

Richard Teigen and Richard Thom,

Plaintiffs,

vs.

Wisconsin Elections Commission,

Defendant.

Case No. 2021CV0958

Case Code: 30701

Hon. Michael O. Bohren

**BRIEF IN SUPPORT OF PROPOSED INTERVENOR-DEFENDANT
DSCC'S MOTION TO INTERVENE**

I. INTRODUCTION

This brief is submitted in support of the proposed Intervenor-Defendant DSCC's motion to intervene in this proceeding pursuant to Wis. Stat. § 803.09(1)-(2). As required by Section 803.09(3), a responsive pleading setting forth the defenses for which intervention is sought accompanies the DSCC's motion. *See* proposed Answer and Affirmative Defenses attached as Ex. 1 to DSCC's motion.

Wisconsin law allows for intervention as of right and for permissive intervention under the broad discretion the Court has to allow intervention by parties with cognizable interests in the matter. Wis. Stat. § 803.09(1)-(2). DSCC is the national Democratic Party committee as defined by 52 U.S.C. § 30101(14), with the mission of electing Democratic candidates to the U.S. Senate, including in Wisconsin. Affidavit of A. Piatt in Support of Motion to Intervene of DSCC ("Piatt Aff."), ¶ 2. DSCC works to accomplish that mission by making expenditures for and contributions

to Democratic candidates for the U.S. Senate and assisting state parties throughout the country in voter education and turnout efforts, among other things. *Id.* at ¶ 4. In 2022, Wisconsin will hold an election for one of its U.S. Senate seats in a race that is already expected to be one of the most competitive in the country. *Id.* at ¶ 6.

2020 saw the highest turnout for Wisconsin voters in 70 years (*Id.* at ¶ 5), with nearly 76% of eligible voters participating and making themselves heard. That turnout was facilitated by the widespread availability of carefully regulated secure drop boxes, in which voters can safely and securely deposit their voted ballots, confident that those ballots will reach elections officials in time to be counted. Many if not most of these secure drop boxes were staffed and carefully supervised by duly authorized representatives of Wisconsin's municipal clerks. *See* Wis. Stat. §§ 5.02(10), 6.87(4)(b)1. There is no evidence whatsoever that the use of secure drop boxes like these facilitated voter fraud. To the contrary, the evidence demonstrates that such secure drop boxes helped ensure that countless lawful voters were able to participate in the election, without having to bear the burden of long lines (a perennial problem in Wisconsin, particularly in the state's denser population centers) or worry that the U.S. Postal Service would not deliver their ballot in time to be counted (a reality that, but for judicial intervention, would have invalidated approximately 80,000 lawful voters' ballots in the 2020 spring primary). In the post-election, several lawsuits were filed challenging drop box voting. All failed.

Plaintiffs' litigation is the latest in this relentless attack, all undertaken with the aim of making it harder for Wisconsin voters to successfully cast ballots in the state's elections.¹ They

¹ This is one of two contemporaneous challenges by the Wisconsin Institute for Law & Liberty ("WILL") regarding the use of drop boxes in the Wisconsin election process, which follow three previous actions last year challenging the use of such boxes, none of which has been successful. *Mueller v. Jacobs*, 2020AP1958-OA (Wis. Dec. 3, 2020); *Trump v. Wis. Elections Comm'n*, 506 F. Supp. 3d 620 (E.D. Wis. 2020), *aff'd*, 983 F.3d 919 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (2021), *Fabick v. Wis. Elections*

seek to have all drop boxes declared illegal, no matter how secure and how carefully regulated. This would erect new and unjustifiable burdens to voting in advance of the upcoming U.S. Senate election. DSCC has a strong “cognizable interest” in defending against this attack both to help ensure that voters are not impeded by this cynical effort when they attempt to vote in the 2022 U.S. Senate election, and because the invalidation of drop boxes would require DSCC to divert valuable resources to reeducation of voters who relied on drop boxes in 2020 and additional turnout efforts to counteract the detrimental effects that eliminating the availability of drop boxes would have. Piatt Aff. ¶¶ 7-8. In an election, injuries to political committees caused by diversion of resources are particularly acute, because money that is not available in the cycle for voter persuasion is forever lost; once the election occurs, the window for persuasion and outreach has forever passed. *Id.* at ¶ 9.

