵ reveals, absentee voting is broadly popular and a core element of the voting process.⁶ And as this Court is aware, IPAV sites under Wis. Stat. § 6.855 implicate that process. *See Teigen v. Wisconsin Elections Commission*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519, *reconsideration denied*, 2022 WI 104, 997 N.W.2d 401, and 2024 WI 4.

Yet the circuit court's order renders Wis. Stat. § 6.855 something of a gordian knot for Wisconsin's municipalities to untangle. On the one hand, municipal clerks are commanded to ensure that elections are "uniformly conducted" within their municipalities. Wis. Stat. § 7.15(e). On the other hand, the circuit court's order telegraphs that uniformity is impossible to enforce because most wards within a municipality would be barred from hosting alternate sites. And any attempt to bridge this divide would seemingly contravene the circuit court's inflation of Wis. Stat. § 6.84(2)—anything not specifically provided for might now be

⁴ Lawrence Andrea, *Absentee voting numbers in Wisconsin soar over the 2018 midterms*, Milwaukee Journal Sentinel (Nov. 8, 2022), <https://www.jsonline.com/story/news/politics/elections/2022/11/08/absentee-voting-numbers-in-wisconsin-soar-over-the-2018-midterms/69627990007/>.

⁵ Craig Gilbert, *Here's what was behind Wisconsin's record-breaking 2020 turnout — and what it means for the war over voting rules*, Milwaukee Journal Sentinel (March 12, 2021), <https://www.jsonline.com/story/news/politics/analysis/2021/03/12/wisconsin-had-record-breaking-2020-voter-turnout-heres-what-happened/4664099001/> ("In 2016, 73% of Wisconsin voters went to the polls on Election Day and only 5% cast absentee ballots by mail. In 2020, 40% voted at the polls on Election Day and 41% cast absentee ballots by mail.")

⁶ Indeed, for some Wisconsin voters with disabilities, absentee voting is the *only* means by which they can access the franchise. *See Carey v. Wisconsin Elections Comm'n*, 624 F.Supp. 3d 1020 (W.D. Wis. 2022).

expressly prohibited. Any municipality attempting to escape the problems created by the circuit court's order risks additional litigation that could further confuse the absentee voting system as we move deeper into the election season. Wisconsin municipalities are thus in an untenable position at the worst possible moment.

In Wisconsin, every election matters and every voter matters. To ensure that Wisconsinites are afforded the degree of ballot access they are due under the law, and to ensure that municipalities and their clerks have the confidence and clarity required to fulfill their duties and facilitate elections, this case merits bypass.

I. The Court should grant bypass because Wisconsin and its voters need clarity for this election season, and because voters of color face peculiar harm from the circuit court's order.

This Court has granted bypass when absentee ballot litigation in the circuit court carried significant ramifications for statewide elections. *See Order, Teigen*, No. 2022AP91. Accepting such urgent election cases for bypass makes intuitive sense when one considers the relative importance of the right to vote in our democracy. As the United States Supreme Court recognized, “[n]o right is more precious in a free country than that of having a voice in the election of those who make laws under which, as good citizens, we must live. Other rights, even the most basic,

are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). This is one such case. Without clarity from this Court regarding the legal conclusion of the circuit court, Wisconsinites face an acute risk that the municipalities and clerks who administer elections will follow the circuit court’s order and be hamstrung in designating IPAV sites for upcoming elections.

A. How Wisconsinites exercise their right to vote is of constitutional importance.

This Court should grant bypass because the right to vote is of unique and substantial importance. The extent to which Wisconsinites are permitted to access that right is a unique issue of statewide concern which merits this Court’s attention.

