

Michael White, Eva White, Edward
Winiecke, and Republican Party of
Waukesha County,

Plaintiffs,

v.

Wisconsin Elections Commission,

Defendant.

Case No. 2022CV001008

Case Code: 30701

**WAUKESHA COUNTY DEMOCRATIC PARTY'S
NOTICE OF MOTION AND MOTION TO INTERVENE**

NOTICE OF MOTION

TO: Kurt A. Goehre
Bryant M. Dorsey
George R. Burnett
LAW FIRM OF CONWAY,
OLEJNICZAK & JERRY, S.C.
231 S. Adams Street
Green Bay, WI 54301
P.O. Box 23200
kag@lcojlaw.com
bmd@lcojlaw.com
gb@lcojlaw.com
Attorneys for Plaintiffs

Steven C. Kilpatrick
Thomas C. Bellavia
Lynn K. Lodahl
WISCONSIN DEPARTMENT OF JUSTICE
Post Office Box 7857
Madison, WI 53707-7857
kilpatricksc@doj.state.wi.us
Bellaviatc@doj.state.wi.us
Lodahlk@doj.state.wi.us
Attorneys for Defendant

PLEASE TAKE NOTICE that Proposed Intervenor-Defendant Waukesha County Democratic Party ("WCDP") 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 date and time as shall be determined by the Court, and shall then and there present the following motion to intervene. As required by Wis. Stat. § 803.09(3), a

responsive pleading setting forth the defenses for which intervention is sought accompanies WCDP's motion. (See Proposed Answer and Affirmative Defenses (attached as Ex. 1).)

MOTION TO INTERVENE

Proposed Intervenor-Defendant WCDP hereby moves the Court pursuant to Wis. Stat. § 803.09 to intervene in this action as a Defendant. In support of its motion to intervene, and as explained in detail in the accompanying brief in support of the motion, WCDP states as follows:

1. Plaintiffs filed their complaint on July 12, 2022, alleging that the Wisconsin Election Commission's ("WEC") guidance allowing clerks to add missing information to witness addresses on absentee ballot envelopes contravenes Wisconsin law and diminishes both the value of Plaintiffs' votes and voter confidence in the electoral process.

2. Plaintiffs named WEC as a Defendant.

3. Because WCDP has a significant interest in the litigation, which directly threatens its members' fundamental right to vote and its candidates' electoral prospects, WCDP now moves to intervene in this action as a Defendant.

4. The Court should grant the motion because, as explained in further detail in the accompanying brief, WCDP satisfies the requirements for intervention as of right under Wis. Stat. § 803.09(1):

a. *First*, the motion is timely filed. No proceedings have yet taken place, and WEC has not yet filed an answer or substantive response.

b. *Second*, WCDP's interests are directly related to the subject of this action. The lawsuit seeks to interfere with WCDP's members' right to vote by asking the Court to revoke election officials' ability to correct minor witness address errors and count valid ballots. A ruling in Plaintiffs' favor would also threaten WCDP's competitive prospects and require WCDP to divert its resources to inform Wisconsin voters about the new scrutiny surrounding absentee ballot envelopes, educate them on what qualifies as a valid absentee envelope certificate, and help them cure ballots with minor witness address omissions.

- c. *Third*, the relief sought by Plaintiffs would, if granted, seriously and directly impair WCDP's ability to protect its own interests and those of its members and constituents. A ruling in Plaintiffs' favor would threaten to disenfranchise WCDP's members and constituents, create a competitive disadvantage for WCDP's candidates, and require WCDP to divert resources to mitigate these harms.
- d. *Fourth*, Defendant WEC, whose interests in this litigation are defined by its statutory duties to conduct elections and administer Wisconsin's election laws, cannot adequately represent WCDP's interests. WCDP has a significant and distinct interest in protecting its constituents' right to vote and electing Democratic candidates, which WEC does not share and cannot adequately represent.

Because WCDP satisfies each of these elements, intervention must be granted. *Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 471, 516 N.W.2d 357 (1994).

