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CIRCUIT COURT
DANE COUNTY, WI
2023CV001900

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 12

PRIORITIES USA, WISCONSIN ALLIANCE FOR
RETIRED AMERICANS, *and* WILLIAM FRANKS,
JR.,

Plaintiffs,

Case No. 2023CV1900

v.

WISCONSIN ELECTIONS COMMISSION,

Defendant.

**PROPOSED-INTERVENOR DEFENDANT THE
WISCONSIN STATE LEGISLATURE'S MEMORANDUM
IN SUPPORT OF ITS MOTION TO INTERVENE**

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INTRODUCTION

The Wisconsin State Legislature (“Legislature”) has enacted statutory provisions allowing Wisconsinites to exercise the privilege of voting absentee, while also outlining certain procedures and timelines to govern that privilege, just as the Wisconsin Constitution specifically authorizes the Legislature to do. Plaintiffs ask this Court to invalidate several of these state election laws on constitutional grounds, including the requirements that absentee ballots be properly witnessed and returned prior to 8 p.m. on Election Day. Plaintiffs’ lawsuit is an affront to the separation of powers, including because it undermines the Legislature’s substantial interest in ensuring the proper enforcement, efficacy, and integrity of the State’s election laws.

This Court should allow the Legislature to intervene as a Defendant as a matter of right, for two independent reasons. First, the Legislature has a sovereign right to defend the State’s election laws against Plaintiffs’ constitutional challenges. That right is codified in Wis. Stat. § 803.09(2m), which grants the Legislature the right to intervene in a lawsuit whenever a litigant “challenges the . . . constitutionality of a statute, facially or as applied.” Wis. Stat. § 803.09(2m); *see also Democratic Nat’l Comm. v. Bostelmann*, 2020 WI 80, ¶ 8, 394 Wis. 2d 33, 949 N.W.2d 423 (quoting Wis. Stat. § 803.09(2m)). Second, the Legislature is entitled to intervene as of right under Wis. Stat. § 803.09(1), as the Legislature has filed a timely motion seeking to protect its interests in the constitutionality of its statutes, the integrity and efficacy of its own constitutional powers, and the integrity of upcoming elections, which this lawsuit plainly threatens.

Alternatively, this Court should grant the Legislature permissive intervention under Wis. Stat. § 803.09(2). Circuit courts have granted the Legislature's intervention motions in three matters involving the construction of Wis. Stat. § 6.87's witness-address requirement for absentee ballots, see *White v. WEC*, No.2022CV1008 (Waukesha Cnty. Cir. Ct. July 12, 2022); *Rise, Inc. v. WEC*, No.2022CV2446 (Dane Cnty. Cir. Ct. Sept. 27, 2022); *League of Women Voters of Wis. v. WEC* (“LWV”), No.2022CV2472 (Dane Cnty. Cir. Ct. Sept. 30, 2022), and this case threatens the Legislature's interests even more directly by asking this Court to invalidate those statutory provisions, among others. The Legislature will raise core defenses grounded in Plaintiffs' claims, and the Legislature's involvement as a party in this matter will not prejudice the existing parties at all.

STATEMENT

A. Consistent With Its Constitutional Authority, The Legislature Has Enacted Various Procedures To Govern The Privilege Of Absentee Voting

Article III of the Wisconsin Constitution provides for the right to vote, Wis. Const. art. III, § 1, while also empowering the Legislature to enact laws governing various aspects of the voting process, *id.* § 2. As most relevant, the Legislature “may” enact laws “[p]roviding for absentee voting.” *Id.* Under this specific constitutional authority, the Legislature has enacted a comprehensive statutory scheme allowing Wisconsin voters to exercise the “privilege” of voting absentee. Wis. Stat. § 6.84. Three of the State's statutory absentee-voting procedures are at issue here.

1. *The Witness Requirement.* Wisconsin requires absentee ballots to be witnessed. Section 6.87 requires an absentee voter to mark and fold his or her absentee ballot in the presence of an adult witness and then place it within the official absentee-ballot envelope. Wis. Stat. § 6.87(4)(b)(1); *see id.* § 6.875. The witness must then provide his or her “[a]ddress” on the absentee-ballot envelope certificate. *Id.* § 6.87(2). “If a certificate is missing the address of a witness, the [absentee] ballot may not be counted.” *Id.* § 6.87(6d).