Plaintiffs seek to bar the use of this important form of access to the ballot box despite the absence of *any* evidence that voters or election officials abused secure drop boxes in 2020 or that the availability of such boxes resulted in any voting fraud. The Wisconsin Elections Commission (“WEC”) has repeatedly endorsed the use of appropriately regulated secure drop boxes in guidance to local election officials. Far from allowing “unsupervised” drop boxes or “invit[ing] fraud and abuse,” as Plaintiffs claim (Compl. ¶ 11), the WEC’s drop-box guidance follows “best practices [that are] based on advice from the Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency and include[] information about drop box security and chain of

Comm’n, No. 2021AP428-OA (Wis. June 25, 2021). See also *WILL Sues Wisconsin Elections Commission Challenging Legal Status of Ballot Drop Boxes*, WISCONSIN INSTITUTE FOR LAW AND LIBERTY (June 28, 2021), available at: <https://will-law.org/will-sues-wisconsin-elections-commission-challenging-legal-status-of-ballot-drop-boxes/?fbclid=IwAR1gWhkDxIZN1OAUwbXbq-swaneJfXmaMZjnq9PlqOUzp8NIs2h62J5HQ>; *WILL Files WEC Complaint Over Village of Hartland’s Use of Absentee Ballot Drop Boxes*, WISCONSIN INSTITUTE FOR LAW AND LIBERTY (June 29, 2021), available at: <https://will-law.org/will-files-wec-complaint-over-village-of-hartlands-use-of-absentee-ballot-drop-boxes/>.

custody procedures for securely emptying the drop boxes on a regular basis.” Ex. 1-B to Proposed Answer and Affirmative Defenses.²

Moreover, the leaders of the Wisconsin Legislature emphasized their “**wholehearted[] support**” of this practice during the 2020 campaign and that such drop boxes are an “**expressly authorized absentee-ballot-return method[]**.” Letter from Misha Tseytlin to Maribeth Witzel-Behl, City Clerk, City of Madison (Sept. 25, 2020) (boldface added) (“[V]oters may also deposit their completed absentee ballots in authorized ‘drop boxes,’ which ‘must be secured and locked at all times’ to protect ballot integrity. We wholeheartedly support voters’ use of any of these convenient, secure, and expressly authorized absentee-ballot-return methods.”) (attached as Ex. 1-B to Proposed Answer and Affirmative Defenses).³ The WEC’s drop-box guidance has drawn widespread, bipartisan praise, including from Justice Gorsuch.⁴

In these circumstances, DSCC readily satisfies the standard for intervention as of right. The motion is clearly timely; DSCC has an interest directly related to the subject matter of the action; disposition of the action may, as a practical matter, affect DSCC’s interest; and the WEC, as a state agency, does not adequately represent DSCC’s interests. In the alternative, this Court should exercise its broad discretion and grant DSCC permissive intervention under Wis. Stat. § 803.09(2).

² *Why did WEC allow clerks to use drop boxes for absentee ballots?*, WISCONSIN ELECTIONS COMMISSION, available at: <https://elections.wi.gov/node/7284> (last accessed 7/11/2021).

³ https://www.wpr.org/sites/default/files/september_25_2020_letter_to_city_clerk_witzel-behl.pdf. (last accessed 7/11/2021).

⁴ “Returning an absentee ballot in Wisconsin is also easy.... Until election day, voters may, for example, hand-deliver their absentee ballots to the municipal clerk’s office or other designated site, or they may place their absentee ballots in a secure absentee ballot drop box. Some absentee ballot drop boxes are located outdoors, either for drive-through or walk-up access, and some are indoors at a location like a municipal clerk’s office.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 36 (2020) (Gorsuch J., concurring).

