FILED
10-27-2023
CIRCUIT COURT
DANE COUNTY, WI
2023CV001900

BY THE COURT:

DATE SIGNED: October 27, 2023

Electronically signed by Ann Peacock
Circuit Court Judge

STATE OF WISCONSIN	CIRCUIT COURT BRANCH 12	DANE COUNTY

PRIORITIES USA, et al.,

Plaintiffs,

v. Case No. 23-CV-1900

WISCONSIN ELECTIONS COMMISSION, et al.,

Defendants.

RETRIEVED FROM DEMOCRACYDOCKET.COM

DECISION AND ORDER
DENYING MOTIONS TO INTERVENE

INTRODUCTION

In this declaratory judgment action, the Plaintiffs—Priorities USA, Wisconsin Alliance for Retired Americans, and William Franks, Jr. (collectively Plaintiffs)—challenge statutory provisions related to absentee voting. Presently before the Court are two opposed motions to intervene.[1] One motion is brought by four entities associated with the Republican Party

[1] The Wisconsin State Legislature also brought a motion to intervene. Dkt. 39. Because the Legislature has a statutory right to intervene in this action and neither party objected to the Legislature's Motion, the motion was granted. Dkt. 73; *see also* Wis. Stat. § 803.09(2m); Wis. Stat. § 13.365.

(collectively "the GOP Intervenors"). The other motion is brought by two private citizens and the Association of Mature American Citizens, Inc. (collectively "the AMAC Intervenors"). Both groups of proposed intervenors seek to intervene as of right under Wis. Stat. § 803.09(1) or, alternatively, as a matter of permission under Wis. Stat. § 803.09(2). Neither the GOP Intervenors nor the AMAC Intervenors satisfy the requirements for intervention under either statutory provision.

To intervene as of right, a movant must show, among other things, "that the existing parties do not adequately represent" their interest. *Helgeland v. Wisconsin Muns.,* 2008 WI 9, ¶38, 307 Wis. 2d 1, 745 N.W.2d 1. Both groups of proposed intervenors fail to make this showing. Even assuming they could satisfy the other elements of intervention, they do not provide facts that show the existing defendants—the Wisconsin Elections Commission ("WEC") and the Wisconsin State Legislature ("the Legislature")—cannot adequately represent their interests. With respect to permissive intervention, I conclude that the groups of proposed intervenors would be "completely superfluous and therefore only wasteful of the time and attention of the existing parties and the court." *See Rise, Inc. v. WEC,* No. 22AP1838, unpublished, ¶¶48-50 (WI App Jul. 7, 2023).[2]

RETRIEVED FROM DEMOCRACYDOCKET.COM

Accordingly, the motions to intervene are denied.

BACKGROUND

On July 20, 2023, Plaintiffs commenced this action seeking a declaratory judgment that four statutory provisions related to absentee voting violate Article III of the Wisconsin Constitution. Specifically, Plaintiffs seek the following declarations:

1. Wis. Stat. § 6.87(4)(b)1. unconstitutionally requires another person to witness the signing of any absentee ballot;

[2] Cited for persuasive value under Wis. Stat. § 809.23(3)(b).

2. Wis. Stat. § 6.87(4)(b)1. unconstitutionally prohibits the use of drop boxes;

3. Wis. Stat. § 6.87(6) unconstitutionally requires absentee voters to cure any defect on or before the day of the election; and

4. Wis. Stat. § 6.84, a declaration of policy preceding the substantive parts of Wisconsin's absentee voting statutes, unconstitutionally prefers votes cast in person over votes cast absentee.

Compl. ¶¶70-112, dkt. 2. Plaintiffs further seek declarations that any guidance document[3] created by the WEC consistent with these provisions is itself unlawful. *Id.*

On August 8, the GOP Intervenors filed a motion to intervene along with a proposed answer. Dkt. 29-30. On September 8, the AMAC Intervenors filed a motion to intervene along with a proposed answer. Dkt. 67-68. WEC and Plaintiffs oppose both motions to intervene. WEC Resp. to GOP, dkt. 62; WEC Resp. to AMAC, dkt. 83; Plaintiffs Resp. to GOP, dkt. 63; Plaintiffs Resp. to AMAC, dkt. 84.