2. *The Drop Box Prohibition.* Section 6.87 mandates that absentee ballots “be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” *Id.* § 6.87(4)(b)1. In *Teigen v. WEC*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519, the Wisconsin Supreme Court analyzed Section 6.87(4)(b)1’s text and concluded that the Legislature’s “‘carefully regulated’ procedures for absentee voting do not permit voting via ballot drop boxes.” *Id.* ¶ 72. Thus, absentee voters must either “mail[]” or personally “deliver[]” their absentee ballots to the municipal clerk to have their vote counted. Wis. Stat. § 6.87(4)(b)1; *Teigen*, 2022 WI 64, ¶ 87.

3. *The Cure Deadline.* Wisconsin also sets forth a cut-off time for the receipt of absentee ballots, meaning that there is a deadline for absentee voters to cure any errors in their absentee-ballot certificates (such as a witness’s failure to include his or her address on the certificate, *see* Wis. Stat. § 6.87(6d)). An absentee voter must return his or her ballot “so it is delivered to the polling place no later than 8 p.m. on election day.” *Id.* § 6.87(6). “Any ballot not mailed or delivered as provided in this subsection may not be counted.” *Id.* Municipal clerks can “return” an improperly

completed absentee ballot certificate “to the elector . . . whenever time permits the elector to correct the defect and return the ballot.” *Id.* § 6.87(9).

B. Plaintiffs File This Action, Claiming That Certain Of Wisconsin’s Absentee-Voting Procedures Are Unconstitutional

On July 20, 2023, Plaintiffs Priorities USA, the Wisconsin Alliance for Retired Americans, and William Franks, Jr. (collectively, “Plaintiffs”) filed this action against the Wisconsin Elections Commission (“Defendant” or “WEC”), challenging several of Wisconsin’s statutory absentee-voting procedures as unconstitutional. First, Plaintiffs seek a declaratory judgment that the statutory provision requiring absentee voters to obtain a witness, Wis. Stat. § 6.87(4)(b)1, “severely burdens the [] fundamental right to vote” and is therefore facially unconstitutional under Article III of the Wisconsin Constitution. Dkt.2 (“Compl.”) ¶¶ 75–82. Second, Plaintiffs ask this Court to declare that the Supreme Court’s interpretation of Wis. Stat. § 6.87(4)(b)1 in *Teigen*—namely, the Court’s holding that Section 6.87(4)(b)1 does not authorize absentee ballot drop boxes—renders Wis. Stat. § 6.87(4)(b)1 unconstitutional. Compl. ¶¶ 83–95. Third, Plaintiffs request a declaratory judgment that the statutory provision requiring absentee voters to correct an improperly completed absentee-ballot certificate envelope by 8 p.m. on Election Day, Wis. Stat. § 6.87(4)(b)1, violates Article III. Compl. ¶¶ 97–106. And finally, Plaintiffs ask this Court to declare that Section 6.84, which clarifies that the ability to vote in Wisconsin is a “privilege,” Wis. Stat. § 6.84(1), violates the Constitution by “differentiating between votes cast in person and votes cast by absentee ballot in a manner which unnecessarily risks disenfranchising absentee voters.” Compl. ¶¶ 107–112. For their first three counts,

Plaintiffs also seek a declaration that certain WEC-issued documents are invalid to the extent they “embod[y]” and “implement[]” these purportedly unconstitutional statutory provisions. Compl. ¶¶ 75, 84, 98; Compl. at 28–29.

On August 8, 2023, the Republican National Committee, Republican Party of Wisconsin, Republican Party of Rock County, and Republican Party of Walworth County (collectively, the “Republican Party”) filed a motion to intervene, contending that their private interest in fair and efficient elections entitles them to intervene in this action. Dkt.27. This Court then issued a briefing schedule on the Republican Party’s motion and set a hearing date for October 31, 2023. Dkts.32, 33.

