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DATE: May 12, 2021

TO: Milwaukee County Board of Supervisors

FROM: Margaret C. Daun, Corporation Counsel
Scott F. Brown, Deputy Corporation Counsel

SUBJECT: Referral of File No. 21-76

QUESTION

Does 2013 Wisconsin Act 14 (“Act 14”) violate the Voting Rights Act of 1965 (“VRA”)?¹

SUMMARY

No, Act 14 does not violate the VRA. The VRA prohibits racial discrimination in voting. Section 2 of the VRA prohibits practices or procedures that discriminate on the basis of race, color, or membership in one of the language minority groups identified therein. Act 14 (“Act 14”) altered the pay structure and term length of the Milwaukee County Board of Supervisors. The Act also limited total annual appropriations for County Board operations and reduced or eliminated the Board’s contracting authority. Nothing in Act 14 (either facially or as applied) impacts County residents’ franchise. As such, Act 14 does not run afoul of the VRA, regardless of any demographic differences between Milwaukee County and other counties, because (1) neither the reallocation of powers among different branches of government or bodies, nor the quantity or compensation of local elected officials for a given jurisdiction are protected or litigable rights under the Act; and (2) Milwaukee County and the division of powers and authorities among branches of its government are entirely discretionary matters of the state, as the County is an arm of the state.

¹ The resolution also requests that the OCC submit its opinion to the State of Wisconsin Attorney General (“AG”) for further review of the constitutionality of Act 14 under the VRA. Importantly, the AG will not opine regarding matters involving the exercise of legislative or executive judgment. (Exh. A at ¶ 3.E.) Likewise, the AG will not issue opinions on the applicability of federal statutes and regulations administered by federal authorities, such as the Civil Rights Act of 1964. (*Id.* at ¶ 3.G.) Thus, even if the OCC requested an opinion of the AG on File No. 21-76, the AG will not respond to such a request.

DETAILED ANALYSIS

What is 2013 Wisconsin Act 203?²

2013 Wisconsin Act 14 initiated some of the largest changes in governance and control of Milwaukee County government operations. Examples include:

- Limiting the annual salary that may be paid to a Milwaukee County Board Supervisor to the annual per capita income of Milwaukee County, as determined by the most recent U.S. Census. Wis. Stat. § 59.10(2)(c).
- Changing the term for Milwaukee County Supervisors from four years to two years. Wis. Stat. § 59.10(2)(b).
- Limiting expenditures that are directly related to the operation and functioning of the Board to 0.4% of the county's portion of the county tax levy. Wis. Stat. § 59.60(7).
- Transferring or removing certain authorities of the Board and clarifying the roles of the Board and Executive in some areas where power is shared.
- Creating a new contracting process. Wis. Stat. § 59.52(31).
 - Contracts under \$100,000 may take effect upon the discretion of the administration.
 - Contracts with a value between \$100,000 and \$300,000 may take effect if the Finance Committee does not vote to reject the contract.
 - If the Committee rejects a contract, it must go the full Board within 30 days for a vote.
 - Contracts valued in excess of \$300,000 may take effect only if approved by a vote of the Board.”

What is the Voting Rights Act of 1965?

The Voting Rights Act of 1965 ensures that no person be denied the right to vote based upon “race or color.” See 52 U.S.C. § 10301, *et seq.* Specifically, section 2(a) states that governments cannot adopt standards, practices, or procedures that “result[] in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.”

² Excerpted from a previous OCC opinion attached to File No. 19-707.

Section 2(b) (cited in *Gonzalez v. City of Aurora*, 535 F.3d 594, 597 (7th Cir. 2008)) further explains:

A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representative of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered [p]rovided [t]hat nothing in this section establishes a right to have members of a protected class elected in numbers equal to this proportion in the population.

Does Act 14 implicate or somehow abridge rights protected under the VRA either directly (facially) or indirectly (as applied)?

No. There is no link between Act 14 and the VRA. Specifically, Act 14 has zero impact on any individual's ability or right to exercise their electoral franchise. And the statutory reallocation of powers under Act 14 have nothing to do with the protections afforded by the Voting Rights Act. And nothing in Act 14 differentiates among County voters based on race or color. Finally, the organization of Milwaukee County and the allocation of powers/authorities among the branches of its government are entirely a matters of state control and discretion, not subject to review under the Voting Rights Act.