RETRIEVED FROM DEMOCRACYDOCKET.COM

LEGAL STANDARD

To intervene as of right under Wis. Stat. § 803.09(1), a movant "must show" four requirements:

> (1) the movant's motion to intervene is timely;
>
> (2) the movant claims an interest sufficiently related to the subject of the action;
>
> (3) 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.

Helgeland, 2008 WI 9, ¶38. "A movant must meet each of these four criteria to claim a right of

---

[3] A guidance document means "any formal or official document or communication issued by an agency …" that either "1. Explains the agency's implementation of a statute or rule …" or "2. Provides guidance or advice with respect to how the agency is likely to apply a statute or rule …" *SEIU v. Vos,* 2020 WI 67, ¶89 393 Wis. 2d 38, 946 N.W.2d 35.

intervention." *Id.* ¶39. However, the "the criteria need not be analyzed in isolation from one another, and a movant's strong showing with respect to one requirement may contribute to the movant's ability to meet other requirements as well." *Id.*

The *Helgeland* court provided further guidance in analyzing the requirements of intervention as of right:

> "Courts have no precise formula for determining whether a potential intervenor meets the requirements of § 803.09(1)...." The analysis is holistic, flexible, and highly fact-specific. A court must look at the facts and circumstances of each case "against the background of the policies underlying the intervention rule." A court is mindful that Wis. Stat. § 803.03(1) "attempts to strike a balance between two conflicting public policies." On the one hand, "[t]he original parties to a lawsuit should be allowed to conduct and conclude their own lawsuit...." On the other hand, "persons should be allowed to join a lawsuit in the interest of the speedy and economical resolution of controversies."

Id. ¶40 (notes omitted).

The requirements for permissive intervention are set forth in Wis. Stat. § 803.09(2):

> Upon 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. . . . 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.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Even if a movant satisfies the requirements for permissive intervention, "the circuit court has discretion to decide whether a movant may be permitted to intervene …." *Id.* ¶120.

I. THE GOP INTERVENORS' MOTION[4]

A. Intervention as of right.

The first requirement to intervene as of right is that the motion is timely. There is no dispute

[4] Seven parties seek to intervene under two distinct statutory procedures. To prevent confusion between the parties' arguments, I first address the GOP Intervenors' motion under both §§ 803.09(1) and (2). I then analyze the AMAC Intervenors' motion.

that the GOP Intervenors' motion, filed within a few weeks of the complaint, is timely. Plaintiff Resp. to GOP, dkt. 63:8.

With respect to the second and third requirements of intervention as of right, the GOP Intervenors focus on two claimed interests: (a) avoiding a diversion of resources allegedly necessary to prevent voter confusion; and (b) preserving the status quo in election laws to prevent vote dilution. GOP Reply, dkt. 82:3-9. It's far from clear that those claimed interests are sufficiently related to this action or that the disposition of this case may impair or impede the GOP Intervenors' ability to protect those interests.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The GOP Intervenors claim that changes in Wisconsin's absentee voting statutes "could … confuse voters and undermine confidence in the electoral process, potentially making it less likely that Movants' voters will vote." GOP Br., dkt. 27:9 (citing *Crawford v. Marion Cnty. Election Bd.,* 553 U.S. 181, 197 (2008); *Eu v. San Francisco Cnty. Democratic Cent. Cmte.,* 489 U.S. 214 (1989); *City of Madison v. WERC,* 2000 WI 39, 234 Wis. 2d 550, 610 N.W.2d 94). But the cited cases do not help the GOP Intervenors because the intervention motions must be "highly fact-specific." *Helgeland,* 2008 WI 9, ¶40. None of the cited cases explain why changes to Wisconsin's absentee voting would confuse voters. For example, the only discussion of voter confusion in *Crawford* comes from its dissent. According to Justice Souter, voting absentee can cause confusion not due to changes in the law but instead because it "leaves an individual without the possibility of receiving assistance from pollworkers …." *Crawford,* 553 U.S. at 212 n.4 (Souter, J., dissenting). Here, the GOP Intervenors present only vague and speculative arguments that voters—or rather, a disproportionate number of Republican voters—are likely to be so confused that they do not vote.

