IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SUSAN LIEBERT; ANNA HAAS; ANNA POI; and ANASTASIA FERIN KNIGHT,

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION; DON M. MILLIS, ROBERT F. SPINDELL, MARGE BOSTELMANN, ANN S. JACOBS, MARK L. THOMSEN, and JOSEPH J. CZARNEZKI, *in their official capacities as commissioners of the Wisconsin Elections Commission*; MEAGAN WOLFE, *in her official capacity as administrator of the Wisconsin Elections Commission*; MICHELLE LUEDTKE, *in her official capacity as city clerk for the City of Brookfield*; MARIBETH WITZEL-BEHL, *in her official capacity as city clerk for the City of Madison*; and LORENA RAE STOTTLER, *in her official capacity as city clerk for the City of Janesville*,

Defendants.

Case No. 3:23-cv-00672

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MOTION TO INTERVENE AS DEFENDANTS BY THE REPUBLICAN NATIONAL COMMITTEE AND THE REPUBLICAN PARTY OF WISCONSIN

Movants—the Republican National Committee (RNC) and Republican Party of Wisconsin—respectfully request to intervene as defendants. In the last few years, the Republican Party has been granted intervention virtually every time it's asked for it. That's dozens of cases, across practically every jurisdiction, for countless reasons.[1]

[1] *See, e.g.*, *Vote.org v. Byrd*, Doc. 85, No. 4:23-cv-111 (N.D. Fla. May 26, 2023) (granting intervention to RNC and the Republican Party of Pasco County); *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 309 (5th Cir. 2022) (reversing the district court's denial of the Republican committee's motion to intervene as of right); *Democratic Nat'l Comm. v. Hobbs*, Doc. 18, No. 2:22-cv-1369 (D. Ariz. Aug. 24, 2022) (granting intervention to the RNC); *Mi Familia Vota v. Hobbs*, Doc. 53, No. 2:21-cv-1423 (D.

And that should be no surprise. As a district court recently reminded Plaintiffs' counsel: Political parties "brin[g] a unique perspective" to cases like this one, which is why courts routinely let them intervene "in actions challenging voting laws." *Democratic Party of Va. v. Brink*, 2022 WL 330183, at *2 (E.D. Va. Feb. 3, 2022). This Court should do the same here for two independent reasons.