The nature of this dispute is an appropriate factor to consider, and one that weighs heavily in favor of granting bypass. Voting issues are of monumental concern. Wisconsinites of all parties are exercising their right to vote in record numbers—and with increasing frequency, they are doing so via the absentee ballot.⁷ “Nothing can be clearer under our Constitution and laws than that the right of a citizen to vote is a fundamental, inherent right.” *State v. Cir. Ct. for Marathon Cnty.*, 178

⁷ Craig Gilbert, *Here’s what was behind Wisconsin’s record-breaking 2020 turnout*, Milwaukee Journal Sentinel (March 12, 2021), <https://www.jsonline.com/story/news/politics/analysis/2021/03/12/wisconsin-had-record-breaking-2020-voter-turnout-heres-what-happened/4664099001/>

Wis. 468, 190 N.W. 563, 565 (1922). And this Court has long recognized the unique role absentee voting can play in exercising that right. *State ex rel. Chandler v. Main*, 16 Wis. 398, 422 (1863).

Yet the circuit court's order injects confusion into municipalities and clerks who are tasked with carrying out a key piece in the absentee voting process: IPAV designation. Wis. Stat. § 6.855. By statute, Wisconsin's more than 1,800 municipal clerks must coordinate the administrative steps to provide ballot access for all eligible Wisconsin voters under the laws of our state. Wis. Stat. § 7.15(1). And clerks want to get this right: "Consistency would be helpful to make sure we're doing things correctly every time."⁸ Yet the circuit court's order has confused how Wis. Stat. § 6.855 is to be applied, sending a difficult message throughout the state on where and how to designate IPAV sites. Any reduction in the number of these sites correspondingly reduces access to the democratic system with elections on the horizon. Now is not the time to be narrowing ballot access. Given the importance of the right to vote, this Court should grant bypass to resolve the uncertainty over IPAV designation created by the circuit court's order.

⁸ Bahl, Andrew, *Wisconsin election clerks fear 'ping-pong' of ever-changing rules*, Cap Times (Jan. 9 2024), https://captimes.com/news/government/wisconsin-election-clerks-fear-ping-pong-of-ever-changing-rules/article_25642fc6-ae64-11ee-9e36-a7c6889ad629.html.

B. The circuit court order poses a unique threat to voters of color and likely violates the Wisconsin Constitution's equal protection guarantees.

As described above, the one-location rule was extinguished years ago. The route to its demise provides helpful context to what is at stake in the underlying order, and why bypass is urgently needed. In 2016, reasoning that one alternate site per municipality would disproportionately overwhelm the resources of Wisconsin's larger cities, a federal court enjoined Wis. Stat. § 6.855 because voters of color (who predominate those cities) disproportionately endure the consequences of such resource strain. *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 963 (W.D. Wis. 2016) *aff'd in part, vacated in part, rev'd in part sub nom. Luft*, 963 F.3d 665. The following year, Wisconsin's Legislature enacted a rudimentary fix: it appended a new subsection to the end of Wis. Stat. § 6.855, expressly authorizing *multiple* alternate sites in each municipality. 2017 Wis. Act 369 § 1JS. The Seventh Circuit Court of Appeals later confirmed, “[t]he one-location rule is gone, and its replacement is not substantially similar to the old one.” *Luft*, 963 F.3d at 674 (emphasis added). But the standard adopted by the circuit court, Brown's rule, largely reimposes the one-location rule.

If the circuit court's order provides a template to other municipalities, the same discrimination which initially triggered the

one-location rule's demise will once again prejudice voters of color. The City of Milwaukee provides a helpful example. In the 2022 general election vote for Governor, the ward hosting Milwaukee's Board of Election Commissioners (Ward 141⁹) was split, with 394 votes cast for the Democratic candidate, Tony Evers and 294 votes cast for Republican candidate, Tim Michels.¹⁰ How many of Milwaukee's 354 wards had the same partisan makeup? Zero.¹¹ So, under Brown's standard, there is no ward in Milwaukee, Wisconsin's largest city, that could host an alternate site, outside of the ward within which the clerk's office is located. The