While the GOP Intervenors claim an adverse ruling will require them "to spend substantial resources communicating to their voters ….", they have made no attempt to quantify that amount in the affidavits of two employees who describe the potential need to modify voter education program. GOP Br., dkt. 27:9. (citing Echols Aff., ¶¶10-13, dkt. 26; Jefferson Aff., ¶¶6-11, dkt. 28). The GOP Intervenors also point out that courts should consider the effect of stare decisis. Specifically, the GOP Intervenors argue that an interpretation of Wisconsin's constitution and statutes "could undermine Movants' ability to assert their rights and interests in future cases across the country." GOP Br., dkt. 27:10. The GOP Intervenors develop no argument for why or how Wisconsin's interpretation of its statutes and constitution will effect other states' interpretations of their own laws.[5]

RETRIEVED FROM DEMOCRACYDOCKET.COM

The GOP Intervenors' reference to a vote-dilution theory is similar to that raised by the proposed intervenor in *Rise*, No. 22AP1838, ¶¶27-30. The proposed intervenor in that case claimed an interest in protecting against vote dilution. *Id.* ¶27. Although the court of appeals noted the argument had "thin legal support," it nevertheless assumed it could suffice for a claimed interest in a case related to the interpretation of voting statutes. *Id.* ¶28 ("we assume without deciding that the vote-dilution theory could be a related interest that favors intervention …"). The *Rise* court further assumed that the interest could be impaired. *Id.* ¶30 ("we assume without deciding … the Dane County case may as a practical matter impair or impede their ability to protect their asserted interest."). The *Rise* court made these two assumptions because it resolved the intervention motion on the fourth element: adequate representation. I make the same assumptions because I can also resolve the GOP Intervenors' motion on adequate representation.

[5] For example, the GOP Intervenors point to no states with similar constitutional provisions and statutory rules that might also need to resolve a conflict like the one Plaintiffs now allege.

The fourth requirement of a motion to intervene as of right is that a movant shows that the existing parties do not adequately represent the movant's interest. *Helgeland,* 2008 WI 9, ¶85. "In determining whether an existing party adequately represents a movant's interest, [a court] look[s] to see if there is a showing of collusion between the representative and the opposing party; if the representative fails in the fulfillment of his duty; or if the representative's interest is adverse to that of the proposed intervenor." *Id.* ¶87. "[A]dequate representation is ordinarily presumed when a movant and an existing party have the same ultimate objective in the action." *Id.* ¶90. Furthermore, "if a party is charged by law with representing the movant's interest, a compelling showing should be required to demonstrate that the representation is not adequate." *Id.* ¶91.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Here, the GOP Intervenors, WEC, and the Legislature all have the same ultimate objective: they would like the Court to deny the declarations sought by the Plaintiffs. WEC is charged by law to administer and enforce election laws. *See* Wis. Stat. § 5.05. And its legal counsel, the Wisconsin Department of Justice, is charged by law in defending the constitutionality of Wisconsin's election laws. Wis. Stat. § 806.04(11); *Helgeland,* 2008 WI 9, ¶96. So not only is there a presumption, the GOP Intervenors are required to make a compelling showing to rebut that presumption.

The GOP Intervenors acknowledge, but then ignore, the presumption. They instead craft their own test for inadequate representation under which they conclude intervention is appropriate because they "are the only party representing the political interests on the other side of the aisle from Plaintiffs." GOP Reply Br., dkt. 82:10 (emphasis omitted). I do not interpret Wisconsin's test for intervention so liberally. *See Helgeland,* 2008 WI 9, ¶87; *Armada Broad., Inc. v. Stirn,* 183 Wis. 2d 463, 476, 516 N.W.2d 357 (1994). But even assuming Wisconsin gave movants free reign to demonstrate inadequate representation, and further assuming I joined the GOP Intervenors'

novel application of an "aisle-balancing" test, the GOP Intervenors would not overcome the presumption of adequate representation given the existing defendants.