Ariz. Oct. 4, 2021) (granting intervention to the RNC and the National Republican Senatorial Committee ("NRSC")); *Harriet Tubman Freedom Fighters Corp. v. Lee*, Doc. 34, No. 4:21-cv-242 (N.D. Fla. July 6, 2021) (granting intervention to the RNC and the NRSC); *Fla. Rising Together v. Lee*, Doc. 52, No. 4:21-cv-201 (N.D. Fla. July 6, 2021) (same); *Fla. State Conference of Branches & Youth Units of NAACP v. Lee*, Doc. 43, No. 4:21-cv-187 (N.D. Fla. June 8, 2021) (same); *League of Women Voters of Fla. v. Lee*, Doc. 72, No. 4:21-cv-186 (N.D. Fla. June 4, 2021) (same); *Sixth District of the African Methodist Episcopal Church v. Kemp*, Minute Order, No. 1:21-cv-1284 (N.D. Ga. June 4, 2021) (granting intervention to the RNC, NRSC, National Republican Congressional Committee ("NRCC") and the Georgia Republican Party); *Concerned Black Clergy of Metropolitan Atlanta v. Raffensperger*, Minute Order, No. 1:21-cv-1728 (N.D. Ga. June 21, 2021) (same); *Coalition for Good Governance v. Raffensperger*, Minute Order, No. 1:21-cv-2070 (N.D. Ga. June 21, 2021) (same); *Ga. State Conference of NAACP v. Raffensperger*, Doc. 40, No. 1:21-cv-1259 (N.D. Ga. June 4, 2021) (same); *Vote America v. Raffensperger*, Doc. 50, No. 1:21-cv-1390 (N.D. Ga. June 4, 2021) (same); *New Ga. Project v. Raffensperger*, Doc. 39, No. 1:21-cv-1333 (N.D. Ga. June 4, 2021) (same); *Swenson v. Bostelmann*, Doc. 38, No. 20-cv-459 (W.D. Wis. June 23, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Edwards v. Vos*, Doc. 27, No. 20-cv-340 (W.D. Wis. June 23, 2020) (same); *Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (same); *Gear v. Knudson*, Doc. 58, No. 3:20-cv-278 (W.D. Wis. Mar. 31, 2020) (same); *Lewis v. Knudson*, Doc. 63, No. 3:20-cv-284 (W.D. Wis. Mar. 31, 2020) (same); *Pavek v. Simon*, Doc. 96, No. 19-cv-3000 (D. Minn. July 12, 2020) (granting intervention to the RNC, the NRSC, and Republican Party of Minnesota, among others); *Ariz. Democratic Party v. Hobbs*, Doc. 60, No. 2:20-cv-01143 (D. Ariz. June 26, 2020) (granting intervention to the RNC and the Arizona Republican Party, among others); *League of Women Voters of Minn. Ed. Fund v. Simon*, Doc. 52, No. 20-cv-1205 (D. Minn. June 23, 2020) (granting intervention to the RNC and the Republican Party of Minnesota, among others); *Nielsen v. DeSantis*, Doc. 101, No. 4:20-cv-236 (N.D. Fla. May 28, 2020) (granting intervention to the RNC, NRCC, and Republican Party of Florida); *Priorities USA v. Nessel*, 2020 WL 2615504, at *5 (E.D. Mich. May 22, 2020) (granting intervention to the RNC and Republican Party of Michigan); *Thomas v. Andino*, 2020 WL 2306615, at *4 (D.S.C. May 8, 2020) (granting intervention to the South Carolina Republican Party); *Corona v. Cegavske*, No. CV 20-OC-644-1B (Nev. 1st Jud. Dist. Ct. Apr. 30, 2020) (granting intervention to the RNC and Nevada Republican Party); *League of Women Voters of Va. v. Va. State Bd. of Elections*, Doc. 57, No. 6:20-cv-24 (W.D. Va. Apr. 29, 2020) (granting intervention to the Republican Party of Virginia); *Black Voters Matter Fund v. Raffensperger*, Doc. 42, No. 1:20-cv-4869 (N.D. Ga. Dec. 9, 2020) (granting intervention to RNC and Georgia Republican Party).

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First, Movants satisfy the criteria for intervention as of right under Rule 24(a)(2). Their motion is timely. The complaint was filed fourteen days ago; this litigation is still in its infancy; and no party will be prejudiced by intervention at this early stage. Movants also have an interest in this matter. Political parties have a clear interest in protecting themselves and their members from abrupt changes to election laws. Finally, no other party adequately represents Movants' interests. Establishing inadequacy isn't a difficult task, and Movants have established it here. None of the other defendants—almost all of whom are Democrats—share Movants' interests in conserving the Republican Party's resources, educating the Republican Party's voters, and electing the Republican Party's candidates.

Second, in the alternative, the Court should grant Movants permissive intervention under Rule 24(b). Again, this motion is timely. Movants' defenses share common questions of law and fact with the existing parties, and granting Movants' motion won't prejudice anyone or delay anything. But denying intervention would irreparably harm Movants, whose candidates must labor under Wisconsin's election laws and whose voters must understand them before casting a ballot.

Whether under Rule 24(a) or (b), Movants should be allowed to intervene as defendants.

INTERESTS OF PROPOSED INTERVENORS

Movants are political committees that support Republicans in Wisconsin. The Republican National Committee is a national committee as defined by 52 U.S.C.

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§30101. It manages the Republican Party's business at the national level, supports Republican candidates, and coordinates fundraising and election strategy throughout the United States. The Republican Party of Wisconsin is a recognized political party that works to promote Republican values and assist Republican candidates in federal, state, and local races. Both Movants have interests—including their own and those of their members—in how Wisconsin's elections are run. Those interests include the outcome of Wisconsin's upcoming elections for the Presidency, Senate, House, and more than a hundred state offices.