II. BACKGROUND

Plaintiffs are two registered Wisconsin voters who reside in Waukesha County. Compl. ¶¶ 17-18. They allege that the use of secure drop boxes for returning absentee ballots is inconsistent with how they believe Wisconsin election statutes should be construed and that their own votes are at risk of not being counted if they choose to use drop boxes to return absentee ballots in upcoming elections. *Id.* ¶ 14. Plaintiffs assert that if the absentee ballots of voters who use drop boxes are counted in future elections, the value of Plaintiffs' votes will be diminished because only lawfully cast ballots should be counted. *Id.* ¶ 53.

Plaintiffs make this assertion despite rulings from courts in Wisconsin and throughout the country establishing that individual voters' allegations of generalized harm through this exact theory of "vote diminishment" are insufficient to confer standing—including in the context of drop-box ballot return. *See e.g., Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 342 (W.D. Pa. Oct. 10, 2020) (plaintiffs lacked "concrete" and "particularized" injury necessary to establish standing when claiming use of drop boxes would cause dilution of their legitimately cast votes); *Feehan v. Wis. Elections Comm'n*, 506 F. Supp. 3d 596 (E.D. Wis. 2020), *appeal dismissed*, Nos. 20-3396, 20-3448, 2020 WL 9936901 (7th Cir. Dec. 21, 2020) (same). Plaintiffs have not and will not suffer any injury at all, let alone a *personal* injury separate and apart from the public at large, and thus lack the personal stake necessary to sue. *See Marx v. Morris*, 2019 WI 34, ¶ 35, 386 Wis. 2d 122, 925 N.W.2d 112; *Krier v. Vilione*, 2009 WI 45, ¶ 20, 317 Wis. 2d 288, 766 N.W.2d 517; *Cornwell Pers. Assocs., Ltd. v. Dep't of Indus., Labor & Human Relations*, 92 Wis. 2d 53, 62, 284 N.W.2d 706 (Ct. App. 1979) ("Courts are not the proper forum for citizens to 'air generalized grievances' about the administration" of Wisconsin law by a government agency). Allowing Plaintiffs' claims to proceed in the absence of any showing of individualized injury to them personally would open a "universe of entities or people" who could

similarly bring challenges to the outcome or conduct of any election. *Krier*, 317 Wis. 2d 288, ¶ 20.

Insofar as Plaintiffs claim to be vindicating the “established policy of the Wisconsin legislature” (Compl. ¶ 50), they are not the Wisconsin Legislature and have identified no “hindrance” to the [Legislature’s] ability to protect [its] own interests.” *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004). Indeed, as described, the leaders of the Wisconsin Legislature (speaking through counsel) have emphasized that they “wholeheartedly support voters’ use” of appropriately regulated secure drop boxes, and that such drop boxes are an “expressly authorized absentee ballot return method[.]” Proposed Answer and Affirmative Defenses, Ex. 1-B.

Defendant WEC is the Wisconsin state agency responsible for administering elections. It has, among other duties, “the responsibility for the administration of [Chapters] 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing.” Wis. Stat. § 5.05(1).

As described, proposed Intervenor-Defendant DSCC is the official national Democratic senatorial committee, as recognized by federal law, dedicated to the election of Democratic candidates to the U.S. Senate. Piatt Aff. at ¶ 2. Its ability to elect Wisconsin Democratic candidates to the U.S. Senate is directly affected by Plaintiffs’ calculated attempt to eliminate the use of carefully regulated secure drop boxes. Democratic voters who would otherwise use secure dropbox voting to participate in the coming U.S. Senate election will find it more difficult to participate in the election if Plaintiffs are successful. And DSCC will have to divert resources to public education efforts, especially *reeducation* efforts targeted at voters who have come to rely on dropbox voting and other turnout efforts in a highly contested election year where every dollar diverted means less money available for critical voter persuasion and get-out-the-vote efforts. Piatt Aff. at ¶¶ 8-9. Thus,

DSCC has a strong interest in this litigation both on its own behalf, and on behalf of its voters whose voting rights are threatened.