⁹ The City of Milwaukee is the only municipality in Wisconsin that maintains its own Board of Election Commissioners, rather than a municipal clerk. *See* Wis. Stat. § 7.20(1). It is located within City Hall at 200 E. Wells St. Room 501, Milwaukee, WI 53202. *See* Elections Commission, City of Milwaukee <https://city.milwaukee.gov/election>. The City of Milwaukee provides its ward maps on the website which helps Milwaukeeans learn how to run for public office. *See* District Maps, City of Milwaukee <https://city.milwaukee.gov/election/HowtoRunforPublicOffice/District-Maps>. A link on that page, labeled "Go to Ward Maps" produces a 352-page pdf document; page 140 of the pdf provides the map to Ward 141, within the boundaries of that ward lies 200 E. Wells St., the Milwaukee Elections Commission. The link to that pdf is reproduced here, for the Court's convenience: <https://drive.google.com/file/d/1zp1X9G1fgRZCfWczZpp0xZ6QO4A3m7lF/view>.

¹⁰ A statewide, ward-by-ward voting breakdown is published by the Wisconsin Elections Commission. *See Election Results*, Wisconsin Elections Commission <https://elections.wi.gov/elections/election-results#accordion-5601>. The ward-by-ward report for the 2022 election for governor is published as an excel spreadsheet and can be downloaded under the drop-down menu labeled "2022 General Election." *Ward by Ward Report_Governor.xlsx* available at https://elections.wi.gov/sites/default/files/documents/Ward%20by%20Ward%20Report_Governor_0.xlsx The ward totals for Milwaukee Ward 141 is available in the second sheet of that spreadsheet, titled "Ward by Ward Report" at row 1966.

¹¹ *Id.*, Ward by Ward Report, rows 1826-2177.

same is true for Wisconsin's 20 largest municipalities¹² (and likely follows in the vast majority of the remainder).

Such consequences are profound and would violate Wisconsin's equal protection guarantees. Take one example: approximately 91%¹³ of the residents of the zip code 53206 are black while 2% are white. But the ward hosting Milwaukee's clerk's office (Ward 141) falls within a different zip code, 53202. And the demographics of 53202 are largely reversed. Just 8% of its residents are black, and 76% are white. But, under Brown's rule, Ward 141 is the only Milwaukee ward that could host an alternate site. Thus, under the circuit court's construction, Wis. Stat. § 6.855 would permit an alternate site *only* in the whiter zip code, forcing the residents of Milwaukee's blackest zip code to travel further to return their ballots. This is, in part, why Wis. Stat. § 6.855 was enjoined in the first place—a single-location rule imposes disparate burdens on different types of voters. *See One Wisconsin Inst.*, 198 F. Supp. 3d at 931-32. Yet for now, this is the message being telegraphed

¹² *See Id.*, Ward by Ward Report, rows 534-687 (Madison), rows 162-220 (Green Bay), rows 1322-1394 (Kenosha), rows 2684-2732 (Racine), rows 284-291, 2402-2444, 3607-3608 (Appleton), rows 3464-3515 (Waukesha), rows 339-342, 898-966 (Eau Claire), rows 3620-3658 (Oshkosh), rows 2839-2875 (Janesville), rows 2235-2260 (West Allis), rows 1428-1455 (La Crosse), rows 3090-3112 (Sheboygan), rows 2203-2234 (Wauwatosa), rows 1008-1029 (Fond du Lac), rows 3402-3423 (Brookfield), rows 3436-2456 (New Berlin), rows 1650-1674 (Wausau), rows 3358-3383 (Menomonee Falls), rows 1800-1825 (Greenfield).

¹³ *See* Census Reporter, 53206 <https://censusreporter.org/profiles/86000US53206-53206/>

from the circuit court's order to the rest of Wisconsin's municipalities. To halt this threat to voters of color, this Court should grant bypass.

II. The Circuit Court's interpretation of Wis. Stat. § 6.84(2) threatens election administration.

Elections are resource-dependent activities, and these resources are constrained in unique fashion, municipality-by-municipality.¹⁴ To ensure their function and efficacy, municipal clerks must be able to balance their available resources to fulfill their statutory obligations. *See* Wis. Stat. § 7.15. The circuit court's construction of Wis. Stat. § 6.855 threatens such efforts across the state.