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ARGUMENT

I. Movants are entitled to intervene as of right.

Rule 24 "should be liberally construed," *Clark v. Sandusky*, 205 F.2d 915, 919 (7th Cir. 1953), and all doubts should be "resolved in favor of the proposed intervenor," *S.D. ex rel. Barnett v. U.S. Dept. of Interior*, 317 F.3d 783, 785 (8th Cir. 2003); *accord City of Emeryville v. Robinson*, 621 F.3d 1251, 1258 (9th Cir. 2010). Mindful of that rule, courts grant intervention as of right if four things are true: (1) the motion is timely; (2) movants have an interest in the lawsuit; (3) the lawsuit may impair or impede movants' interest; and (4) no existing party adequately represents movants' interests. *Heartwood, Inc. v. U.S. Forest Serv., Inc.*, 316 F.3d 694, 700 (7th Cir. 2003). All four are true here.

A. The motion is timely.

When determining the timeliness of a motion to intervene, the Court considers four factors: first, whether Movants promptly sought intervention; second, whether

granting the motion would prejudice the original parties; third, whether denying the motion would prejudice movant; and fourth, whether any other circumstances "militate in" Movants' "favor." *City of Bloomington v. Westinghouse Elec. Corp.*, 824 F.2d 531, 534-37 (7th Cir. 1987); *Lopez-Aguilar v. Marion County Sheriff's Dep't*, 924 F.3d 375, 388 (7th Cir. 2019). All four factors militate in Movants' favor.

For starters, Movants filed this motion rapidly—a mere fourteen days after the complaint was filed. That's timely. *See, e.g.*, *Swenson v. Bostelmann*, 2020 WL 8872099, at *1 (W.D. Wis. June 23, 2020) ("[T]he motion is timely as it was filed only weeks after the lawsuit commenced."); *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wis. v. United States*, 2002 WL 32350046, at *2 (W.D. Wis. Nov. 20, 2002) ("more than two months" is "timely"); *Edwards v. Vos*, 2020 WL 6741325, at *1 (W.D. Wis. June 23, 2020) ("eight weeks" is "timely"); *Donald J. Trump for President, Inc. v. Northland Television, LLC*, 2020 WL 3425133, at *1 (W.D. Wis. June 23, 2020) ("eight weeks" is "timely"); *Hunter v. Bostelmann*, 2021 WL 4592659, at *3 (W.D. Wis. Oct. 6, 2021) ("five weeks" is "timely"). Indeed, Movants are unaware of *any* decision from *any* court—state or federal—holding that fourteen days is too late to intervene.

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Movants' prompt intervention will not prejudice the original parties, either. At this point, Plaintiffs haven't filed any briefs or dispositive motions, not all Defendants have appeared, and only one Defendant has responded to the complaint—filed today. None of the parties would suffer prejudice.

But Movants would suffer prejudice if they're not allowed to intervene. Indeed, their interests would be irreparably harmed if they can't protect the rights of their members and candidates in court. If the Court denies their motion, Movants couldn't actively advocate for Wisconsin's election laws. They couldn't relitigate the issue before the next election. And their members—supporters and candidates alike—would be forced to follow a court order that directly affects their constitutional right to vote. Because there aren't any unusual circumstances that could trump those harms, the motion is timely. *See City of Bloomington*, 824 F.2d at 534-37.

B. Movants have protected interests in this action.

Movants' interests fall within Rule 24's ambit. Rule 24 is "broad," *Cascade Nat. Gas Corp. v. El Paso Nat. Gas Co.*, 386 U.S. 129, 136 (1967), and its use of "the term 'interest' [i]s to be broadly construed" in favor of intervention, *Meridian Homes Corp. v. Nicholas W. Prassas & Co.*, 683 F.2d 201, 204 (7th Cir. 1982). Movants meet that standard.

"[I]n cases challenging various statutory schemes as unconstitutional or as improperly interpreted and applied, the courts have recognized that the interests of those who are governed by those schemes are sufficient to support intervention." *Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir. 1989). This case is no exception. Here, Movants have "a direct and substantial interest in the proceedings" because they "affect the [Movants'] ability to participate in and maintain the integrity of the election process in [Wisconsin]." *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022).