III. LEGAL STANDARD

There is “no precise formula for determining whether a potential intervenor meets the requirements of § 803.09(1)”; “[t]he analysis is holistic, flexible, and highly fact-specific.” *Helgeland v. Wis. Muns.*, 2008 WI 9, ¶ 40, 307 Wis. 2d 1, 745 N.W.2d 1. “A court must look at the facts and circumstances of each case against the background of the policies underlying the intervention rule.” *Id.* (internal quotation marks omitted). To intervene as of right, a proposed intervenor must satisfy the four criteria specified in Wisc. Stat. § 803.09(1):

- (A) its motion to intervene must be timely;
- (B) it must claim an interest sufficiently related to the subject of the action;
- (C) it must show that the disposition of the action may, as a practical matter, impair or impede its ability to protect that interest; and
- (D) it must demonstrate that the existing parties do not adequately represent its interest.

Helgeland, 307 Wis. 2d 1, ¶ 38. “Wisconsin Stat. § 803.09(1) is based on Rule 24(a)(2) of the Federal Rules of Civil Procedure, and interpretation and application of the federal rule provide guidance in interpreting and applying § 803.09(1).” *Id.*, ¶ 37. Intervention must be granted if these elements are satisfied. *Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 471, 516 N.W.2d 357 (1994) (“If [movant] meets each of the requirements [in Wis. Stat. § 803.09], we must allow him to intervene.”).

The standard for permissive intervention, which DSCC seeks in the alternative, is set forth in Section 803.09(2): “Upon timely motion anyone may be permitted to intervene in an action when a movant's claim or defense and the main action have a question of law or fact in common.”

IV. ARGUMENT

A. DSCC is entitled to intervention as of right.

1. DSCC's motion is timely.

The timeliness requirement for intervention as of right is measured by the diligence of the applicant and the impact the motion will have on the existing litigants. Two factors guide a court in deciding whether an application for intervention is timely: (1) whether, in light of all the circumstances, the proposed intervenor acted promptly; and (2) whether the intervention will prejudice the original parties. *State ex. rel. Bilder v. Delavan Twp.*, 112 Wis. 2d 539, 550, 334 N.W.2d 252 (1983) (application for intervention timely as court had not approved a stipulation to settle case). The “promptness” element focuses on when the proposed intervenor discovered its interest was at risk and how far the litigation has proceeded at the time of the motion to intervene. *Roth v. La Farge Sch. Dist. Bd. of Canvassers*, 2001 WI App. 221, ¶¶ 16-17, 247 Wis. 2d 708, 634 N.W. 2d 882.

DSCC readily satisfies the timeliness requirement. It is filing its motion promptly after Plaintiffs filed their lawsuit. Second, intervention would not prejudice any of the parties. The WEC has not yet even responded to Plaintiffs' Complaint, and the litigation has not progressed in any material way. *See State ex. rel. Bilder*, 112 Wis. 2d at 550 (“The critical factor is whether in view of all the circumstances the proposed intervenor acted promptly.”).

2. DSCC has an interest sufficiently related to the subject of the action.

Consistent with the “broader, pragmatic approach” of Wisconsin courts to intervening as a matter of right, the “interests” factor for intervention serves “‘primarily [as] a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.’” *Helgeland*, 307 Wis. 2d 1, ¶¶ 43–44 (quoting *Bilder*, 112 Wis. 2d at 548–49).

As outlined above, DSCC has significant and protected interests in the subject matter of this litigation. This case involves nothing less than a request to erect a potentially serious obstacle to Wisconsin voters being able to successfully exercise their right to vote absentee—an obstacle that would interfere with DSCC’s core mission of supporting the election of Democratic candidates to the U.S. Senate. Make no mistake, the organization behind Plaintiffs, WILL, brought this case because it believes that enabling Wisconsin voters to easily access absentee voting creates a competitive disadvantage for the Republican candidates it prefers and its contributors support. It follows from that proposition that not allowing DSCC to intervene would disadvantage it by impeding its ability to support the election of Democratic candidates.