Wisconsin Stat. § 6.855 says nothing about what tools a municipality may purchase and use at an alternate site. The City of Racine chose to purchase a van to drive to-and-from its IPAV sites to facilitate absentee ballot collection. There is no statutory prohibition against spending money in this fashion or against using a van to service

¹⁴ Wisconsin Legislative Council, *Administration of Elections: Elections Commission and Local Governments*, https://docs.legis.wisconsin.gov/misc/lc/information_memos/2018/im_2018_12; Barry Burden, *The experiences of Municipal Clerks and the Electorate in the November 2020 General Election in Wisconsin*, Elections Research Center University of Wisconsin-Madison (2021), <https://thompsoncenter.wisc.edu/wp-content/uploads/sites/509/2021/09/Burden-2020-Wisconsin-Election-Report-PUBLIC.pdf> (“A hindrance to consensus that cannot be ignored is the tremendous disparity in the sizes of populations that clerks serve. At least one some matters, there are important differences in the needs of clerks and voters between big and small municipalities. Clerks from less populous jurisdictions tend to be especially wedded to existing ways of operating and are more likely to resist new mandates that increase the burden on their small offices.”).

alternate sites. The circuit court only found otherwise by inflating Wis. Stat. § 6.84(2).

Under Wis. Stat. § 6.84(2), absentee ballot statutes are to be “construed as mandatory.” In *Teigen*, this Court confirmed that mandatory requirements must be “strictly adhered to” and “strictly observed.” *Teigen*, 2022 WI 64, ¶53; Wis. Stat. § 6.84(2). Yet in finding certain practices illegal, this Court still pointed to specific provisions that were contravened—this Court never said that all unenumerated absentee voting activity is prohibited. Rather, the *Teigen* lead opinion (in part) specified that drop boxes violated Wis. Stat. § 6.855. There is no such specificity here.

Instead, the circuit court simply looked at Wis. Stat. § 6.855, saw that vehicles were not mentioned, and ruled that they are therefore prohibited under Wis. Stat. § 6.84(2)’s mandate. This is an unworkable inflation of Wis. Stat. § 6.84(2) that threatens municipal clerk’s authority to conduct elections. For example, like vans, pens and pencils are not specifically mentioned under Wis. Stat. § 6.855. Are they also forbidden? Certainly not. But with the circuit court’s order lingering, municipal clerks across the state are left to wonder how to navigate the absentee ballot system, knowing that anything they do which is not specifically

mentioned in statute could subject them to costly litigation under Wis. Stat. § 6.84(2).

To reaffirm that municipal clerks across Wisconsin enjoy the authority to conduct our elections, and to avoid overwhelming the judicial system with unnecessary litigation concerning unenumerated absentee ballot activity, this Court should grant bypass to construe the scope of Wis. Stat. § 6.84(2).

III. This case presents a novel legal question, the resolution of which will have statewide impact.

The history of Wis. Stat. § 6.855 is circuitous, and the provisions at issue are subject to minimal precedential interpretation by any court of this state. When the question presented is “a novel one, the resolution of which will have statewide impact” this Court’s jurisdiction is favored. Wis. Stat. § 809.62(1r)(c)2. Such is the case here, and this Court should grant bypass to resolve this novel question.

As described above, Wis. Stat. § 6.855 was adopted, then enjoined, then modified by the legislature, and then the Seventh Circuit confirmed that the provision at issue, the one-location rule, was no more. BLOC argued to the circuit court that this demonstrated implied repeal of the entirety of the one-location rule, the partisan advantage clause included. Whether the partisan advantage clause still operates; and if so, how, are

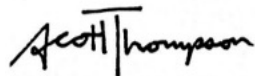
novel legal questions—not to mention, significant questions that touch on the right to vote. *See supra*. This Court should take this case on bypass to resolve these questions of statewide importance.

IV. Conclusion

Much is stake. To ensure that Wisconsinites enjoy full access to the ballot, this Court should grant bypass.

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Respectfully submitted,



Electronically Signed By: Scott B. Thompson

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