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Given this clear interest—and the fact that such interests "are sufficient to support intervention," *Chiles*, 865 F.2d at 1214—it's no wonder that courts routinely recognize that political parties have interests in election cases like this one. *See, e.g.*, *Siegel v. LePore*, 234 F.3d 1163, 1169 n.1 (11th Cir. 2001); *Trinsey v. Pennsylvania*, 941 F.2d 224, 226 (3d Cir. 1991); *Anderson v. Babb*, 632 F.2d 300, 304 (4th Cir. 1980); *Hastert v. State Bd. of Elections*, 777 F. Supp. 634, 639 (N.D. Ill. 1991); *Radogno v. Ill. State Bd. of Elections*, 2011 WL 5868225, *1 (N.D. Ill. Nov. 22, 2011). Indeed, given their inherent and broad-based interest in elections, usually "[n]o one disputes" that a political party "meet[s] the impaired interest requirement for intervention as of right." *Citizens United v. Gessler*, 2014 WL 4549001, *2 (D. Colo. Sept. 15, 2014).

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And that makes good sense. The law Plaintiffs challenge is designed to serve "the integrity of [the] election process," *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989), and promote the "orderly administration" of elections, *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196 (2008) (op. of Stevens, J.). Movants "have a legally protectable interest" in upholding this law, because it helps Movants effectively "maintain the integrity of the election process." *La Union del Pueblo Entero*, 29 F.4th at 306. And because Movants' candidates "actively seek [election or] reelection in contests governed by the challenged rule[]," Movants also have an interest in "demand[ing] adherence" to that law. *Shays v. FEC*, 414 F.3d 76, 88 (D.C. Cir. 2005).

The Supreme Court has explained that "[c]ourt orders affecting elections … can themselves result in voter confusion and consequent incentive to remain away from the

polls." *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). Preventing courts from enjoining election safeguards "promotes confidence in our electoral system—assuring voters that all will play by the same, *legislatively enacted* rules." *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1284 (11th Cir. 2020) (emphasis added). Simply put, "[t]he RNC has a valid interest in the orderly administration of elections." *Democratic Nat. Comm. v. Republican Nat. Comm.*, 671 F. Supp. 2d 575, 621 (D.N.J. 2009) (citing *Crawford*, 553 U.S. at 196), *aff'd*, 673 F.3d 192 (3d Cir. 2012).

But scrupulous adherence to Wisconsin's election laws doesn't come cheap. Every election cycle, party organizations like Movants "expend significant resources" on the election process—a process that the challenged laws "unquestionably regulat[e]." *La Union del Pueblo Entero*, 29 F.4th at 305. Safeguarding Movants' coffers from costs associated with sudden court-ordered changes in election procedure is a legitimate "interest" under Rule 24(a)(2). *E.g.*, *Issa*, 2020 WL 3074351, at *3; *Bldg. & Realty Inst. of Westchester & Putnam Ctys., Inc. v. New York*, 2020 WL 5658703, at *11 (S.D.N.Y. 2020). And that rule applies with special force here, where "changes in voting procedures could affect candidates running as Republicans and voters who [are] members of the … Republican Party." *Ohio Democratic Party v. Blackwell*, 2005 WL 8162665, *2 (S.D. Ohio Aug. 26, 2005). "[T]here is no dispute that the … Republican Party ha[s] an interest in the subject matter of this case." *Id.*

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C. This action would impair Movants' interests.

Going forward without Movants would "impair" their interests. Fed. R. Civ. P. 24(a)(2). To satisfy this prong, Movants "do not need to establish that their interests *will* be impaired." *Brumfield v. Dodd*, 749 F.3d 339, 344 (5th Cir. 2014). Instead, they need only show "that the disposition of the action 'may' impair or impede their ability to protect their interests," *id.*—a lax standard that was "obviously designed to liberalize the right to intervene in federal actions," *Nuesse v. Camp*, 385 F.2d 694, 701 (D.C. Cir. 1967). Movants have little trouble satisfying that standard.

