

FILED  
03-04-2024  
Clerk of Circuit Court  
Waukesha County  
2022CV001395

DATE SIGNED: March 1, 2024

Electronically signed by Brad D. Schimel  
Circuit Court Judge

STATE OF WISCONSIN                      CIRCUIT COURT    WAUKESHA COUNTY

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NANCY KORMANIK

Plaintiff,

v.

Case No.: 22-CV-1395

Case Code: 30701

WISCONSIN ELECTIONS COMMISSION

Defendant,

and

RISE, INC. and the DEMOCRATIC NATIONAL  
COMMITTEE,

Intervenor-Defendants.

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**ORDER GRANTING FINAL JUDGMENT TO PLAINTIFF**

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After considering the parties' briefing, arguments, and all other records and evidence presented in this case, it is hereby **ORDERED** that Plaintiff is entitled to final judgment on her claim for declaratory relief, *see* Wis. Stat. § 806.01(1)(c);

For the reasons set forth in this Court's Decision and Order (Doc. No. 160), Wisconsin law prohibits clerks or local election officials (i) from returning an elector's previously completed and returned absentee ballot, which was not spoiled at the time it was originally

returned, to that elector so that the ballot may thereafter be amended or spoiled, or (ii) from amending, spoiling, or replacing any such ballot;

The Court's final judgment applies to portions of the WEC memoranda of August 1, 2022 entitled "Spoiling Absentee Guidance for the 2022 Partisan Primary" and August 2, 2022 entitled "Rules about 'Spoiling' Your Ballot," now withdrawn, and any other memoranda, communication, guidance, or publication of WEC that contains or indicates that municipal clerks or local election officials can take any action that is contrary to the prohibitions and declaration set forth in this final judgment;

Notwithstanding the above, and as set forth in this Court's Decision and Order (Doc. No. 160), nothing herein prohibits a clerk from issuing a replacement ballot to an elector or elector's agent whenever the elector or the elector's agent returns a previously spoiled or damaged ballot to the clerk, and the clerk believes that the ballot was issued to or on behalf of the elector who is returning it, pursuant to Wis. Stat. § 6.86(5); and nothing herein prohibits a clerk from returning an absentee ballot inside the sealed envelope when it lacks a properly completed certificate to the elector whenever time permits the elector to correct the defect and return the ballot, pursuant to Wis. Stat. § 6.87(9);

The Court's previously issued Temporary Injunction (Doc No. 106) is hereby vacated.

The Court further **ORDERS** taxation of costs against Intervenor-Defendants and in favor of Plaintiff. Plaintiff seeks \$300 in Statutory Attorney Fees, pursuant to Wis. Stat. § 814(1)(a) and \$245 costs for a certified copy of the transcript of the October 5, 2022, hearing. The total costs imposed are \$545, which is to be apportioned equally between the two Intervenor-Defendants.

Plaintiff previously sought \$189.57 for the filing fee, but withdraws that request, as Plaintiff acknowledges that the filing fee was incurred prior to Intervenor-Defendants entering the case. “A defendant who intervenes is not chargeable with costs which accrue prior to the time of his intervention.” *Dring v. Mainwaring*, 168 Wis. 139 (1918). *Dring* inescapably stands for the proposition that, under Wisconsin law, an intervenor may be liable for costs which accrued after they joined the case. Intervenor-Defendant DNC cites *Dring* as blackletter law in Wisconsin, and cites additional authority for the proposition that “[a]n intervenor may be liable for costs which accrue subsequent to the time of his or her intervention.” Doc. 168 at 5. Intervenor-Defendant Rise, Inc., also concedes that *Dring* is good law. Doc. 169 at 2.

“[U]nder Wisconsin law, an intervenor is a full participant in the proceedings, having all the same rights as all other parties to the action. *Zellner v. Herrick*, 2009 WI 80, ¶22, 319 Wis. 2d 532, 770 N.W.2d 305; *Kohler Co. v. Sogen Int'l Fund, Inc.*, 2000 WI App 60, ¶¶10-12, 233 Wis. 2d 592, 608 N.W.2d 746. This includes the power to raise "any legal claims and defenses," as well as the power to appeal an adverse decision just as any other party could. *Kohler Co.*, 233 Wis. 2d 592, ¶11; *Prince Corp. v. Vandenberg*, 2016 WI 49, ¶13, 369 Wis. 2d 387, 882 N.W.2d 371 (noting that the intervenors there "separately appealed the circuit court's order").” *DNC v. Bostelmann*, 202 WI 80 ¶9.

Intervenor-Defendants participated in oral arguments relating to Plaintiff’s Motion for Temporary Injunction; filed Motions for Summary Judgment and briefs in support thereof; filed briefs in opposition to Plaintiff’s Motion for Summary Judgment; and participated in oral arguments in this case. Plaintiff needed to respond to not just Defendant Wisconsin Election Commission’s Motion for Summary Judgment, but also to Intervenor-Defendant DNC’s Cross-Motion for Summary Judgment and Intervenor-Defendant Rise, Inc’s, Motion for Summary

Judgment. This Court attests that needing to address the additional summary judgment motions and briefs in support thereof made addressing the various claims much more complex. Plaintiff must certainly have had the same experience. This resulted in multiple briefs, response briefs and reply briefs beyond what would have been submitted had Defendant WEC stood alone.

Frankly, it seemed to the Court that Defendant WEC and the two Intervenor-Defendants acted in concert to bring legal attacks from multiple fronts. The Court sees nothing wrong with that, but it left Defendant WEC free to make only its strongest arguments and leave others to the Intervenor-Defendants to cover. Whatever the case, having to battle three rather than one clearly left Plaintiff needing to pivot in multiple directions in attempting to organize its arguments, as the Court had to pivot to address the arguments from multiple fronts.

Further, if Defendant WEC had failed to prevail on its Motion for Summary Judgment, the motions of either or both of the Intervenor-Defendants may still have carried the day and delivered Plaintiff a defeat.

Finally, Intervenor-Defendant DNC argues that Plaintiff's demand for the cost for the transcript of the October 5, 2020, hearing should be denied. DNC asserts that this hearing predated Intervenor-Defendants officially joining the case. That argument fails in light of the fact that the Court granted the Motions to Intervene at the outset of that hearing, and both Intervenor-Defendants joined in the legal arguments against Plaintiff's Motion for Temporary Injunction that was argued and decided at that hearing. At most, the Court could consider waiving the transcript cost for the first few pages up to the point that the Motions to Intervene were actually granted, but the Court declines to do so.

Contrary to the position of Rise, Inc., equitable considerations also favor awarding costs against Intervenor-Defendants, since the involvement of Intervenor-Defendants made Plaintiff's responsibility to support its claims more complex.

Thus, the Court now enters final judgment in favor of Plaintiff, consistent with the above, which resolves all claims pending in this case, and is final for purposes of appeal.

**SO ORDERED.**

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