The GOP Intervenors argue that WEC will not protect its interest because: WEC "was on the side of the Democratic Party" in a different lawsuit, because WEC is led by a nonpartisan administrator, and because WEC "cannot be expected to defend the rules" with appropriate effort. GOP Br., dkt. 27:11. These reasons are not persuasive. First, the GOP Intervenors do not explain why WEC's prior legal position matters to the present case, in which WEC seeks the same ultimate result the GOP Intervenors also seek. Second, the GOP Intervenors do not explain why the lack of party affiliation of WEC's administrator matters. Third, the GOP Intervenors do not explain why these concerns would not be ameliorated by the participation of the Legislature, the other existing defendant.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The GOP Intervenors cite to *Armada Broadcasting* to suggest WEC will not appropriately defend their interests. In that case, journalists sued a school district to release an investigatory report into a teacher's discipline. 183 Wis. 2d at 476. The teacher properly intervened because the district was not "directly affected by public disclosure," and "[t]he personal nature of the interests at stake in the … report make [the teacher] the best person to protect those interests." *Id.* Any comparison to the present case breaks down, however, because WEC is represented by the attorney general. Unlike a school district with no direct interest in defending disciplinary records for teachers, Wisconsin's attorney general does have a direct interest in defending Wisconsin's statutes. *Helgeland,* 2008 WI 9, ¶96; *State v. City of Oak Creek,* 2000 WI 9, ¶23 & n.14, 232 Wis. 2d 612, 605 N.W.2d 526 ("The attorney general has similarly recognized his duty to defend the constitutionality of the statutes ….").

The GOP Intervenors' speculation about what WEC and/or the Legislature will or will not

argue does not demonstrate inadequate representation. This speculation without specifics is exemplified by the fact that the two existing defendants have both filed motions to dismiss and the GOP Intervenors do not point to any additional arguments that they would have made in a similar motion.

Because the GOP Intervenors have failed to make a compelling showing to overcome the presumption that WEC and the Legislature will adequately protect their interests, their motion to intervene as of right under Wis. Stat. § 802.09(1) is denied.

B. Permissive Intervention.[6]

With respect to the GOP Intervenors' motion for permissive intervention, the motion is timely. The next requirement is for the GOP Intervenors to show their "claim or defense and the main action have a question of law or fact in common." Wis. Stat. § 803.09(2). The GOP Intervenors say they satisfy this requirement because they "will argue that the laws are valid, that a declaration is unwarranted, and that Plaintiffs' desired relief would undermine Movants' interests. This inevitable clash is why courts allow political parties to intervene in defense of state election laws." GOP Br., dkt. 27:12. Plaintiffs and WEC do not focus on this part of the test for permissive intervention, so I assume the GOP Intervenors satisfy this element for purposes of this decision.[7]

RETRIEVED FROM DEMOCRACYDOCKET.COM

---

[6] The GOP Intervenors claim that "[a]ll parties agree that Movants meet the requirements for permissive intervention …." GOP Reply Br., dkt. 82:10. That is incorrect—WEC and Plaintiffs both argue that the GOP Intervenors' addition to this case would cause unnecessary delay. WEC Resp. to GOP, dkt. 62:14; Plaintiff Resp. to GOP, dkt. 63:12.