STATEMENT OF INTEREST

The Legislature comprises the State Assembly and the State Senate. *See* Wis. Const. art. IV, § 1. Wisconsin law recognizes that the Legislature—as the body “vested” with the “legislative power,” *id.*—has an interest in defending the State’s own sovereign interest in its law in court, *Bostelmann*, 2020 WI 80, ¶¶ 8, 13. Specifically, Section 803.09(2m) provides that “[w]hen a party to an action challenges in state or federal court the constitutionality of a statute, facially or as applied,” or the “validity of a statute, as part of a claim or affirmative defense . . . the legislature may intervene as set forth under [Section] 13.365.” Wis. Stat. § 803.09(2m). Section 13.365(3) further provides that “[t]he joint committee on legislative organization may intervene at any time in the action on behalf of the legislature” and permits the hiring of counsel other than the Attorney General. *Id.* § 13.365(3). Thus, “Wisconsin has adopted a public policy that gives the Legislature a set of litigation interests,”

Bostelmann, 2020 WI 80, ¶ 8, including where, as here, a party “otherwise challenges the . . . validity of a statute, as part of a claim or affirmative defense,” *id.* (quoting Wis. Stat. § 803.09(2m)).

The Legislature also has a core interest in its constitutional powers. *See Wis. Legislature v. Palm*, 2020 WI 42, ¶ 13, 391 Wis. 2d 497, 942 N.W.2d 900; *Serv. Emps. Int’l Union, Loc. 1 (“SEIU”) v. Vos*, 2020 WI 67, ¶¶ 63–73, 393 Wis. 2d 38, 946 N.W.2d 35. The Constitution provides that the Legislature “may” enact laws “[p]roviding for absentee voting.” Wis. Const. art. III, § 2. The Legislature has an interest in claims, such as those asserted by Plaintiffs here, that would undermine the efficacy and integrity of the Legislature’s constitutional authority to enact laws governing the procedures for absentee voting in Wisconsin. *Palm*, 2020 WI 42, ¶ 13.

ARGUMENT

I. The Legislature Is Entitled To Intervene As Of Right Under Section 803.09(2m) As Plaintiffs’ Challenge Involves The Constitutionality Of Wisconsin’s Absentee-Voting Laws

The Legislature has the authority to intervene as a matter of right in any lawsuit and “at any time,” when a party challenges “the constitutionality of a statute, facially or as applied.” Wis. Stat. § 803.09(2m); *see also id.* § 13.365. Through Section 803.09(2m), “Wisconsin has adopted a public policy that gives the Legislature . . . litigation interests” that permit it to intervene when a party challenges the “validity of a statute, as part of a claim or affirmative defense.” *Bostelmann*, 2020 WI 80, ¶ 8 (quoting Wis. Stat. § 803.09(2m)). In such instances, “the Legislature” has “a statutory right to participate as a party.” *Id.* ¶ 13.

Here, the Legislature is entitled to intervene as of right under Section 803.09(2m). Plaintiffs' Complaint challenges several State election laws governing absentee voting in Wisconsin, namely, (i) the requirement that absentee votes be witnessed, Wis. Stat. § 6.87(4)(b)1, (ii) the requirement that the absentee ballot "be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots," *id.*, as that requirement has been interpreted by the Wisconsin Supreme Court, *Teigen*, 2022 WI 64, (iii) the requirement that an absentee ballot must be "returned so it is delivered to the polling place no later than 8 p.m. on election day," Wis. Stat. § 6.87(6), and (iv) the general statutory recognition that, under the Wisconsin Constitution, absentee voting is a "privilege" rather than a "constitutional right," *id.* § 6.84(1). See Compl. ¶¶ 82, 95, 106, 112. Plaintiffs could not prevail on their declaratory judgment claims unless this Court determines the "constitutionality" of these statutory provisions. Wis. Stat. § 803.09(2m); see *Bostelmann*, 2020 WI 80, ¶¶ 8, 13. For that reason alone, this Court should grant the Legislature's Motion To Intervene.

II. The Legislature Is Also Entitled To Intervene As Of Right Under § 803.09(1)

The Legislature is also entitled to intervene in this action as a matter of right under Section 803.09(1). "A movant must meet four requirements to intervene as a matter of right: (1) the motion to intervene must be timely; (2) the movant must claim an interest in the subject of the action; (3) 'the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest;' and (4) the existing parties do not adequately represent the movant's interest." *City of*

Madison v. Wis. Emp. Rels. Comm'n, 2000 WI 39, ¶ 11, 234 Wis. 2d 550, 610 N.W.2d 94 (citations omitted); accord *Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 471, 516 N.W.2d 357, 360 (1994); see also Wis. Stat. § 803.09(1). The Legislature meets each of Section 803.09(1)'s requirements.