For starters, "if the Government were to lose this case, or to settle it against [Movants'] interests," Movants would "suffer," and their interests—along with the interests of their members and volunteers—would be irreparably impaired. *Mausolf v. Babbitt*, 85 F.3d 1295, 1302-03 (8th Cir. 1996). Indeed, enjoining the Wisconsin election law at issue would "change the entire election landscape for [Movants'] members and volunteers," thereby "chang[ing] what [Movants] must do to prepare for upcoming elections." *La Union*, 29 F.4th at 307; *Shays*, 414 F.3d at 85-86. That alone is enough to satisfy the impairment requirement. *Id.*; *see also Shays*, 414 F.3d at 85-86.

But that's not all. Freezing the challenged rule would not only undercut a democratically enacted law that protects voters and candidates (including Movants' members), *Frank v. Walker*, 768 F.3d 744, 751 (7th Cir. 2014), it would also threaten to confuse voters and undermine confidence in the electoral process. *See Purcell*, 549 U.S. at 4-5 ("Court orders affecting elections … can themselves result in voter confusion.").

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On top of that independent harm, Movants would be forced to spend substantial resources to: (1) inform Republican voters of changes in the law; (2) ward off the inevitable "confusion" that those changes would spawn; and (3) galvanize participation to offset the "consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4-5; *Crawford*, 472 F.3d at 951; *Thomsen*, 198 F. Supp. 3d at 909.

Moreover, "as a practical matter," Fed. R. Civ. P. 24(a)(2), an adverse decision from this Court could prevent Movants from defending their rights at all. *See Meridian Homes Corp.*, 683 F.2d at 204. This proceeding might be the *only* time that Movants can litigate Plaintiffs' claims. So, in a very real sense, this Court's decision could be the final word on the laws governing the next election. Because the "very purpose of intervention is to allow interested parties to air their views … *before* making potentially adverse decisions," *Brumfield*, 749 F.3d at 345 (emphasis added), the "best" course is to give "all parties with a real stake in [the] controversy … an opportunity to be heard." *Hodgson v. UMWA*, 473 F.2d 118, 130 (D.C. Cir. 1972). That includes Movants.

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D. The existing parties do not adequately represent Movants' interests.

Finally, no one adequately represents Movants' interests. *Lopez-Aguilar*, 924 F.3d at 391. Establishing inadequacy isn't demanding. "[T]he burden of making [this] showing should be treated as minimal." *Ligas ex rel. Foster v. Maram,* 478 F.3d 771, 774 (7th Cir. 2007) (quoting *Trbovich v. UMWA,* 404 U.S. 528, 538 n.10 (1972)). And a Movant satisfies it if he can show that the representation "'may be' inadequate." *Trbovich,* 404 U.S. at 538; *Ligas,* 478 F.3d at 774.

Movants satisfy it here. To begin with, Plaintiffs do not represent Movants' interests. And neither do Defendants. True, the burden of establishing inadequacy increases "when the government is acting on behalf of a constituency that it represents." *Citizens for Balanced Use*, 647 F.3d at 898. But that burden is still "comparatively light." *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998).

And for good reason. The Government's interests "are necessarily colored by its view of the public welfare, rather than the more parochial views of a proposed intervenor whose interest is personal to it." *Id.* So, while the Government "may well believe that what best serves the public welfare will also best serve the overall interests of [Movants], the fact remains that the [Movants] may see their own interest in a different, perhaps more parochial light." *Conservation L. Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992); *Kleissler*, 157 F.3d at 972. As a result, "the government's representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a [private movant] merely because both entities occupy the same posture in the litigation." *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1255-56 (10th Cir. 2001). Given this, it's no wonder that courts "often conclud[e] that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals*, 322 F.3d at 736.

That's especially true in the election context. Defendants have no interest in the election of particular candidates, the mobilization of particular voters, or the costs associated with either. Instead, as state officials acting on behalf of all Wisconsin citizens

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and the state itself, Defendants must consider "a range of interests likely to diverge from those of the intervenors." *Meek v. Metro. Dade Cty.*, 985 F.2d 1471, 1478 (11th Cir. 1993). Those clashing interests include:

- "the expense of defending the current [laws] out of [state] coffers." *Clark*, 168 F.3d at 461. Movants need only consider the cost to their coffers.

