

FILED
10-20-2022
CIRCUIT COURT
DANE COUNTY, WI
2022CV002446

BY THE COURT:

DATE SIGNED: October 20, 2022

Electronically signed by Juan B. Colas
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
Branch 10

DANE COUNTY

Rise, Inc. et al.,
Plaintiffs

vs.

Case No. 22CV2446

Wisconsin Elections Commission, et al.,
Defendants

vs.

Wisconsin State Legislature,
Intervenor-Defendant

DECISION AND ORDER ON WHITES' MOTION TO INTERVENE

Plaintiffs in this case seek a declaratory judgment defining the term “address” in Wis. Stat. §6.87(2) as it relates to the witness certification of an absentee ballot, and an injunction directing the Wisconsin Elections Commission (WEC) to instruct local clerks that they must apply that definition when deciding if a witness address is sufficient. Michael and Eva White have moved to intervene.

They argue that they have a right to intervene because they seek to protect their interests in the enforcement of our election laws, to protect their fundamental right to vote in elections that are administered equally and in accordance with the law, and to protect and represent their interests in preserving the relief they won in as plaintiffs in Waukesha County Circuit Court in *White et al. v. WEC*, Waukesha County 22CV1008. R-Doc. 42. A person has a right to intervene when they claim “an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant’s ability to protect that interest” unless the movant’s interest is

adequately represented by existing parties. Wis. Stat. §803.09(1). The intervenor's interest must be "of such direct and immediate character that the intervenor will either gain or lose by the direct operation of the judgment." *City of Madison v. WERC*, 234 Wis. 2d 550, 558, fn. 9, 610 N.W.2d 94 (S.Ct. 2000)

The first two interests identified by the Whites are broad and not unique to them, but are likely shared by every resident of Wisconsin and by every eligible voter. They are also interests presumably shared by the Legislature and the named defendants. They are not of sufficiently direct or immediate character that the Whites will gain or lose by the direct operation of the judgment. The Legislature and the named defendants also adequately represent these broad, non-specific interests. The admissions and denials in Whites' Proposed Answer, R-Doc. 44 and the Legislature's Answer, R-Doc. 39 are substantively the same. The affirmative defenses alleged by the Whites also can be adequately represented the Legislature and by the Elections Commission and Clerk of the City of Madison Clerk. The Whites are therefore not entitled to intervention based on these as a matter of right, based on these two asserted interests.

The third claimed interest, preservation of the relief they won in Waukesha County, does not support intervention. The Whites mischaracterize this action as a collateral attack on the permanent injunction they won in Waukesha. That injunction prohibits WEC from directing local clerks to modify or supplement the witness address information supplied by the witness on the absentee ballot envelope. *Waukesha Co.* 22CV1008, Doc. 188. It expressly does not enjoin WEC from giving guidance regarding the definition of "address" nor make any determination of what the statute means by that term. *Id.* p. 3, also 22CV1008-Doc. 173, Transcript, p. 19. The relief sought in this action, a definition of "address," is not inconsistent with or contrary to that injunction. Therefore, preserving the relief the Whites won in the Waukesha case is not a basis for intervention by right or by leave.

A party not entitled to intervene as a matter of right may still be allowed to intervene if "the movant's claim or defense and the main action have a question of law or fact in common." Wis. Stat. §803.09(2). "In exercising this discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Id.* In this case the Whites claims and defenses are related in law and fact to the main action. Their motion for intervention is at the earliest stage of the proceedings (the time for the named defendants to file an answer has not yet run) and their intervention will not unduly delay or prejudice the litigation of the original action. However, as noted above, the interests of the Whites are not so specific or unique, or inadequately represented, that their intervention is needed to protect their interests, to ensure that the issues presented are fully litigated or to assist the court. Therefore, I decline to allow them to intervene under §803.09(2).

THEREFORE, IT IS ORDERED, the Whites' Motion to Intervene is DENIED.