[7] In Wis. Stat. § 803.09(2), the word "defense" has a technical definition: it applies only to an intervenor who "could be a defendant to a claim in the main action or a defendant to a similar or related claim." *Helgeland v. Wisconsin Muns.,* 2006 WI App 216, ¶40, 296 Wis. 2d 880, 724 N.W.2d 208, *aff'd on other grounds,* 2008 WI 9. The court of appeals has explained the reasons for this narrow definition:

> We focus on the meaning of defense. … "Defense" is a term that has a legal meaning and we may consult Black's Law Dictionary to determine its common legal meaning. Black's Law Dictionary defines "defense" as "[a] defendant's stated reason why the plaintiff or prosecutor has no valid case, especially, a defendant's

In reviewing a motion for permissive intervention, a court must consider whether intervention would unduly delay or prejudice the adjudication of the original parties' rights. Wis. Stat. § 803.09(2). Plaintiffs and WEC argue the GOP Intervenors will cause delay and prejudice. WEC says the GOP Intervenors will delay matters because a third set of defendants will overly complicate proceedings and, in WEC's words, intervention will also cause undue prejudice because "[t]his is a case about the meaning of Wisconsin's non-partisan election laws, not a boxing match between political interests." WEC Resp. to GOP, dkt. 62:15. Plaintiffs agree and characterize intervention as "clogging the Court's docket with duplicative briefing and arguments." Plaintiffs Resp. to GOP, dkt. 63:16.

The GOP Intervenors promise to comply with scheduling orders to prevent delay. GOP Br., dkt. 27:13. They further assert that even if their intervention will prejudice the parties, excluding the Republican Party from "a seat at the table" in an election-related lawsuit will cause

RETRIEVED FROM DEMOCRACYDOCKET.COM

> answer, denial or plea[:] … 'that which is alleged by a party proceeded against in an action or suit, as a reason why the plaintiff should not recover or establish that which he seeks by his complaint or petition.'" Thus, "defense" is commonly understood as a legal term to mean not just anyone's arguments, but the arguments or allegations of a person proceeded against to defeat what the claimant seeks. In the context of Wis. Stat. § 803.09(2), "defense" conveys that the person seeking to intervene, although not named as a defendant, *could be* a defendant to a claim in the main action or a defendant to a similar or related claim.

Id. (emphasis, alterations, and second ellipsis in original, internal citations omitted, quoting *Black's Law Dictionary* 451 (8th ed. 2004)); *see id.*, ¶42 ("Federal cases discussing the identically worded federal rule in all material respects also support this meaning of 'defense.'") (collecting cases). Put simply, a claim or defense for purposes of intervention "is more than arguments or issues a non-party wishes to address." *Id.* ¶41.

The GOP Intervenors cite a series of unpublished federal district court cases that appear to ignore the "claim or defense" requirement. Their original brief cites *Trump v. WEC,* No. 20-cv-1785, unpublished slip op. (E.D. Wis. Dec. 8, 2020); *Edwards v. Vos,* No. 20-cv-340, unpublished slip op. (W.D. Wis. Jun. 23, 2020); and *Priorities USA v. Nessel,* No. 19-13341, unpublished slip op. (E.D. Mich. May 22, 2020). Each decision granted motions to intervene absent any discussion of the term "defense" or citation to any legal authority for the definition they might have used. *E.g., Trump,* No. 20-cv-1785, *3 (not finding any common claim or defense, but granting intervention because of the movant's "key perspectives."). The GOP Intervenors' Reply cites *League of Women Voters v. Va State Bd. of Elections,* No. 6:20-cv-24, unpublished slip op. (E.D. Va. Apr. 30, 2020). Like the others, this case offers no analysis of "defense." The GOP Intervenors also cite an order granting intervention in *Dem. Party of Va. v. Brink,* 599 F. Supp. 3d 346 (E.D. Va. 2022). However, they cite that order by what appears to be a reference to an internal docket number and have not provided a copy of the opinion. GOP Reply Br., dkt. 82:11 (citing "*Brink,* Doc. 39 ….").

an equal amount of prejudice. *Id.* at 13-14. Specifically, the GOP Intervenors say they may appeal an order denying intervention, which may delay adjudication of the original parties' rights. *Id.* at 13. In support of this proposition, they cite an unpublished trial order from *League of Women Voters of Fla. v. Lee,* 595 F. Supp. 3d 1042 (N.D. Fla. June 4, 2021), *rev'd sub nom. League of Women Voters of Fla. v. Florida Secretary of State,* 66 F.4th 905 (11th Cir. 2023), but that order contains no reasoning except to rely on a different unpublished order.