Moreover, as discussed above, eliminating drop boxes will require DSCC to divert its resources to inform Wisconsin voters about the unavailability of this option and to educate them about how to return absentee ballots through other methods. This will impose a significant burden on its efforts to support the Democratic candidate in the U.S. Senate race. Although the interest requirement for intervention is less demanding than the Article III standing requirement, it is noteworthy that courts have regularly found this type of diversion of resources by political committees, including DSCC, to be adequate to confer Article III standing. *See, e.g., Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (concluding challenged law “injure[d] the Democratic Party by compelling the party to devote resources” that it would not have needed to devote absent new law), *aff’d*, 553 U.S. 181 (2008); *Issa v. Newsom*, No. 20-cv-1044, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (granting intervention and citing this interest); *League of United Latin Am. Citizens (LULAC) of Wis. v. Deininger*, No. 12-C-0185, 2013 WL 5230795, at *1 (E.D. Wis. Sept. 17, 2013) (finding after discovery that expenditures to get-out-the-vote gave organizations standing to challenge recently adopted voter ID laws).

3. Disposition of the action in DSCC’s absence would impair its ability to protect its interest.

DSCC also easily satisfies the minimal burden required to meet the third element of intervention as of right, that disposition of this case may impair its ability to protect its interest. As with the other elements, Wisconsin courts take “a pragmatic approach” to this prong and “focus on the facts of each case and the policies underlying the intervention statute.” *Helgeland*, 307 Wis. 2d 1, ¶ 79 & n.70 (citing 6 JAMES WM. MOORE, ET AL., MOORE’S FEDERAL PRACTICE § 24.03[3][a], at 24–42 (3d ed. 2002)). The Wisconsin Supreme Court has identified two particular factors to weigh in considering this prong: (1) “the extent to which an adverse holding in the action would apply to the movant’s particular circumstances”; and (2) “the extent to which the action into which the movant seeks to intervene will result in a novel holding of law.” *Id.* ¶¶ 80–81. Intervention is more warranted when a novel holding is at stake because its stare decisis effect is “more significant when a court decides a question of first impression.” *Id.* ¶ 81.

Here, for the reasons discussed above, an adverse ruling would seriously impair DSCC’s ability to protect its interests. When a proposed intervenor has protectible interests in the outcome of litigation, as DSCC does here, courts have “little difficulty concluding” that its interests will be impaired. *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 898 (9th Cir. 2011). Intervention is especially warranted if the proposed remedy *directly* threatens to harm intervenors. *See, e.g., Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 572 (7th Cir. 2009) (granting intervention when proposed intervenors “would be directly rather than remotely harmed by the invalidation” of challenged statute). Courts routinely allow political parties and committees, including DSCC, to intervene in these circumstances. *See, e.g., Order, Donald J. Trump for President v. Bullock*, No. 20-cv-00066 (D. Mont. Sept. 8, 2020), ECF No. 35 (granting DCCC, DSCC, and Montana Democratic Party intervention in lawsuit by four Republican party entities); *Order, Stringer v.*

Hughs, 20-CV-00046 (W.D. Texas Jan 21, 2020), ECF No. 27 (granting DSCC both as of right and permissive intervention); *Wood v. Raffensperger*, No. 20-CV-5155, 2020 WL 7706833, at *1 (N.D. Ga. Dec. 28, 2020) (DSCC permitted to intervene in election challenge), *appeal filed*, No. 20-14813 (9th Cir. Dec. 29, 2020); Text Order, *Parnell v. Allegheny Cnty. Bd. of Elections*, No. 20-cv-01570 (W.D. Pa. Oct. 22, 2020), ECF No. 34 (granting intervention DSCC’s congressional counterpart the DCCC in lawsuit regarding processing of ballots); *Paher v. Cegavske*, No. 20-cv-00243, 2020 WL 2042365, at *1, *4 (D. Nev. Apr. 28, 2020) (granting DNC and DCCC intervention in case supported by a conservative group like WILL that consistently supports Republican Party-advocated outcomes and is funded by Republican Party supporters); *Donald J. Trump for President, Inc. v. Murphy*, No. 20-cv-10753, 2020 WL 5229209, at *1 (D.N.J. Sept. 1, 2020) (granting DCCC intervention in lawsuit by Republican candidate and party entities); *Issa*, 2020 WL 3074351, at *3 (granting DCCC and California Democratic Party intervention in lawsuit by Republican congressional candidate).

