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FILED
11-13-2023
CLERK OF WISCONSIN
COURT OF APPEALS

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November 13, 2023

VIA ELECTRONIC FILING ONLY

Samuel A. Christensen
Clerk of the Supreme Court and the Court of Appeals
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

Re: Braun v. Wisconsin Elections Commission
Appeal No. 2023AP0076, District II

Dear Clerk Christensen:

At issue in this appeal is the Waukesha County Circuit Court's denial of Vote.org's motion to intervene for purposes of defending Wisconsin's longstanding use of the National Voter Registration Form to register Wisconsin voters. Vote.org moved to intervene, among other reasons, because it was concerned that the Wisconsin Elections Commission would not robustly defend the use of the National Form.

Appellant Vote.org submits this letter to inform the Court that it now has confirmation that the Commission does not intend to appeal the lower court's order. Because Vote.org was denied intervention, it is unable to appeal the Circuit Court's summary judgment order itself. The Commission's failure to robustly defend the law, including by declining to seek appellate review of the Circuit Court's order on summary judgment, confirms that denial of Vote.org's motion to intervene was error and should be reversed.

Clerk Samuel A. Christensen

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As Vote.org informed the Court in its September 6 letter, the Waukesha County Circuit Court recently granted summary judgment to Plaintiff Richard Braun in the case below, holding that “[t]he use of the National Form to register a voter in Wisconsin is unlawful.” Order at 9. As a direct result of the Circuit Court’s order, Vote.org has ceased offering the National Form to Wisconsin registrants—precisely the harm that Vote.org sought to intervene in this case to prevent. In that previous letter, Vote.org also noted that Defendant the Wisconsin Elections Commission had not filed a notice of appeal.

On November 10, counsel to the Commission confirmed via email to the undersigned that no notice of appeal would be forthcoming, as the Commission will not be appealing the Circuit Court’s grant of summary judgment. The deadline to notice an appeal is December 4. *See Wis. Stat. § 804.04(1)*.

As explained in Vote.org’s opening brief and reiterated in its reply brief, an existing party’s decision *not* to appeal where a proposed intervenor *would* appeal renders the existing party an inadequate representative of the proposed intervenor’s interests. Brief of Appellant at 20; Reply Brief of Appellant at 10; *see, e.g., Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng’rs*, 101 F.3d 503, 508–09 (7th Cir. 1996); *Ams. United for Separation of Church & State v. City of Grand Rapids*, 922 F.2d 303, 305–06 (6th Cir. 1990); *Smuck v. Hobson*, 408 F.2d 175, 177 (D.C. Cir. 1969).

If Vote.org were granted intervention, it *would* appeal. Accordingly, the Commission’s confirmation that it declines to appeal proves that it does not adequately represent Vote.org’s interests, requiring reversal of the denial of the motion to intervene below.

Sincerely,



Diane M. Welsh
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