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# Supreme Court of Wisconsin

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

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No. 2021AP1976-OA      Kleefisch v. Wisconsin Elections Commission

Pending before the court is a petition for leave to commence an original action and a supporting memorandum filed by petitioner, Rebecca Kleefisch, in her official capacity as candidate for Governor. The respondent, Wisconsin Elections Commission, filed a response opposing the petition. A non-party brief, amicus curiae, submitted by the League of Women Voters of Wisconsin, Disability Rights Wisconsin, Wisconsin Faith Voices for Justice, Souls to the Polls, and the Wisconsin Democracy Campaign, was accepted and considered as well.

IT IS ORDERED that the petition for leave to commence an original action is denied.

PATIENCE DRAKE ROGGENSACK, J. (*dissenting*). Elections conducted in a manner that garners the support of Wisconsin's voters are critically important. Since the 2020 presidential election, many Wisconsin voters have raised serious concerns about the conduct of elections because of directives given by the Wisconsin Elections Commission (WEC) to the municipal

clerks who run the elections. We have been petitioned repeatedly to accept cases that address very similar concerns.<sup>1</sup>

In her petition for review, Rebecca Kleefisch focuses on absentee ballots, as have other petitioners. She contends that WEC guidance in regard to absentee ballots given to municipal clerks is contrary to the legislature's statutory directives. Kleefisch contends that WEC has not followed the law on: (1) the use of unattended absentee ballot drop boxes; (2) the role of special voting deputies at residential care facilities and retirement homes; (3) the use of consolidated polling places; and (4) whether WEC must follow rule-making procedures before issuing guidance on these issues. She contends that these are serious, repetitive concerns that require Supreme Court review.

Whether the WEC guidance documents are consistent with state statutes that set the parameters for elections in Wisconsin presents an issue of publici juris, because through its guidance, WEC affects how statewide elections are conducted. In re Petition of Heil, 230 Wis. 428, 436-37, 284 N.W. 42 (1938) (explaining that issues of publici juris protect the liberties and rights of people throughout the state).

The legality of absentee ballot guidance from WEC has been simmering since 2020, and will likely continue until we thoroughly address absentee ballot issues generated by WEC. Because Wisconsin voters deserve elections conducted in a manner that we have reviewed and approved, I would grant Kleefisch's petition to commence an original action. Because the majority sidesteps its obligation to hear the continuing cry of Wisconsin voters and address absentee ballot issues, I respectfully dissent.

I am authorized to state that Chief Justice ANNETTE KINGSLAND ZIEGLER and Justice REBECCA GRASSL BRADLEY join this dissent.

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Sheila T. Reiff  
Clerk of Supreme Court

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<sup>1</sup> Trump v. Biden, 2020 WI 91, ¶101, 394 Wis. 2d 629, 951 N.W.2d 568 (Roggensack, J., dissenting); Trump v. Evers, No. 2020AP1971-OA (petition denied); Hawkins v. Wis. Elections Comm'n, 2020 WI 75, 393 Wis. 2d 629, 948 N.W.2d 877; Mueller v. Wis. Elections Comm'n, No. 2020AP1958-OA (petition denied); Fabick v. Wis. Elections Commission, 2021AP428-OA (petition denied); Teigen v. Wis. Elections Comm'n, No. 2022AP91 (review granted).