

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

RISE, INC. et al
Plaintiffs

vs.

WISCONSIN ELECTION
COMMISSION et al,
Defendants

FILED**AUG 23 2023**

Case No. 22CV2446

DANE COUNTY CIRCUIT COURT

LEAGUE OF WOMEN VOTERS OF
WISCONSIN,
Plaintiff

vs.

WISCONSIN ELECTION
COMMISSION et al,
Defendants

Case No. 22CV2472

DECISION AND ORDER ON MOTION TO CONSOLIDATE FOR TRIAL

INTRODUCTION

On July 31, 2023, the Wisconsin Elections Commission (“Commission Defendants”), the defendants in the above-captioned cases, filed a Motion to Reconsider and Consolidate in *Rise Inc., et al. v. Wisconsin Elections Commission, et al*, Dane County Case No. 22CV2446.¹ The Court allowed the parties an opportunity to submit written objections. Only the League of Women Voters of Wisconsin (“League”), the plaintiffs in

¹ On October 21, 2022, the Courts declined to consolidate after raising the issue *sua sponte*. (*Rise* Dkt. 101, *League* Dkt. 64).

the *League* case, and the Wisconsin State Legislature (“Legislature”), the intervenor defendants in both cases, oppose consolidation.

APPLICABLE LAW

A circuit court may consolidate actions that could have been brought as a single action under Wis. Stat. § 803.04, the permissive joinder statute. Wis. Stat. § 805.05(1). A circuit court considers two factors when deciding whether to consolidate cases. First, the right to relief must be “in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences.” Wis. Stat. § 803.04(1). Second, a question of law or fact common to all plaintiffs or defendants must arise in the action. *Id.* The purpose of the permissive joinder statute is to avoid multiple trials involving identical or similar issues. *Kluth v. Gen. Cas. Co. of Wis.*, 178 Wis. 2d 808, 818, 505 N.W.2d 442 (Ct. App. 1993). The “subject matter relatedness” of events constituting a claim is an important factor. *Id.* The court may “order separate trials or make other orders to prevent delay or prejudice.” Wis. Stat. § 803.04(4).

DISCUSSION

The League opposes consolidation, primarily arguing that consolidation is inappropriate because: (1) the cases address different areas of law, with the *League* case only addressing a federal claim and the *Rise* case involving the interpretation of state law; (2) the cases are in different procedural postures, with a pending motion for summary judgment in the *League* case and a pending motion to dismiss in the *Rise* case;² and (3) consolidating the case would significantly delay the *League* case, resulting in undue prejudice to the plaintiff in that case. The Legislature also opposes consolidation, but it does not contest that the requirements under Wis. Stat. § 803.04(1) are met. Instead, the Legislature argues that “these cases have now sufficiently progressed...such that

² The *Rise* court denied on the motion to dismiss on August 14, 2023. (*Rise* Dkt. 202).

consolidation would now provide no practice benefit to the timely and efficient resolution of these cases.” (*Rise*, Dkt. 200:1)

1. The legal requirements for consolidation are met.

Both of the factors of Wis. Stat. § 803.04(1) are met. First, the right to relief in both cases arises out of the same occurrences. Specifically, the lawsuits seek to address confusion regarding the Witness Address Requirement³ purportedly caused by the decision in *White v. Wisconsin Elections Commission*, No. 22-CV-1008 (Waukesha Cnty. Cir. Ct.) which, if unaddressed, could disenfranchise voters (*Compare Rise Dkt. 160 with League Dkt. 94*). Second, while the specific claims in two cases are based upon different legal theories – with *Rise* concerning a state law claim and the *League* case concerning a federal law claim – both cases involve common questions of law and fact concerning the Witness Address Requirement. *Id.* Importantly, the League’s federal claim depends on the meaning of the Witness Address Requirement, which is the crux of the *Rise* case.

2. Consolidation is necessary to avoid conflicting decisions.

Because the requirements for permissive joinder are satisfied, it is up to the Court’s discretion whether to order consolidation. *Keplin v. Hardware Mut. Cas. Co.*, 24 Wis. 2d 319, 325, 129 N.W.2d 321 (1964); *Exch. V. Basten*, 202 Wis. 2d 74, 75, 549 N.W.2d 690, 699 (“The question of consolidation of actions is one that is reserved for the sound discretion of the circuit court.”). Here, the need to avoid conflicting decisions strongly favors of consolidation. As discussed above, both cases require interpreting the Witness Address Requirement. Conflicting interpretations would inevitably lead to confusion among Wisconsin’s election clerks, likely necessitating further litigation and

³ Section 6.87 of the Wisconsin Statutes provides for absentee voting procedures. Among other requirements, an elector completing an absentee ballot must do so in front of a witness. Wis. Stat. § 6.87(4)(b)1. The witness must then complete and sign a written verification. Wis. Stat. § 6.87(2), (4)(b)1. An absentee ballot may not be counted if the certification is missing the witness’s “address.” Wis. Stat. § 6.87(6d). These related provisions are called the “Witness Address Requirement.”

expense. This is exactly what the League's lawsuit seeks to address: purported confusion among some clerks and the resulting disenfranchisement it could cause.

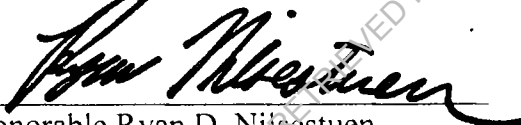
The objectors' concerns regarding delays can be addressed by the Court's management of the two cases. While the League speculates that the *Rise* case could take months to reach a conclusion, the Court does not share that pessimism. In particular, the Court may "make other orders to prevent delay or prejudice." Wis. Stat. § 803.04(4). This is especially warranted in the cases at hand considering the strong public interest in favor of resolving election disputes well before an election. *See Trump v. Biden*, 2020 WI 94, ¶ 30, 394 Wis. 2d 629.

ORDER

The Commission Defendants' Motion for Consolidation is GRANTED.

Dated: August 22, 2023

By the Court:



Honorable Ryan D. Niisestuen
Circuit Court Judge

Dated: August 22, 2023

By the Court:



Honorable Nia Trammell
Circuit Court Judge