The GOP Intervenors' argument about a countervailing delay because of the threat of appeal is not persuasive for at least two reasons. First, a vacated Florida district court's non-final intervention order is not helpful to understanding any part of Wisconsin law. Second, and more importantly, the GOP Intervenors develop no argument about why their potential for appeal of an intervention special proceeding could delay the underlying civil action. *See* Wis. Stat. § 808.075(3); *Madison Teachers, Inc. v. Walker,* 2013 WI 91, ¶18, 351 Wis. 2d 237, 839 N.W.2d 388; *In re Mayer's Estate,* 29 Wis. 2d 497, 504-505, 139 N.W.2d 111 (1966). I decline to base an intervention decision on a vague theory of appeal.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Ultimately, allowing the GOP Intervenors to intervene will delay these proceedings and prejudice the rights of the original parties. At a minimum, intervention would mean that the Court and the parties would have to read and respond to the arguments of a third set—or if the Court also grants the AMAC Intervenors' motion, a fourth set—of defendants. The GOP Intervenors' burden here was to show that their intervention would add some benefit to outweigh that added cost. That is, they had to show that something "beneficial would be accomplished by permitting them to intervene under § 803.09(2)." *Rise,* No. 22AP1838, ¶50. They fail to make that showing because they do not explain why the Court needs three sets of defendants to all defend the same statutory interpretation or, alternatively, why their status as political parties matters to the interpretation of

election statutes. Because their participation would be "completely superfluous and therefore only wasteful of the time and attention of the existing parties and the court," the GOP Intervenors' motion for permissive intervention is denied. *See id.* ¶¶48-50.

II. THE AMAC INTERVENORS' MOTION

A. Intervention as of right.

The AMAC Intervenors claim that a "motion is timely if it is filed before the first substantive hearing in the case." AMAC Br., dkt. 68:7 (citing *Armada Broad.,* 183 Wis. 2d at 472). However, *Armada Broadcasting* does not say this—it says, instead, that "[t]he question of timeliness is left to the discretion of the circuit court." *See also Helgeland,* 2008 WI 9, ¶42 (same). In any event, the AMAC Intervenors filed their motion to intervene on September 8. This was one day after WEC and the Legislature responded to the complaint with their motions to dismiss.

RETRIEVED FROM DEMOCRACYDOCKET.COM

To determine whether a motion is timely, "our supreme court has devised a two-part test." *C.L. v. Edson,* 140 Wis. 2d 168, 178, 409 N.W.2d 417 (Ct. App. 1987) (citing *Bilder v. Twp. of Delavan,* 112 Wis. 2d 539, 334 N.W.2d 252 (1983)). That test asks "whether in view of all the circumstances the proposed intervenor acted promptly" and "whether the intervention will prejudice the original parties to the lawsuit." *Bilder,* 112 Wis. 2d at 550 (citations omitted).

I conclude the AMAC Intervenors satisfy both parts of this test: they acted relatively promptly by filing their motion to intervene only one day after the other defendants filed their responsive papers. While the timing of the intervention could be viewed as prejudicial given that the AMAC Intervenors waited until the parties had already filed briefs in opposition to the GOP Intervenors, the prejudice was minimal.

With respect to the second and third requirements of intervention as of right, the AMAC Intervenors claim two interests: (1) "an interest in … making sure that their legally cast ballots are

not diluted or polluted by illegally cast ballots, and (2) … an interest in defending the judgment in their prior litigation." AMAC Br., dkt. 68:9; AMAC Reply Br., dkt. 87:3, 8. According to the AMAC Intervenors, this action may threaten the "functional result" of *Teigen v. WEC,* 2022 WI 64. The court of appeals was recently confronted with similar asserted interests in *Rise,* No. 22AP1838, ¶¶23-30. The *Rise* court assumed that the proposed intervenor had a substantially similar interest and that the interest could be impaired by the lawsuit. *Id.* ¶30. The *Rise* court could make these two assumptions because it resolved the intervention motion on the fourth requirement: adequate representation.

