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SUPREME COURT



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Supreme Court of Wisconsin

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September 20, 2024

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

No. 2024AP1872

Kennedy v. Wisconsin Elections Comm'n, L.C.# 2024CV2653

The court having considered the petition to bypass the court of appeals submitted on behalf of respondent-respondent, Wisconsin Elections Commission, and the response to the petition filed by petitioner-appellant, Robert F. Kennedy, Jr.;

IT IS ORDERED that the petition to bypass is granted, and the appeal is accepted for consideration in this court; and

IT IS FURTHER ORDERED that the expedited briefing schedule established by the court of appeals shall continue to apply to the filing of the remaining merits briefs in this court. Given the need for a prompt resolution of this appeal, the court does not contemplate holding oral argument in this matter. The court will endeavor to issue a written decision as expeditiously as possible.

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REBECCA GRASSL BRADLEY, J. (*dissenting*). A majority of this court grants the Wisconsin Elections Commission's (WEC) petition to bypass the court of appeals before the WEC has filed its response brief, despite the majority's professed practice in prior cases of "generally den[ying] as premature petitions for bypass prior to the filing of briefs in the court of appeals." See Jeffrey Becker v. Dane County, No. 2021AP1343 unpublished order (Wis. Nov. 16, 2021). The members of the majority do not follow their ostensible "rule" regarding so-called "premature" petitions with any consistency.¹

Process matters. The members of the majority sometimes enforce a rule against "premature petitions" but sometimes they don't, without disclosing any standards by which they will choose whether to apply it. Such arbitrariness by courts is antithetical to the original understanding of the judicial role. See The Federalist No. 78, at 471 (Alexander Hamilton) (Clinton Rossiter ed., 1961). ("To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them."). The majority's arbitrariness in following its professed procedure in one case while discarding it in another sends a message to litigants that judicial process will be invoked or ignored based on the majority's desired outcome in a politically-charged case. I dissent.

I am authorized to state that Chief Justice ANNETTE KINGSLAND ZIEGLER joins this dissent.

Samuel A. Christensen
Clerk of Supreme Court

¹ For example, the court unanimously granted a petition to bypass the court of appeals in State ex rel. Kaul v. Prehn, No. 2021AP1673, unpublished order (Wis. Nov. 16, 2021), at the same time it denied the petition in Becker. Just a few months before that, the court granted the Wisconsin Legislature's petition to bypass in Waity v. LeMahieu, No. 2021AP802, unpublished order (Wis. July 15, 2021), before the parties filed all of their briefs with the court of appeals. In those cases, the court neglected to explain its reasoning for granting the petitions while denying the petition in Becker, despite all three petitions having been filed before the completion of briefing in the court of appeals.