5. Alternatively, WCDP should be granted permissive intervention under Wis. Stat. § 803.09(2). The motion 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, WCDP will inevitably raise common questions of law and fact, including the core issue of whether Wisconsin's election laws allow clerks to correct minor witness address omissions on absentee certificates to ensure that otherwise-valid absentee ballots are counted. WCDP is also prepared to proceed in accordance with the schedule this Court sets, and its intervention will only serve to efficiently resolve the factual and legal issues before the Court.

6. Counsel for WCDP telephoned and emailed counsel for the Plaintiffs on August 10, 2022, in an attempt to confer regarding this motion. As of the filing of this motion, Defendants' counsel have not received a response.

7. Counsel for WCDP conferred with counsel for WEC, and WEC takes no position on this motion.

WHEREFORE, Proposed Intervenor-Defendant WCDP respectfully requests that this Court set its motion for hearing and grant it intervention as a Defendant in this action.

Dated: August 10, 2022

By: Electronically signed by Jeffrey A. Mandell

Jeffrey A. Mandell, SBN 1100406
Douglas M. Poland, SBN 1055189
Richard Manthe, SBN 1099199
Carly Gerads, SBN 1106808
STAFFORD ROSENBAUM LLP
222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, Wisconsin 53701
Telephone: (608) 256-0226
jmandell@staffordlaw.com
dpoland@staffordlaw.com
rmanthe@staffordlaw.com
cgerads@staffordlaw.com

Respectfully submitted,

Abha Khanna*
Jonathan P. Hawley*
Makeba Rutahindurwa*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 656-0177
akhanna@elias.law
mrutahindurwa@elias.law

John M. Geise*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, D.C. 20002
Telephone: (202) 968-4652
jgeise@elias.law

*Attorneys for Proposed Intervenor-
Defendant Waukesha County Democratic
Party*

*Motion for admission *pro hac vice*
forthcoming

EXHIBIT 1

RETRIEVED FROM DEMOCRACYDOCKET.COM

Michael White, Eva White, Edward
Winiecke, and Republican Party of
Waukesha County,

Plaintiffs,

v.

Wisconsin Elections Commission,

Defendant.

Case No. 2022CV001008

Case Code: 30701

WAUKESHA COUNTY DEMOCRATIC PARTY'S ANSWER TO COMPLAINT

Proposed Intervenor-Defendant Waukesha County Democratic Party ("Proposed Intervenor"), through its counsel, hereby submits the following answer to Plaintiffs' complaint:

NATURE OF THIS ACTION

1. Paragraph 1 of Plaintiffs' complaint contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

PARTIES

2. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 2 of Plaintiffs' complaint, and therefore denies the same.

3. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 3 of Plaintiffs' complaint, and therefore denies the same.

4. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 4 of Plaintiffs' complaint, and therefore denies the same.

5. Admit.

6. Proposed Intervenor admits that the Republican Party of Waukesha County has offices located at 1701 Pearl Street, Suite #5, Waukesha, Wisconsin 53186 and that it has numerous members who reside in Waukesha County. Paragraph 6 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

7. Admit.

JURISDICTION AND VENUE

8. Paragraph 8 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

9. Admit.

10. Paragraph 10 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

11. Paragraph 11 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

12. Paragraph 12 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

BACKGROUND FACTS

13. Proposed Intervenor admits that Wisconsin saw a rise in the use of absentee ballots in the 2020 elections. Paragraph 13 of Plaintiffs' complaint otherwise contains mere characterizations and opinions to which no response is required.

14. Proposed Intervenor admits that the quoted language appears in the press release cited in paragraph 14 of Plaintiffs' complaint.

15. Proposed Intervenor admits that the quoted language appears in the press release cited in paragraph 15 of Plaintiffs' complaint. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the quoted language, and therefore denies the same. Paragraph 15 otherwise contains mere characterizations and opinions to which no response is required.

16. Paragraph 16 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

17. Proposed Intervenor admits that the quoted language appears in the statutory provision cited in paragraph 17 of Plaintiffs' complaint.

18. Paragraph 18 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

19. Proposed Intervenor admits that the quoted language appears in the statutory provision cited in paragraph 19 of Plaintiffs' complaint.