1. *The Legislature's Motion Is Timely.* In deciding whether a motion to intervene is timely, "courts in Wisconsin have looked at a number of factors, including: (1) when the proposed intervenor discovered his or her interest was at risk; (2) how far litigation has proceeded; and (3) the extent to which the other parties would be prejudiced by the addition of a new party." *Roth v. La Farge Sch. Dist. Bd. of Canvassers*, 2001 WI App. 221, ¶ 17, 247 Wis. 2d 708, 634 N.W.2d 882. Courts also consider whether the intervenor could simply "initiate [] a separate [] action." *State ex rel. Bilder v. Township of Delavan*, 112 Wis. 2d 539, 550, 334 N.W.2d 252, 258 (1983). But "[t]he critical factor is whether in view of all the circumstances the proposed intervenor acted promptly." *Id.* (citation omitted). Here, the Legislature's proposed intervention is timely, as the Legislature filed this Motion in the early stages of this case, very soon after it "discovered [its] interest was at risk." *Roth*, 2001 WI App. 221, ¶ 17 (citations omitted). The Legislature filed roughly one month after Plaintiffs filed their Complaint on July 20, 2023, and before WEC has filed an Answer. Neither Plaintiffs nor WEC will be "prejudiced by the addition of" the Legislature to this suit at this very early stage before WEC has even submitted its own responsive pleading. *Id.*

2. *The Legislature Has A Substantial Interest In The Subject Matter Of This Lawsuit.* A proposed intervenor meets Section 803.09(1)'s interest element by showing an "interest of such direct and immediate character that the intervenor will either gain or lose by the direct operation of the judgment." *City of Madison*, 2000 WI 39, ¶ 11 n.9 (citation omitted). Courts take a "pragmatic approach" in assessing this element, *Armada Broad., Inc.*, 183 Wis. 2d at 474, examining "the facts and circumstances of the particular case" in light of the liberal "policies underlying the intervention statute," namely, "the speedy and economical resolution of controversies" that results when interested parties are joined in a single suit, with due regard that the "original parties . . . should be allowed to conduct and conclude their own lawsuit," *Bilder*, 112 Wis. 2d at 548 (citations omitted). The "interest test" is "primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Id.* at 548–49 (citations omitted).

The Legislature has a direct and substantial interest in the subject matter of this litigation, for three independent reasons. First, Wisconsin has the sovereign and "legitimate interest in the continued enforcement of [its] own statutes." *Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191, 2201 (2022) (brackets altered; citations omitted). Sections 13.365 and 803.09(2m) show the State's sovereign choice to permit the Legislature to assert that interest in court. Wis. Stat. §§ 13.365, 803.09(2m); *Bostelmann*, 2020 WI 80, ¶¶ 8, 13. Second, the Legislature has an interest in the efficacy and integrity of its own powers, *Palm*, 2020 WI 42, ¶ 13,

including its power to enact laws “[p]roviding for absentee voting,” Wis. Const. art. III, § 1. Finally, the Legislature has an interest in ensuring the integrity of elections throughout Wisconsin via the faithful enforcement of its election-integrity statutes. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) (controlling plurality of Stevens, J.); *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989).

Each of these interests is implicated here. First, as explained above, Plaintiffs ask this Court to determine the constitutionality of Sections 6.84, 6.87, and other relevant election laws to adjudicate Plaintiffs’ constitutional claims, *supra* Part I, and the Legislature has an interest in the continued validity of those laws. Second, if this Court grants the particular relief requested in Plaintiffs’ Complaint—namely, a ruling that absentee voting is a fundamental right rather than a “privilege,” Wis. Stat. § 6.84—it would undermine the Legislature’s constitutional authority to enact laws “[p]roviding for absentee voting,” Wis. Const. art. III, § 2, which authority encompasses enacting the rules and procedures governing the absentee-voting process that Plaintiffs challenge in this lawsuit, *see League of Women Voters of Wis. Educ. Network, Inc. v. Walker*, 2014 WI 97, ¶¶ 5, 58, 357 Wis. 2d 360, 851 N.W.2d 302. Finally, Plaintiffs’ lawsuit seeks to invalidate Section 6.87’s requirements that absentee ballots be witnessed and then mailed or personally delivered to the municipal clerk, which are part of the Legislature’s election-integrity measures for absentee voting. *See* Wis. Stat. § 6.87(4)(b)1; *accord Eu*, 489 U.S. at 231; *Crawford*, 553 U.S. at 196 (controlling plurality of Stevens, J.).

