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07-09-2024
CIRCUIT COURT
DANE COUNTY, WI
2024CV002019

BY THE COURT:

DATE SIGNED: July 9, 2024

Electronically signed by Stephen E Ehlke
Circuit Court Judge

STATE OF WISCONSIN

DANE COUNTY
BRANCH 15

CIRCUIT COURT

RACINE RECALL, et al.,

Petitioners,

v.

Case No. 2024-CV-2019

WISCONSIN ELECTIONS
COMMISSION, et al.,

Respondents.

**DECISION AND ORDER
DISMISSING RACINE RECALL'S PETITION FOR A WRIT OF MANDAMUS**

INTRODUCTION

In 2022, the people of Wisconsin Assembly District 63 elected Robin Vos to serve as their representative. Halfway through Vos' term, the Wisconsin Supreme Court declared Wisconsin's legislative districts violated the "contiguous territory" requirement of our constitution, thus "rendering them unconstitutional." *Clarke v. WEC*, 2023 WI 79, ¶ 77, 410 Wis. 2d 1, 998 N.W.2d 370. In order to prevent the use of unconstitutional district maps, our Supreme Court "enjoin[ed] the Wisconsin Elections Commission from using the current maps in all future elections." *Id.*

Undeterred by *Clarke*'s holding, Racine Recall and Matthew Snorek (together, "Racine Recall") now ask this Court to issue a writ of mandamus commanding the Wisconsin Elections Commission ("WEC") to hold a recall election in District 63. I dismiss the petition because the relief sought—an election under an unconstitutional district—plainly violates our Supreme Court's injunction against "using the current maps in all future elections." Simply put, this court will not command WEC to do what the Wisconsin Supreme Court forbids.

BACKGROUND

The Wisconsin Constitution guarantees the people's right to recall elective officers. Wis. Const., art. XIII, § 12. Wisconsin statutes, in turn, create a procedure for the people to ask WEC to hold a recall election. Wis. Stat. § 9.10. The first step in that procedure allows any of "[t]he qualified electors of the state" to "petition for the recall of any incumbent elective official" Wis. Stat. § 9.10(1)(a). Any recall petition "shall be signed by electors equal to at least 25 percent of the vote cast" Wis. Stat. § 9.10(1)(b). The petition must further satisfy requirements related to the form of the petition and the manner in which it is circulated for signing. *See, e.g.*, Wis. Stat. § 9.10(2) ("Petition requirements"). A petitioner has only sixty days to gather those signatures. Wis. Stat. § 9.10(2)(d). In the meanwhile, the elected official subject to the recall has the right to "file a written challenge ... specifying any alleged insufficiency."¹ Wis. Stat. § 9.10(3)(b). Then, following opportunity for written briefing on the challenge, WEC must either declare the petition insufficient or, if the petition is sufficient, hold a recall election.² *Id.* However WEC decides, an

¹ Wis. Stat. § 9.10(3) applies to state officials. Another section, not at issue in this case, applies to the recall of city, village, town, and other municipal officials. *See* Wis. Stat. § 9.10(4).

² Wis. Stat. § 9.10(3)(b) reads, in relevant part:

aggrieved party “may file a petition for a writ of mandamus or prohibition with the circuit court” Wis. Stat. § 9.10(3)(bm).

On March 27, 2024, Racine Recall filed a petition for a recall election in District 63. Dkt. 3 ¶ 16. Sixty-two days later, on May 28, 2024, Racine Recall provided WEC “over 9,000 signatures.” *Id.*, ¶25. Although sixty-two days is greater than the sixty days allotted by Wis. Stat. § 9.10(2)(d) for the gathering of signatures, Racine Recall asserts that its submission was timely because the sixtieth day was a Sunday, the sixty-first day was Memorial Day, and Wis. Stat. § 990.001(4)(b) generally prohibits the use of a Sunday or holiday as a legal deadline. *Id.*, ¶21.

On June 28, 2024, WEC declared the petition insufficient.³ *Id.*, ¶ 27; Ex. A. Racine Recall then filed this petition for a writ of mandamus.

LEGAL STANDARD

“Mandamus is an extraordinary legal remedy, available only to parties that can show that the writ is based on a clear, specific legal right which is free from substantial doubt.” *Lake Bluff Housing Partners v. City of S. Milwaukee*, 197 Wis. 2d 157, 170, 540 N.W.2d 189 (1995) (quotation marks and citations omitted).

DECISION

Racine Recall is entitled to a writ of mandamus only if it can show it has a clear legal right to a recall election. Racine Recall cannot meet this burden based on our Supreme Court’s decision

Within 31 days after the petition is offered for filing, the official with whom the petition is offered for filing shall determine by careful examination whether the petition on its face is sufficient and so state in a certificate attached to the petition. If the official finds that the amended petition is sufficient, the official shall file the petition and call a recall election to be held on the Tuesday of the 6th week commencing after the date of filing of the petition.

³ Racine Recall argues that Vos and WEC committed various other procedural errors. The Court does not address these other matters because “the only matter before the court shall be whether the recall petition is sufficient.” Wis. Stat. § 9.10(3)(bm).

in *Clarke*. There, the Court held that “[b]ecause the current state legislative districts ... violate the constitution’s contiguity requirements, we enjoin the Wisconsin Elections Commission from using the current legislative maps in future elections.” *Clarke*, 2023 WI 79, ¶ 3. The *Clarke* injunction is important because if it applies to Racine Recall’s petition, then Racine Recall does not have a legal right to an order commanding WEC to hold an election. To determine whether the *Clarke* injunction bars Racine Recall’s petition for a writ of mandamus, the Court need only answer two questions: (1) is District 63 part of the “current legislative maps” named in *Clarke*, and (2) if so, is a recall election a “future election.” As discussed below, the answer to both of these questions is plainly “yes.”

As to the first question, Racine Recall seeks “a recall election of Assembly District 63 Representative ... Robin J. Vos” Dkt. 3 at 1; *see also id.* at 21 (seeking an order “[c]ompelling WEC to call a recall election for Speaker Vos in District 63.”). Any ambiguity about Racine Recall’s request is extinguished by its request for a recall in “District 63 as provided per the District map based on 2022” *Id.* ¶ 6.

As to the second question, a recall election is, almost by definition, part of the group of “all future elections.” The word “all” is an adjective used for “representing the entire number, amount, or quantity ...” or “the utmost possible of” a thing. *The American Heritage College Dictionary* 35 (4th ed. 2002)(courts “often consult a dictionary in order to guide our interpretation of the common, ordinary meanings of words.” *Stroede v. Society Ins.*, 2021 WI 43, ¶12, 397 Wis. 2d 17, 959 N.W.2d 305). By using the word “all” to communicate the scope of its injunction, our Supreme Court must have meant to include even unusual or unanticipated elections like a recall election. Accordingly, because *Clarke* enjoined WEC from holding a recall election in District 63, this mandamus action seeks a remedy which is not available. Therefore, this Court lacks authority to

issue the requested writ. Only the Supreme Court “has the . . . power to overrule, modify, or withdraw language from prior Wisconsin cases.” *Zarder v. Humana Ins. Co.*, 2010 WI 35, ¶ 54, 324 Wis. 2d 325, 782 N.W.2d 682 (citing *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997)). Accordingly, Racine Recall’s petition for a writ of mandamus is dismissed.

ORDER

For these reasons,

IT IS ORDERED that Racine Recall and Matthew Snorek’s petition for a writ of mandamus is dismissed.

This is a final order for purpose of appeal.