

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY
BRANCH 9

MICHAEL WHITE, EVA WHITE,
EDWARD WINIECKE, and REPUBLICAN
PARTY OF WAUKESHA COUNTY

Plaintiffs,

v.

Case No. 22-CV-1008

Case Code No.: 30701

WISCONSIN ELECTIONS COMMISSION,

Defendants.

**NOTICE OF MOTION AND MOTION TO INTERVENE OF LEAGUE OF
WOMEN VOTERS OF WISCONSIN**

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PLEASE TAKE NOTICE that proposed Intervenor-Defendant League of Women Voters of Wisconsin ("LWVWI") will appear before the Honorable Michael J. Aprahamian Circuit Court Judge, Branch 9, in his usual courtroom in the Waukesha County Courthouse, Courtroom C278, Waukesha, WI 53188, at such time and on

such other date as shall be set by the Court and shall then and there present the following Motion to Intervene. In accordance with Wis. Stat. § 803.09(3), LWVWI attaches to this Motion their Answer to Plaintiffs' Complaint.

MOTION

LWVWI hereby moves the Court in accordance with Wis. Stat. § 803.09 to intervene in this action as a Defendant. In support of this Motion, and as explained in detail in the accompanying Brief in support of this Motion and affidavit of Eileen Newcomer, LWVWI states as follows:

1. On July 12, 2022, Plaintiffs initiated this action by filing their Complaint.

2. Plaintiffs ask this Court to narrowly interpret Wis. Stat. §§ 6.87(2), 6.87(6d), 6.87(9) and thereby, to invalidate widely distributed and relied upon guidance from the Wisconsin Elections Commission ("WEC") regarding how, and when, municipal clerks may make certain corrections to the absentee ballot witness certification contained on the absentee ballot certificate envelope (Form EL-122).

3. Plaintiffs named WEC as a Defendant but did not join LWVWI as Defendants. LWVWI now moves to intervene in this action as a Defendant.

4. The Court should grant the Motion because, as is explained in further detail in the accompanying Brief, LWVWI satisfies the requirements for intervention by right under Wis. Stat. § 803.09(1):

5. **First**, LWVWI's Motion to Intervene is timely filed. LWVWI filed within the time for the named Defendant to answer the Complaint; prior to the disposition

of any substantive motion; and no discovery has yet commenced.

6. **Second**, LWVWI's interests are directly related to the subject of this action. LWVWI engages in extensive and sustained efforts to promote voter awareness, education, and participation, and to encourage civic engagement. LWVWI invests time and resources in educating its members, constituencies, and the public about elections and how and when to cast a ballot, and provide resources to assist its members, constituents, and other Wisconsin voters to exercise their right to vote. LWVWI has been directly involved in the issue of missing or defective absentee ballot witness information since 2016, when it provided public testimony regarding the requirements of federal law to inform WEC's guidance on this issue and advocated for the adoption of the current policy on curing technical, immaterial omissions or defects in the witness certification. At the time, LWVWI made clear that it would file a lawsuit to enforce the federal constitutional and statutory guarantees, but that was ultimately unnecessary once WEC amended its guidance on this issue. In the nearly six years since, LWVWI has continued to advocate for WEC guidance and policies that avoid unnecessary and unlawful disenfranchisement of voters for immaterial omissions or defects. This case threatens to deny access to eligible Wisconsin voters whose interests LWVWI represents and serves and, if the relief Plaintiffs seek is granted, it will require a significant expenditure of time, resources, and money for LWVWI to revise all relevant educational materials and programs, re-train volunteers, and re-educate its members, constituencies, and the public on the draconian and unlawful absentee ballot rejection rule that Plaintiffs seek.

7. **Third**, the current Defendant cannot adequately represent LWVWI's interests. WEC has an interest in defending its own conduct and guidance, as a government entity charged with upholding Wisconsin election laws, as interpreted by the courts. However, WEC cannot raise the federal constitutional and statutory guarantees and rights upon which LWVWI will rely in this proposed intervention. WEC can and will only bring its administration of state election laws into compliance with those federal limitations upon a judicial finding that a particular statute, WEC guidance document or rule, or a particular litigant's proffered remedy violates the U.S. Constitution or federal statutes. Accordingly, WEC is not positioned to zealously advocate for the interests and federally-guaranteed rights of LWVWI or its members and constituents, in casting a ballot that will count.

8. **Fourth**, the relief sought by Plaintiffs would, if granted, impair LWVWI's ability to protect its own interests and those of its members and constituents in this litigation. Were Plaintiffs to prevail here, the ability of LWVWI's members and constituents, as well as Wisconsin voters generally, to cast a ballot that will count, notwithstanding immaterial omissions or defects, would be severely restricted, and LWVWI's interests in promoting and safeguarding Wisconsin voters' access, encouraging them to exercise their right to vote, and advocating for accessible, secure, and convenient methods to vote would be directly and significantly impaired. LWVWI's financial interests and investments in voter education programs and training would also be impacted. The WEC's current guidance on absentee ballot witness certifications has been in place for nearly six years. Plaintiffs' requested relief

would require a massive investment to overhaul LWVWI's existing public education materials and disseminate them widely to inform eligible Wisconsin voters that their absentee ballots can now be rejected for immaterial omissions and defects caused by the witness.

9. For these reasons, LWVWI is entitled to intervene under Wisconsin law. *Armada Broad., Inc., v. Stirn*, 183 Wis. 2d 463, 471, 516 N.W. 2d 357 (1994).

10. Alternatively, LWVWI should be granted permissive intervention under Wis. Stat. § 803.09(2) because (1) its intervention would not unduly delay or prejudice the adjudication of the original rights of the parties, and (2) its argument and the main action share common questions of law.

WHEREFORE, Proposed Intervenor-Defendant League of Women Voters of Wisconsin respectfully requests that this Court: (a) set this Motion to Intervene for hearing; and (b) grant this Motion to Intervene, enter an order joining LWVWI to this action as an additional Defendant, and accept for filing the attached Answer and Affirmative Defenses. LWVWI further respectfully requests that this Motion to Intervene be adjudicated on an expedited basis or, in the alternative, that LWVWI be granted leave to file a Brief in Response to Plaintiffs' Motion for Temporary Injunction, pending and conditioned upon the Court's ruling on the Motion to Intervene.

Dated this 15th day of August, 2022.

By: /s/Daniel S. Lenz
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**Motion for admission pro hac vice forthcoming.*