- "the social and political divisiveness of the election issue" to the state of Wisconsin. *Meek*, 985 F.2d at 1478. Movants need only consider the issue's effect on the state of the Republican Party.

- Defendants' potential preference to "resolve this case … on sovereign-immunity and standing grounds." *La Union*, 29 F.4th at 308. Movants prefer to win on the merits.

- Defendants' "desir[e] to remain politically popular," *In re Sierra Club*, 945 F.2d 776, 779-80 (4th Cir. 1991). Movants have no interest in Defendants' political popularity. In fact, most of the Defendants are Democratic political opponents, and Movants would prefer they be *less* politically popular.

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The tension between Movants and Defendants is especially stark here. Unlike Movants—who are devoted to electing, funding, and representing Republicans—the Wisconsin Elections Commission is a bipartisan organization, "with three Commissioners representing the Democratic Party and three representing the Republican Party." Wisconsin Elections Commission, *About the Commission* (last visited Oct. 6, 2023), https://perma.cc/36X7-U5AM. And unlike Movants—who believe that absentee-voting protections promote election integrity, transparency, and accountability—the Commission claims that "[t]he absentee voting process in Wisconsin" is overly "complex" and "favor[s] the technologically savvy." Wisconsin

Elections Commission, *Absentee Voting Report* (May 15, 2020), https://perma.cc/D4ZA-HHLA. Either of these "difference[s]" is more than sufficient "to overcome the weak presumption of adequate representation." *Stone*, 371 F.3d at 1312. Taken together, there's no question that Movants aren't adequately represented. *Meek*, 985 F.2d at 1478. Movants should thus be granted intervention as of right.

II. Alternatively, Movants should be granted permissive intervention.

Even if Movants were not entitled to intervene as of right under Rule 24(a), this Court should grant them permissive intervention under Rule 24(b). Exercising broad judicial discretion, courts grant permissive intervention whenever a movant has "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b). Courts must also consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).[2] If a court has doubts, "the most prudent and efficient course" is to allow permissive intervention. *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wis.*, 2002 WL 32350046, at *3. Movants meet this standard with room to spare.

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[2] Notably, this Court can grant permissive intervention even if it concludes that Defendants adequately represent Movants' interests. *Ariz. Democratic Party*, 2020 WL 6559160, at *1. Permissive intervention does not require the intervenor to have an "interest" at all, let alone an interest that the parties inadequately represent. *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng'rs*, 101 F.3d 503, 509 (7th Cir. 1996); *Planned Parenthood of Wis. v. Kaul*, 942 F.3d 793, 801 n.4 (7th Cir. 2019). Courts thus grant permissive intervention even when: (1) the movant is "completely and adequately represented"; (2) will merely "enhance[]" the government's defense; or (3) or will provide a "secondary voice in the action." *Ohio Democratic Party*, 2005 WL 8162665, at *2. Movants contend that their interests are not adequately represented by either of the parties, *see supra* at 8-10, but if the Court disagrees, it can—and, indeed, should—grant permissive intervention.

A. Movants share "a claim or defense" with the main action.

Movants will raise "defense[s]" that share many common questions with the parties' claims and defenses. Fed. R. Civ. P. 24(b). Plaintiffs claim the challenged law is unconstitutional and must be enjoined. Movants believe the law is valid, that an injunction is unwarranted, and that Plaintiffs' desired relief would undermine Movants' interests, their members' interests, and the interests of Wisconsin voters. So, in other words, Movants and Plaintiffs don't just dispute some "common question[s]" in the case, *id.*—they dispute *all* "the issues presently pending." *Pac for Middle Am. v. State Bd. of Elections*, 1995 WL 571893, *4 (N.D. Ill. Sept. 22, 1995) (granting intervention for this reason). And Movants' "interest in the litigation is the mirror-image" of plaintiffs. *Builders Ass'n of Greater Chi. v. Chicago*, 170 F.R.D. 435, 441 (N.D. Ill. 1996) (once again granting intervention for this reason). That's reason enough to grant permissive intervention.[3]

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B. Intervention wouldn't "delay" or "prejudice" the case.