For the reasons set forth in *Rise* and the above discussion with respect to the GOP Intervenors, it is far from clear that the AMAC Intervenors' claimed interests are sufficiently related to this action or that the disposition of this case may impair or impede their ability to protect those interests. However, I make assumptions on those requirements in favor of the AMAC Intervenors because I resolve the AMAC Intervenors' motion on the fourth requirement of adequate representation.

RETRIEVED FROM DEMOCRACYDOCKET.COM

With regard to the fourth requirement, the AMAC Intervenors begin by acknowledging that they have the same ultimate objective as the existing parties. AMAC Br., dkt. 68:13. As with the GOP Intervenors' motion, the Court must presume adequate representation, *Helgeland,* 2008 WI 9, ¶90, and, as with the GOP Intervenors, the AMAC Intervenors do not address any of the factors our supreme court asks intervention movants to address. *Id.* ¶87 (courts look for (1) collusion, or (2) if the existing representative fails, or (3) for adverse interests).

The AMAC Intervenors instead raise three concerns of their own. The first is their "concern that WEC will not adequately defend the very interpretation of state law that it directly opposed"

in *Teigen v. WEC.* AMAC Br., dkt. 68:14. But the AMAC Intervenors do not explain why WEC (or its attorney, the Wisconsin Attorney General) would ignore the Wisconsin Supreme Court's holding in *Teigen* given that WEC acknowledges the ruling and has made changes consistent with that ruling. And even if the AMAC Intervenors could make that showing, they do not explain the connection between the *statutory* challenge in *Teigen* and the present *constitutional* challenge. *See Teigen,* 2022 WI 64, ¶2 (summarizing the petitioner's arguments as (1) guidance documents were "unpromulgated administrative rules; and (2) under Wisconsin statutes, drop boxes are illegal."). Further, the AMAC Intervenors do not advance a convincing argument to explain why the Legislature would also refuse to adequately defend its own statutes.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The AMAC Intervenors' second concern with existing representation is that their rights are different than WEC and the Legislature. AMAC Br., dkt. 68:15. The AMAC Intervenors include people who can vote, so they conclude their interests must also be different. To demonstrate this, in both their initial brief and reply, the AMAC Intervenors cite *Feehan v. WEC,* 506 F. Supp. 3d 640 (E.D. Wis. 2020). *Feehan* is a useful comparison. That case was a challenge to "set aside the results of the 2020 General Election …." *Id.* at 642. Attorney James Gesbeck moved to intervene, claiming that WEC did not represent his interest for the very same reasons the AMAC Intervenors now advance: "[Gesbeck] asserts that the right to vote is an individual right and argues that the court should not assume that it is the role of the … elections commission to protect that individual right." *Id.* at 646. The district court agreed with Gesbeck's characterization of his rights and WEC's role, but explained this did not matter: "The movant does not have a right, independent of the defendants, to defend the certification … He has different *reasons* for defending the certification …." *Id.* at 648 (emphasis in original). The same is true here. The AMAC Intervenors, WEC, and the Legislature all want to defend Wisconsin's statutory provisions at issue in this case. The fact

that each of the three may have different *reasons* for defending the provisions does not mean the AMAC Intervenors' interests diverge from either WEC or the Legislature.

The AMAC Intervenors' final concern is "avoiding the confusion that will result from a court order invalidating the challenged provisions." AMAC Br., dkt. 68:15. To explain their fear of confusion, the AMAC Intervenors cite *Purcell v. Gonzalez,* 549 U.S. 1 (2006) (per curiam), a case in which the Supreme Court refused to address the merits of a case "[g]iven the imminence of the election and the inadequate time to resolve the factual disputes …." *Id.* at 5-6. It's unclear as to what this has to do with the question of whether WEC and/or the Legislature will adequately protect the AMAC Intervenors' interests. The AMAC Intervenors do not explain why any party wants confusion or, if any confusion may result from this case, why there is not enough time to resolve that confusion before an election.