3. *The Disposition Of This Lawsuit May Impair The Legislature's Interest.*

The third element of Section 803.09(1) is whether the Court's "disposition of the action may as a practical matter impair or impede the [Legislature's] ability to protect [its] interest[s]." *City of Madison*, 2000 WI 39, ¶ 11 (citation omitted). This element, too, is met here.

If this Court grants Plaintiffs' request to invalidate several of the State's election laws, in whole or in part, its decision will impede the Legislature's interests noted above. A ruling from this Court in Plaintiffs' favor would undermine the Legislature's interests in the constitutionality of its laws. Further, if this Court were to invalidate the State's absentee-voting laws challenged here, that would harm the Legislature's interest in the efficacy and integrity of its own powers—specifically, its constitutional authority to enact the procedures governing the State's absentee-voting regime. *See* Wis. Const. art. III, § 2. Finally, by invalidating Section 6.87's absentee-witness requirement and procedure for submitting absentee ballots, an order in favor of Plaintiffs here would undermine the Legislature's interest in election integrity. *See* Wis. Stat. § 6.84(1); *accord Eu*, 489 U.S. at 231; *Crawford*, 553 U.S. at 196 (controlling plurality of Stevens, J.).

4. *No Other Party Adequately Represents The Legislature's Interests.* The last element of Section 803.09(1) is whether any existing parties "adequately represent the [Legislature's] interest[s]." *City of Madison*, 2000 WI 39, ¶ 11 (citation omitted). To satisfy this adequacy requirement, the proposed intervenor bears the "minimal" burden of "show[ing] that the representation of [its] interest 'may be' inadequate."

Wolff v. Town of Jamestown, 229 Wis. 2d 738, 747, 601 N.W.2d 301, 306 (Ct. App. 1999) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Courts look to whether the proposed intervenor would “gain or lose” in the same way as another party, or whether it would “protect a right that would not otherwise be protected in the litigation.” *Helgeland v. Wis. Muns.*, 2008 WI 9, ¶ 45, 307 Wis. 2d 1, 745 N.W.2d 1 (citation omitted). Even when the proposed intervenor seeks the same outcome as an existing party in the action, intervention is nonetheless appropriate if the intervenor is “in a better position . . . to provide full ventilation of the legal and factual context.” *Wolff*, 229 Wis. 2d at 748 (citation omitted).

No other party could represent adequately the Legislature’s substantial interests here, so the Legislature meets the “minimal” burden of “show[ing] that the representation of [its] interest ‘may be’ inadequate” absent intervention. *Id.* at 747. The Legislature’s unique sovereign interests are at issue in this action. *Supra* pp.9–11. None of the existing parties share those interests, and thus none of these parties can represent adequately the Legislature’s interests. *Helgeland*, 2008 WI 9, ¶ 45. Plaintiffs cannot represent the Legislature’s interest in the validity, efficacy, and integrity of the absentee-voting laws and the Legislature’s constitutional power to enact those laws, as Plaintiffs are adverse to the Legislature: they expressly seek to invalidate as unconstitutional several absentee-voting laws enacted by the Legislature pursuant to Article III of the Constitution. *Id.* Nor can Defendant WEC—an agent of the State when enforcing state election law—adequately advance any of the Legislature’s interests in the validity, efficacy, and integrity of the

absentee-voting laws, including because the Legislature, not WEC, has the authority to enact laws “[p]roviding for absentee voting.” Wis. Const. art. III, § 2.

III. At Minimum, This Court Should Grant The Legislature Permissive Intervention Under Section 803.09(2)

If this Court declines to award the Legislature intervention as a matter of right, it should exercise its discretion to grant the Legislature permissive intervention. Section 803.09(2) provides, in relevant part, that “[u]pon timely motion anyone may be permitted to intervene in an action when a 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 its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties,” *id.*, by, for example, “making the lawsuit complex or unending,” *C.L. v. Edson*, 140 Wis. 2d 168, 177, 409 N.W.2d 417, 420 (Ct. App. 1987). A proposed permissible intervenor need only be “a proper party”; it need not “be necessary to the adjudication of the action.” *City of Madison*, 2000 WI 39, ¶ 11 n.11.

