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June 30, 2020

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

Nos. 2019AP2397
2020AP112

Zignego v. Wis. Elections Comm'n

The plaintiffs-respondents-petitioners, State ex rel. Timothy Zignego, Frederick G. Luehrs, III, and David Opitz, have filed a motion requesting this court to decide this matter on briefs without oral argument or, in the alternative, to set an expedited date for oral argument. The defendants-appellants, the Wisconsin Elections Commission, Marge Bostelmann, Julie Glancey, Ann Jacobs, Dean Knudsen, and Mark Thomsen, have filed a response in opposition to this motion.

The defendants-appellants have also filed a motion to extend the time in which to file their response brief. The plaintiffs-respondents-petitioners have filed a response in opposition to that motion. Accordingly,

IT IS ORDERED that the motion of the plaintiffs-respondents-petitioners to decide the matter on briefs or, in the alternative, to set an expedited date for oral argument is denied. This

matter will be scheduled for oral argument in the normal course, but oral argument will not occur before September 29, 2020; and

IT IS FURTHER ORDERED that the motion of defendants-appellants for an extension of time to file their response brief is granted. The response brief shall be served and filed on or before July 21, 2020.

REBECCA GRASSL BRADLEY, J. (*concurring in part; dissenting in part*). This case arises from a circuit court's December 2019 writ of mandamus ordering the Wisconsin Elections Commission (WEC) to deactivate voters from the voting registration rolls after WEC received information that those voters were no longer eligible to vote where they were formerly registered. WEC did not comply with the circuit court order and asked the court of appeals to reverse it.¹ The petitioners filed a petition to bypass the court of appeals and later filed a petition for a supervisory writ. A majority of this court denied both requests, over my dissents.² This court granted petitioners' petition for review after the court of appeals issued its final decision in favor of WEC. See State ex rel. Zignego v. Wis. Elections Comm'n, 2020 WI App 17, 391 Wis. 2d 441, 941 N.W.2d 284. The court of appeals, which is primarily an error-correcting court, rendered its opinion without the benefit of any cases interpreting the statute involved. This case will be finally resolved only by a decision of the supreme court.

This case involves issues of first impression impacting the voting rights of Wisconsin citizens and the integrity of impending elections. Time is of the essence because this case implicates voter eligibility and the manner in which Wisconsin's election officials maintain voter registration lists. Petitioners have been seeking an answer from the supreme court for more than six months. During that time, three of Wisconsin's five 2020 elections were held. Under this court's typical briefing and oral argument schedule, the people of Wisconsin would most likely not receive a decision in this case until after every single one of Wisconsin's 2020 elections has come

¹ The circuit court's order required WEC to comply with a state statute's 30-day deadline to deactivate ineligible voters, but WEC believed it could wait 12-24 months before removing the identified voters.

² See Rebecca Grassl Bradley, J., Dissent to Order Denying Petition to Bypass (S. Ct. Order issued Jan. 13, 2020) (joined by Chief Justice Patience Roggensack and Justice Annette Kingsland Ziegler); Rebecca Grassl Bradley, J., Dissent to Order Denying Petition for Supervisory Writ (S. Ct. Order issued June 1, 2020).

and gone (including the presidential election in November)³ and nearly an entire year after petitioners' commencement of this time-sensitive appellate litigation. The majority's unusual order delaying oral argument in this case until at least September 29, 2020 renders a timely decision impossible.⁴

This court certainly could decide these significant issues of statewide importance in a timely manner before the November 2020 election. While the court unanimously grants respondents' request for an extension of their briefing deadline, the court nevertheless could also grant petitioners' unopposed request for oral argument in August—enabling the court to issue a timely decision. With no explanation, the majority declines to do so. I would grant petitioners' unopposed request for oral argument in August to ensure that Wisconsin's elections are held in accordance with the law as declared by the State's highest court.

"When justice is not forthcoming, when it is deferred too long, the result may be extreme injustice." Strachan v. Colon, 941 F.2d 128, 129 (2d Cir. 1991) ("For that reason the 40th clause of Magna Carta provided that justice be to none denied or delayed. 1 W.S. Holdsworth, A History of English Law, 57-58 (3rd ed. 1922). This ancient tenet of the law has been capsulized in the expression 'justice delayed is justice denied.'). Justice for the people of Wisconsin means deciding this case expeditiously for the citizens of Wisconsin in order to ensure the integrity of Wisconsin's elections going forward.

Nearly a century ago, this court observed that we have "control over our own work" and we should "use all reasonable and lawful means to see that it is done as expeditiously as circumstances will permit." See In re Snyder, 184 Wis. 10, 11, 198 N.W. 616 (1924). This court emphasized the importance of timely justice:

There is an insistent and well-founded demand by the public for a speedy and effective administration of justice, and it has been the constant effort of this court to meet such demand, not necessarily because it is a public demand, but because it is inherently reasonable and just. Courts are public servants created to do public work. They should prosecute such work, not only honestly and in accordance with

³ The same day the circuit court in this case issued the writ of mandamus precipitating the appeal, the League of Women Voters of Wisconsin, represented by the Fair Elections Center based in Washington D.C., filed a lawsuit in federal court against the members of the Wisconsin Elections Commission, alleging violations of the procedural due process requirements of the Fourteenth Amendment to the United States Constitution, demonstrating the perceived importance of this case not only statewide but nationally. See League of Women Voters of Wisconsin v. Wisconsin Elections Comm'n, No. 19-CV-1029 (W.D. Wis. filed Dec. 17, 2019).

⁴ Petitioners advised this court that its decision would need to be released no later than September 13, 2020 (three days before ballots must be distributed for the November 3, 2020 election) in order for the November election to proceed in accordance with this court's decision.

established law, but timely. Clients are a part of the public and are entitled to a reasonably speedy determination of their cases. It has been the pride of this court and of courts generally of this state that litigants have had speedy justice.

Id. (emphasis added).

These timeless principles espoused in In re Snyder are particularly compelling in cases affecting every Wisconsin citizen. A majority of this court disregards its duty to the people we serve by inexplicably delaying the final resolution of a critically important and time-sensitive case involving voting rights and the integrity of Wisconsin's elections. It is the duty of Wisconsin's highest court to promptly decide cases presenting novel issues of statewide significance. Elections are the foundation of American government and their integrity is of such monumental importance that any threat to their validity should trigger not only our concern but our prompt action. The motion to expedite a decision on the merits in this case should be granted. Instead, this court maintains its idle position as elections come and go. I respectfully dissent from that portion of the court's order denying petitioners' unopposed request for oral argument and concur with that portion of the order granting respondents' motion for an extension of their briefing deadline.

I am authorized to state that Justice DANIEL KELLY joins this opinion concurring in part and dissenting in part.

Sheila T. Reiff
Clerk of Supreme Court

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