DSCC’s request to intervene also is supported by the fact that Plaintiffs’ Complaint is seeking a *prospective* ruling that Wisconsin law does not permit the use of drop boxes in future elections under *any* circumstances and despite the context—even where staffed and supervised by duly authorized representatives of the municipal clerk. Their complaint thus clearly seeks “a novel holding of law” that, if decided in Plaintiffs’ favor, would have far-reaching *stare decisis* effects on DSCC’s mission of supporting the election of Democrats to the U.S. Senate. The only way for DSCC to guard against this harm is to intervene in this matter.

4. No existing party adequately represents DSCC’s interest.

No existing party adequately represents Intervenor’s interest. The burden to satisfy this factor is “minimal.” *Armada Broad., Inc.*, 183 Wis. 2d at 476 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Because the future course of litigation is difficult to

predict, the test is whether representation “may be” inadequate, not whether it *will* be inadequate. See *Wolff v. Town of Jamestown*, 229 Wis. 2d 738, 747, 601 N.W. 2d 301 (Ct. App. 1999). The fact that the WEC and DSCC share a “mutually desired outcome” and make “similar arguments” does not bar intervention. *Id.* at 748. When there is a realistic possibility that the existing parties’ representation of the proposed intervenor’s interests may be inadequate, “all reasonable doubts are to be resolved in favor of allowing the movant to intervene and be heard on [its] own behalf.” 1 JEAN W. DI MOTTO, WIS. CIVIL PROCEDURE BEFORE TRIAL § 4.61, at 41 (2d ed. 2002) (citing *Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir. 1989)).

The WEC does not adequately represent DSCC’s interests. Indeed, DSCC has “special, personal [and] unique interest[s]” that are distinct from the WEC’s interests. *Helgeland*, 307 Wis. 2d 1, ¶ 116–17. This Court has recognized that government entities cannot be expected to litigate “with the vehemence of someone who is directly affected” by the litigation’s outcome. *Armada Broad.*, 183 Wis. 2d at 476. As described, DSCC faces significant harm to its core mission of electing Democratic candidates. By contrast, the WEC’s interests in this litigation are defined by its statutory duties to conduct elections and to administer Wisconsin’s election laws. See, e.g., *id.*; see also *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1255–56 (10th Cir. 2001) (“[T]he government’s representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a [political candidate] merely because both entities occupy the same posture in the litigation.”); *Clark v. Putnam Cnty.*, 168 F.3d 458, 461–62 (11th Cir. 1999) (Black voters granted intervention in challenge to court-ordered voting plan defended by county commissioners because commissioners represented all county citizens, including people adverse to proposed intervenors’ interests); *Coal. of Ariz./N.M. Cntys. for Stable Econ. Growth v. Dep’t of Interior*, 100 F.3d 837, 845 (10th Cir. 1996) (government defendants necessarily represent “the

public interest” rather than the proposed intervenors’ “particular interest[s]” in protecting their resources and the rights of their candidates and voters.); *Armada Broad.*, 183 Wis. 2d at 476 (noting that government entities cannot be expected to litigate “with the vehemence of someone who is directly affected” by the litigation’s outcome).

Moreover, the WEC is comprised of three Republican and three Democratic commissioners, which regularly results in 3-3 votes and partisan gridlock on election issues (including more than 19 times in 2020, on issues such as how to count postmarked ballots and whether to purge voters from the voter rolls).⁵ And even where Commissioners are not tied, they often reach bipartisan consensus only by compromising on partisan issues rather than robustly representing them. This political reality of how the WEC functions further establishes that the WEC cannot be expected to litigate with the same “vehemence” as DSCC and cannot reasonably be expected to adequately represent DSCC’s interests.