20. Proposed Intervenor admits that the Wisconsin Elections Commission ("WEC") website has a copy of a standard absentee ballot application/certification but lacks knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in paragraph 20 of Plaintiffs' complaint, and therefore denies the same.

21. Admit.

22. Paragraph 22 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

23. Proposed Intervenor admits that the quoted language appears in the statutory provision cited in paragraph 23 of Plaintiffs' complaint. Paragraph 23 otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

24. Proposed Intervenor admits that the quoted language appears in the statutory provision cited in paragraph 24 of Plaintiffs' complaint. Paragraph 24 otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

25. Proposed Intervenor admits that the quoted language appears in the statutory provision cited in paragraph 25 of Plaintiffs' complaint. Paragraph 25 otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

26. Proposed Intervenor admits that the quoted language appears in the statutory provision cited in paragraph 26 of Plaintiffs' complaint. Paragraph 26 otherwise contains mere

characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

27. Paragraph 27 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

28. Paragraph 28 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

29. Admit.

30. Paragraph 30 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

31. Admit.

32. Admit.

33. Paragraph 33 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

34. Paragraph 34 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

35. Paragraph 35 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

36. Paragraph 36 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

37. Paragraph 37 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

38. Paragraph 38 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

39. Paragraph 39 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

40. Paragraph 40 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

CLAIM FOR RELIEF: DECLARATORY RELIEF

41. Proposed Intervenor reincorporates by reference the previously alleged paragraphs as if fully set forth herein.

42. Paragraph 42 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

43. Paragraph 43 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

44. Paragraph 44 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

45. Paragraph 45 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

46. Proposed Intervenor lacks knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 46 of Plaintiffs' complaint, and therefore denies the same.

47. Paragraph 47 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

48. Paragraph 48 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

49. Paragraph 49 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor denies the same.

RELIEF REQUESTED

Paragraphs 1–8 characterize Plaintiffs’ prayer for relief, to which no response is required.

To the extent a response is required, Proposed Intervenor responds as follows:

1. Deny.
2. Deny.
3. Deny.
4. Deny.
5. Deny.
6. Deny.
7. Deny.
8. Deny.

AFFIRMATIVE DEFENSES

Proposed Intervenor asserts the following affirmative defenses without accepting any burdens regarding them:

1. Plaintiffs’ claim is barred in whole or in part because this Court lacks competency to adjudicate Plaintiffs’ claim.
2. Plaintiffs lack standing to assert their claim.
3. Plaintiffs’ complaint fails, in whole or in part, to state a claim upon which relief can be granted.

Proposed Intervenor reserves the right to assert any further defenses that may become evident during the pendency of this matter.

PROPOSED INTERVENOR'S REQUEST FOR RELIEF

Having answered Plaintiffs' complaint, Proposed Intervenor requests that the Court:

1. Deny Plaintiffs any relief;
2. Dismiss Plaintiffs' complaint with prejudice;
3. Award Proposed Intervenor its costs and attorneys' fees incurred in defending against Plaintiffs' claim; and
4. Grant such other further relief as the Court deems just and proper.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Dated: August 10, 2022

By: Electronically signed by Jeffrey A. Mandell

Jeffrey A. Mandell, SBN 1100406
Douglas M. Poland, SBN 1055189
Richard Manthe, SBN 1099199
Carly Gerads, SBN 1106808
STAFFORD ROSENBAUM LLP
222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, Wisconsin 53701
Telephone: (608) 256-0226
jmandell@staffordlaw.com
dpoland@staffordlaw.com
rmanthe@staffordlaw.com
cgerads@staffordlaw.com

Respectfully submitted,

Abha Khanna*
Jonathan P. Hawley*
Makeba Rutahindurwa*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 656-0177
akhanna@elias.law
mrutahindurwa@elias.law

John M. Geise*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, D.C. 20002
Telephone: (202) 968-4652
jgeise@elias.law

*Attorneys for Proposed Intervenor-
Defendant Waukesha County Democratic
Party*

*Motion for admission *pro hac vice*
forthcoming