Here, the Legislature meets both of Section 803.09(2)’s threshold inquiries. First, the Legislature’s “defense” in this action is “in common” with the “main action,” Wis. Stat. § 803.09(2), as the Legislature asserts that the absentee voting provisions challenged in this action are valid and do not violate the Constitution. Second, the Legislature’s Motion is “timely,” *id.*, because it was filed at an early stage in this litigation, roughly one month after Plaintiffs filed their Complaint and before WEC filed any responsive pleading, *supra* pp.8–9.

Beyond these two threshold requirements, all other appropriate permissive-intervention factors support the Legislature's intervention. The Legislature has significant and direct interests that are implicated in this case, as discussed above, *supra* Part II, including the sovereign interest in the validity of its statutes, *Bostelmann*, 2020 WI 80, ¶¶ 8, 13; *Eu*, 489 U.S. at 231. That interest is implicated here, as the subject matter of this lawsuit asks the Court to determine whether certain of Wisconsin's election laws are constitutional. Further, the Legislature has a special interest in ensuring the validity of the state election-integrity statutes that are designed to protect the integrity of the elections in Wisconsin. *Crawford*, 553 U.S. at 196 (controlling plurality of Stevens, J.); *Eu*, 489 U.S. at 231. The Legislature's involvement in this suit will not "unduly delay or prejudice the adjudication of the rights of the original parties," Wis. Stat. § 803.09(2), but will instead advance Section 803.09's "primar[y]" concern with "disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process," *Bilder*, 112 Wis. 2d at 548–49 (citations omitted); see Gabrielle B. Adams et al., *Wisconsin Civil Procedure Before Trial* § 4.56 (6th ed. 2018). Finally, the Legislature's intervention would not "mak[e] the lawsuit complex or unending," as the Legislature will raise core arguments grounded in the claims alleged in Plaintiffs' Complaint, which claims implicate the Legislature's exclusive constitutional authority to enact laws providing for absentee voting. *Edson*, 140 Wis. 2d at 177.

Notably, circuit courts have allowed the Legislature to intervene in several other matters involving some of the same absentee-voting laws at issue here, and the

Legislature's participation has helped clarify and refine the issues in these cases. In *Rise, Inc. v. WEC*, No.2022CV2446 (Dane Cnty. Cir. Ct.), and *LWV v. WEC*, No.2022CV2472 (Dane Cnty. Cir. Ct.), for instance, the plaintiffs at least initially sought declaratory judgments construing the meaning of Section 6.87's witness-address requirement for absentee ballots. The Legislature's briefing in these cases has already led to the dismissal of certain claims in *LWV*, see *LWV*, No.2022CV2472 (Dane Cnty. Cir. Ct. Mar. 14, 2023) (ECF 107) (dismissing count one of the second amended complaint); *LWV*, No.2022CV2472 (Dane Cnty. Cir. Ct. June 13, 2023) (ECF 111) (granting parties' stipulation to dismiss count three of the second amended complaint without prejudice), and an amended pleading in *Rise*, see *Rise*, No.2022CV2446 (Dane Cnty. Cir. Ct. Mar. 24, 2023) (ECF 160). Similarly, in *White v. WEC*, No.2022CV1008 (Waukesha Cnty. Cir. Ct.), the plaintiffs challenged WEC's attempt to disregard the plain terms of Section 6.87's witness-address requirement by instructing clerks to unilaterally cure certain defective absentee ballot witness certificates. The Legislature successfully intervened and helped obtain a final judgment permanently enjoining WEC's unlawful conduct. See *White*, No.2022CV1008 (Waukesha Cnty. Cir. Ct. Oct. 3, 2022) (ECF 188). As in these other cases, the Legislature's intervention here will assist the Court and the parties in clarifying the legal issues and resolving this matter.

CONCLUSION

This Court should grant the Legislature's Motion To Intervene.

Dated: August 22, 2023

Respectfully submitted,

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