As one court recently explained in granting intervention under similar circumstances,

Although Defendants and the Proposed Intervenors fall on the same side of the dispute, Defendants’ interests in the implementation of the [challenged law] differ from those of the Proposed Intervenors. While Defendants’ arguments turn on their inherent authority as state executives and their responsibility to properly administer election laws, the Proposed Intervenors are concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election . . . and allocating their limited resources to inform voters about the election procedures. As a result, the parties’ interests are neither “identical” nor “the same.”

Issa, 2020 WL 3074351, at *3 (citation omitted); *see also Murphy*, 2020 WL 5229209, at *1;

Donald J. Trump for President, Inc., 2020 WL 5229116, at *1; *Paher*, 2020 WL 2042365, at *2.

Political party entities, including Republican entities, are regularly granted intervention in cases where the state is defending against challenges to voting laws. *See, e.g., Black Voters Matter Fund*

⁵ See Vanessa Swales, *Partisan Gridlock At Wisconsin Elections Commission Frustrates Voters, Local Officials*, WISCONSIN PUBLIC RADIO (Oct. 26, 2020), available at: <https://www.wpr.org/partisan-gridlock-wisconsin-elections-commission-frustrates-voters-local-officials>.

v. Raffensperger, 1:20-cv-4869, ECF No. 42 (N.D. Ga. Dec. 9, 2020) (granting intervention to RNC and Georgia Republican Party), *Nielsen v. DeSantis*, 4:20-cv-236-RH-MJF, ECF No. 216 (N.D. Fla. June 10, 2020) (granting intervention to RNC, NRCC, and Republican Party of Florida), *Democratic Nat'l Comm. v. Bostelmann*, 20-cv-249, ECF No. 85, (W.D. Wis. Mar. 28, 2020) (granting intervention to RNC and Republican Party of Wisconsin).

Because DSCC cannot rely on the WEC or anyone else in the litigation to protect its distinct interests, it satisfies the fourth requirement and is entitled to intervention as of right. *Issa*, 2020 WL 3074351, at *4.

B. DSCC is Entitled to Permissive Intervention

In addition to granting intervention as a matter of right, a court can exercise its broad discretion to permit a party to intervene when the “movant’s claim or defense and the main action have a question of law or fact in common,” intervention will not “unduly delay or prejudice the adjudication of the rights of the original parties,” and the motion is timely. Wis. Stat. § 803.09(2); *see also Helgeland*, 307 Wis. 2d 1, ¶¶ 119–20; *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000) (“Permissive intervention under Rule 24(b) is wholly discretionary.”). Even when courts deny intervention as of right, they often find that permissive intervention is appropriate. *See, e.g., City of Chi. v. Fed. Emergency Mgmt. Agency*, 660 F.3d 980, 986 (7th Cir. 2011); *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng’rs*, 101 F.3d 503, 509 (7th Cir. 1996); Opinion and Order at 10-11, *Bostelmann*, 20-cv-249 (W.D. Wis. Mar. 28, 2020), ECF No. 85.

DSCC meets the criteria for permissive intervention. The motion to intervene is timely and, given that this litigation is at a very early stage, intervention will not unduly delay or prejudice the adjudication of the original parties’ rights. Moreover, DSCC will inevitably raise common questions of law and fact, including the core issue of whether Wisconsin’s election laws allow the

use of appropriately regulated secure drop boxes for voters returning absentee ballots. DSCC is also prepared to proceed in accordance with the schedule this Court determines, and its intervention will only serve to contribute to the complete development of the factual and legal issues before this Court.

V. CONCLUSION

For the reasons stated above, this Court should grant DSCC's motion to intervene as a matter of right. In the alternative, this Court should exercise its direction and grant DSCC permissive intervention.

Respectfully submitted this 13th day of July, 2021.

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