RETRIEVED FROM DEMOCRACYDOCKET.COM

To prevail on their motion to intervene as of right under § 803.09(1), the AMAC Intervenors had to rebut a presumption that WEC and the Legislature would provide adequate representation. The AMAC Intervenors do not meet this burden because they do not address the factors set forth in *Helgeland* and because none of the three reasons they supply—that WEC and the Legislature will not defend their statutes, that they have their own reasons for defending those statutes, and that this case may cause confusion—is a compelling showing sufficient to overcome the presumption of adequate representation. As with the GOP Intervenors, the AMAC Intervenors do not identify any argument that either of the existing defendants failed to advance in their pending motions to dismiss. Indeed, the AMAC defendants state that they "do not intend to file a separate motion to dismiss . . . ." AMAC Reply Br., dkt. 87:14. These facts militate against a finding that the existing defendants do not provide adequate representation. "Failure to establish one element means the motion must be denied." *Olivarez,* 2006 WI App 189, ¶12. I therefore deny

the AMAC Intervenors' motion to intervene as of right.

B. Permissive Intervention.

With respect to the AMAC Intervenors' motion for permissive intervention, the motion is timely. The AMAC Intervenors next had to show a claim or defense in common with the main action. To satisfy this burden, the AMAC Intervenors say they will "seek to defend the constitutionality of the challenged statutes in order to protect Wisconsin's longstanding rules that safeguard election integrity …." AMAC Br., dkt. 68:16. Neither Plaintiffs nor WEC meaningfully dispute this, so I assume the AMAC Intervenors satisfy this element. *But see* fn. 7.

In attempting to show that their participation will not unduly delay or prejudice the adjudication of the original parties' rights, the AMAC Intervenors "commit to abiding by whatever schedule this Court sets" and state they "will work with the parties to efficiently litigate this matter." AMAC Br., dkt. 68:17. As before, Plaintiffs oppose intervention because the AMAC Intervenors fail to "identify anything that they will bring to this litigation that is not already covered by WEC and the Legislature." Plaintiffs Resp. to AMAC, dkt. 84:19. And, also as before, WEC points out that "adding more defendants to this case will only complicate motion practice and lengthen trial …." WEC Resp. to AMAC, dkt. 83:16.

RETRIEVED FROM DEMOCRACYDOCKET.COM

I reject the AMAC Intervenors' argument with respect to prejudice and delay for the same reasons I have already rejected the GOP Intervenors' similar argument. Simply put, the AMAC Intervenors' promise to follow a briefing schedule does not satisfy their burden to show something "beneficial would be accomplished by permitting them to intervene under § 803.09(2)."[8] *Rise,* No.

[8] I further reject the AMAC Intervenors' unsupported comparison between the Association of Mature Americans and Priorities USA. Even accepting the proposition that intervention should be granted in cases with directly competing entities, the AMAC Intervenors supply zero evidence that this sort of relationship exists here. *See* Carlstrom Aff., dkt. 72 (the president of the Association of Mature Americans explains his organization wants fair elections but never references Priorities USA, let alone explains why the two entities are "mirror images.").

22AP1838, ¶50. I conclude that the AMAC Intervenors would be "completely superfluous and therefore only wasteful of the time and attention of the existing parties and the court." *See id*. As such, I deny the AMAC Intervenors' motion for permissive intervention.

ORDER

For the reasons set forth above, the Republican National Committee, the Republican Party of Wisconsin, the Republican Party of Rock County, the Republican Party of Walworth County, Richard Teigen, Richard Thom, and the Association of Mature American Citizens, Inc.'s motions to intervene are denied.

This is a final order for purposes of appeal.

RETRIEVED FROM DEMOCRACYDOCKET.COM