

FILED

OCT 04 2022

CIRCUIT COURT  
WAUKESHA COUNTY, WIS.

STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

ROBERT PELLEGRINI,

Plaintiff,

-vs-

Case: 22CV004

WISCONSIN ELECTIONS COMMISSION, et al.,

Defendants.

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**DECISION AND ORDER ON WEC'S MOTION FOR FINAL ORDER**

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¶1. Plaintiff Robert Pellegrini filed a complaint with the Wisconsin Elections Commission ("WEC") against the Clerk of the Village of Hartland—Darlene Igl—pursuant to Wis. Stat. § 5.06. That complaint challenged the clerk's use of drop boxes to collect absentee ballots in a past election. WEC determined that Ms. Igl's use of drop boxes did not violate state elections law and issued a decision, signed by its Administrator, dismissing Mr. Pellegrini's complaint ("WEC's decision"). This action for judicial review challenged WEC's decision.

¶2. After Mr. Pellegrini initiated this action, the Wisconsin Supreme Court decided *Teigen v. WEC*, 2022 WI 64, 976 N.W.2d 519, holding in part that unstaffed absentee ballot drop boxes are not permitted under Wisconsin law. Thereafter, the parties here agreed that WEC's decision rejecting Mr. Pellegrini's Wis. Stat. § 5.06 complaint must be reversed.

¶3. WEC in its motion contends that a final order is appropriate and this action for judicial review is now moot in the light of the parties' agreement that *Teigen* requires reversal of WEC's decision.

¶4. Mr. Pellegrini, on the other hand, desires to continue this litigation and asks this Court to reverse WEC's decision on an additional ground raised in his complaint for judicial review, that is, that WEC has no authority to delegate its decision-making authority on Wis. Stat. § 5.06 complaints to its Administrator or Chair, but rather, must be addressed and decided by a two-thirds vote of the Commission.

¶5. Mr. Pellegrini argues that the case is not moot because the delegation issue and the corresponding relief he seeks on that issue is separate from the question addressing the legality of drop boxes.

¶6. Moreover, Mr. Pellegrini argues that well-established exceptions to the mootness doctrine apply here and warrant continued litigation of the February 27, 2020, Delegation Order ("Delegation Order").

¶7. The Court has reviewed the submissions filed by the parties and agrees with WEC that a final order reversing WEC's decision is appropriate.

¶8. The Court disagrees with Mr. Pellegrini that he brought a separate and independent claim challenging the Delegation Order. His only claim was under Wis. Stat. § 5.06(8) for judicial review of WEC's December 6, 2021, decision denying his complaint against Ms. Igl. There was no claim challenging the validity of the Delegation Order, and the delegation issue was presented only as an alternative ground for reversing WEC's decision.

¶9. As a result, the Court finds that the delegation issue is moot, and continued litigation would result in an advisory opinion on a matter not necessary to resolve the case. To

be sure, there are exceptions to overcoming mootness, and Mr. Pellegrini has spelled out reasons for applying them here in order to address the legality of the Delegation Order. Nonetheless, for the reasons outlined in WEC's submissions, the Court, in the exercise of its discretion, concludes that exceptional circumstances do not warrant applying the identified exceptions and addressing the legality of the Delegation Order in this action.

¶10. For the reasons laid out by WEC in its reply brief, the Court has procedural concerns with addressing this issue given the basis for the present challenge and how it was pursued in the complaint for judicial review. Moreover, as WEC spells out, the delegation issue became moot before the parties or this Court engaged in any litigation on its merits. Finally, although the Court agrees with Mr. Pellegrini that the delegation issue is likely to come before courts again, the Court disagrees that the issue is likely to evade review.

¶11. Accordingly, for the foregoing reasons, IT IS ORDERED that WEC's motion for a final judgment is GRANTED; that based upon the Wisconsin Supreme Court's decision in *Teigen v. WEC*, 2022 WI 64, 976 N.W.2d 519, judgment should be entered in favor of Mr. Pellegrini reversing WEC's decision rejecting his challenge to the use of drop boxes; that alternative grounds for reversing WEC's decision are moot; and all other motions, including motions to intervene in the case, are denied as moot.

Dated this 4th day of October, 2022.

BY THE COURT:

/s/ Michael J. Aprahamian

Circuit Court Judge