﻿WISPOLITICS: Top court unites in Wolfe-Elections Commission case

By WisPolitics

The often-divided state Supreme Court the other day issued a unanimous decision on a controversial case.

Such unity is worth noting in these days of bitter partisanship and an April state Supreme Court race that will cost tens of millions of dollars to determine ideological control of the high court.

The case centers on Meagan Wolfe, the administrator of the bipartisan Elections Commission. The ruling will allow her to continue serving in the role indefinitely. And it brings to an end an effort by GOP lawmakers to remove Wolfe from the post, spurred on by complaints over how the 2020 election was conducted.

Wolfe in reacting gave no indication how long she plans to continue serving as the Elections Commission administrator. She only focused on the upcoming spring election and the work of the state’s local clerks.

“Serving beside them is an honor, and Wisconsinites are lucky to have them,” Wolfe said in a statement. “I have every confidence that our clerks will continue to deliver fair and accurate elections to all Wisconsin communities.”

Senate Majority Leader Devin LeMahieu, R-Oostburg, and Senate President Mary Felzkowski, R-Tomahawk, in a joint statement said they were disappointed with the court’s ruling. They also took a shot at the three Dem appointees to the Elections Commission, saying they “have decided that Wisconsinites do not get a say in who administers our elections.”

“Senate Republicans will continue to do everything we can to ensure that Wisconsin has free and fair elections and restore integrity to the process,” they said.

The political and legal background is extensive.

Seven years ago, Wolfe was elevated from assistant administrator to interim leader after the GOP-controlled state Senate voted to reject the nomination of her predecessor Mike Haas over his work for the former Government Accountability Board and its connection to the John Doe probe of former GOP Gov. Scott Walker.

A year later, the Senate unanimously confirmed her for a four-year term. But since the 2020 election, some GOP lawmakers have been looking for a way to replace her. That includes a vote to fire her in 2023 that Republican lawmakers later acknowledged was symbolic. Later came a push to impeach her from the post.

In 2023, the three GOP appointees on the six-member Elections Commission voted to reappoint Wolfe as they hoped to then submit the nomination to the Republican-controlled state Senate for confirmation.

But the three Dem commissioners abstained, arguing the body needed at least four members to support an appointment and Wolfe could serve in the job indefinitely. That prompted the legal skirmish over her status as the agency administrator.

The high court found state law requires the six-member Elections Commission to appoint a new administrator only if a vacancy occurs. It also ruled there is no vacancy with Wolfe continuing to serve in the role even though the original four-year appointment expired in 2023.

In doing so, the court cited a previous ruling in a similar case that allowed one of Walker’s appointees to continue serving on the Natural Resources Board even after his term expired.

Citing that decision, conservative Chief Justice Annette Ziegler wrote for the unanimous court that, “WEC does not have a duty to appoint a new administrator to replace Wolfe simply because her term has ended.”

That 2022 decision found an appointee could continue serving on the Natural Resources Board even though his term had expired in May 2021.

The state Department of Justice under Dem Attorney General Josh Kaul filed suit seeking to force Wausau dentist Fred Prehn off the board after he declined to step down once his six-year appointment had expired. The Walker appointee cited past court precedent that an appointee could continue serving in a role until the Senate confirmed a replacement.

Three liberal justices still on the court from that case dissented in that 4-3 ruling. In the Wolfe ruling, liberal Justice Ann Walsh Bradley wrote a concurring opinion that she still disagreed with the Prehn decision.

Joined by colleagues Rebecca Dallet and Jill Karfosky, Bradley wrote “it may behoove us” to give that decision a second look, though no parties asked the court to overturn that decision in the Wolfe case.

Ann Walsh Bradley cited Dallet’s dissent in that 2022 case that the majority opinion rested “on shaky ground” and the possibility it could lead to “absurd results” such as Prehn serving as long as he wanted, so long as the state Senate didn’t confirm a successor nominated by the governor.

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