

MOTION

BLOC hereby moves the Court in accordance with Wis. Stat. §§ 803.09(1) and (2) to intervene in this action as a Defendant. In support of this Motion, and as explained in detail in the accompanying Brief in Support and in the affidavit of Angela Lang, BLOC states as follows:

1. On December 1, 2022, Plaintiff Kenneth Brown initiated this action by filing a Complaint.

2. Plaintiff asks this Court to impose a narrow and severe reading of Wis. Stat. § 6.855, which authorizes municipalities to establish alternate in-person absentee voting (“IPAV”) locations in their municipalities where voters may exercise their statutorily protected right to apply for, receive, vote, and return an absentee ballot prior to an election.

3. Plaintiff further requests that this Court overturn long-standing Wisconsin Elections Commission (“WEC” or the “Commission”) practice, which the Commission approved, regarding how it addresses certain complaints brought pursuant to Wis. Stat. § 5.06.

4. Plaintiff named WEC and the City of Racine Clerk, Tara McMenamin, as Defendants, but did not join BLOC as an additional defendant. BLOC now moves to intervene in this action as an Intervenor-Defendant.

5. The Court should grant this Motion because, as explained in further detail in the accompanying brief in support of this motion, BLOC satisfies the requirements for intervention by right under Wis. Stat. § 803.09(1).

- a. *First*, BLOC's Motion to Intervene is timely filed. BLOC files this motion as Defendant McMenamín's Motion to Dismiss and Alternative Motion to Strike is pending and, therefore, other matters are stayed. BLOC files this Motion prior to the Court adjudicating any substantive motion, and prior to the adjudication of motions to intervene filed by Proposed Intervenor-Defendants the Democratic National Committee and Wisconsin Alliance for Retired Americans. Finally, BLOC files this Motion in sufficient time for it to be heard at the hearing currently set for March 15, 2023, and for any other party to respond prior to that hearing.
- b. *Second*, BLOC's interests are directly related to the subject of this action. BLOC is a nonprofit organization that engages in extensive and sustained efforts to promote voter awareness, education, and participation, and to encourage civic engagement in Wisconsin's Black communities, including in Racine. BLOC invests time and resources in educating its members, constituencies, and the public about elections and how and when to cast a ballot, and provide resources to assist its members, constituents, and other Wisconsin voters to exercise their right to vote, including IPAV. BLOC continues to advocate and work for access to the political process and the successful conduct of free and fair elections in Wisconsin, which are threatened both by Plaintiff's myopic reading of Wis. Stat. § 6.855

and his challenge to long-standing WEC practices regarding the resolution of certain complaints.

- c. *Third*, the current Defendants cannot adequately represent BLOC's interests. WEC and Clerk McMEnamin are government actors with interests in defending their own conduct and determinations. WEC has the general responsibility for the administration of Wisconsin's election laws. Wis. Stat. § 5.05(1). Among other responsibilities as a city clerk, Clerk McMEnamin has "charge and supervision of elections and registration" in the City of Racine. Wis. Stat. § 7.15(1). Unlike BLOC, neither Defendant represents or advocates on behalf of citizens and voters, much less specifically Black citizens and voters. Nor do the proposed Intervenor-Defendants primarily serve BLOC's core constituency.
- d. *Fourth*, the relief Plaintiff seeks in the matter would, if granted, impair BLOC's ability to protect its own interests and those of its members and constituents in this litigation. Were Plaintiff to prevail, the ability of Racine voters, including individuals with whom and on whose behalf BLOC works, to lawfully and securely vote via IPAV would be severely restricted. Further, this case may have statewide implications for how WEC, municipalities, and courts interpret Wis. Stat. § 6.855 and may thereby affect IPAV availability in other municipalities in which BLOC is active. Finally, Plaintiff's challenge

to WEC's complaint-resolution procedure threatens to disrupt the efficient and orderly resolution of election-related complaints and election administration, areas in which BLOC actively works.

6. For these reasons, LWVWI is entitled to intervene under Wisconsin law. *Armada Broad., Inc., v. Stirn*, 183 Wis. 2d 463, 471, 516 N.W. 2d 357 (1994).

7. Alternatively, BLOC should be granted permissive intervention under Wis. Stat. § 803.09(2) because (1) its intervention would not unduly delay or prejudice the adjudication of the original rights of the parties and (2) its claims and defenses and the main action share common questions of law.

WHEREFORE, Proposed Intervenor-Defendant Black Leaders Organizing for Communities respectfully requests that the Court: (a) set this Motion to Intervene for hearing; and (b) grant this Motion to Intervene, enter an order joining BLOC to this action as an additional Defendant, and accept for filing the attached Answer and Affirmative Defenses.

Dated this 1st day of March, 2023.

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