Movants' intervention wouldn't unduly delay this litigation or prejudice anyone. For one thing, Plaintiffs put the legality of Wisconsin's law at issue, so they "can hardly

[3] And it has been reason enough for courts in the past. *See, e.g.*, *Swenson v. Bostelmann*, 2020 WL 8872099, at *1 (W.D. Wis. June 23, 2020) ("[T]he RNC/RPW readily meets the two required elements of permissive intervention" because "they seek to defend the challenged election laws to protect their and their members' stated interests," among other things.); *Priorities USA*, 2020 WL 2615504, at *5 (granting permissive intervention where the RNC "demonstrate[d] that they seek to defend the constitutionality of Michigan's [election] laws" because plaintiffs alleged "the same laws [were] unconstitutional").

be said to be prejudiced by having to prove a lawsuit [they] chose to initiate." *Sec. Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995); *ABS Global, Inc. v. Inguran, LLC*, 2015 WL 1486647, *5 (W.D. Wis. Mar. 31, 2015) (same). What's more, Movants swiftly moved to intervene while the case is still at "a nascent stage," *100Reporters LLC v. DOJ*, 307 F.R.D. 269, 286 (D.D.C. 2014), so their participation has not delayed—and will not delay—this case in any meaningful way.[4] And more still, Movants commit to submitting all filings in accordance with whatever briefing schedule the Court imposes, "which is a promise" that undermines any claim of undue delay. *Emerson Hall Assocs., LP v. Travelers Cas. Ins. of Am.*, 2016 WL 223794, *2 (W.D. Wis. Jan. 19, 2016).

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In reality, denying Movants' request is far more likely to cause prejudice and undue delay. "[W]hen an order prevents a putative intervenor from becoming a party in any respect, the order is subject to immediate review." *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 377 (1987); *Shea v. Angulo*, 19 F.3d 343, 344-45 (7th Cir. 1994) (similar). And appellate review could "dela[y] the adjudication of this case's merits for months—if not longer." *Jacobson v. Detzner*, 2018 WL 10509488 (N.D. Fla.). To preempt that possibility, the best course is to allow intervention now.

[4] Of course, "any introduction of an intervener in a case will necessitate its being permitted to actively participate, which will inevitably cause some 'delay.'" *Appleton v. Comm'r*, 430 F. App'x 135, 138 (3d Cir. 2011). But that kind of prejudice or delay is irrelevant. *Id.* Rule 24(b) is concerned with "*undu*[*e*] delay or prejudice," and "'[u]ndue' means not normal or appropriate." *Id.* (emphasis added). Delays that result from prompt intervention are completely "normal," *see supra* note 1-2 n.1, and any *de minimus* delay that intervention may cause here would be "appropriate," *Appleton*, 430 F. App'x at 138.

* * *

This Court should not consider changing Wisconsin's election laws without allowing a major political party a seat at the table. Republican Party organizations "are not marginally affected individuals; they are substantial organizations with experienced attorneys who might well bring perspective that others miss or choose not to provide." *Nielsen*, 2020 WL 6589656, at *1. In just the last few years, dozens of courts have agreed. *See supra* at 1-2 n.1. This Court should too.

CONCLUSION

The Court should grant Movants' motion and allow them to intervene as defendants.

Dated: October 16, 2023

Respectfully submitted,

/s/ Thomas McCarthy

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Counsel for Proposed Intervenor-Defendants Republican National Committee and Republican Party of Wisconsin

* admission pending

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SUSAN LIEBERT; ANNA HAAS; ANNA POI; and ANASTASIA FERIN KNIGHT,

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION; DON M. MILLIS, ROBERT F. SPINDELL, MARGE BOSTELMANN, ANN S. JACOBS, MARK L. THOMSEN, and JOSEPH J. CZARNEZKI, *in their official capacities as commissioners of the Wisconsin Elections Commission*; MEAGAN WOLFE, *in her official capacity as administrator of the Wisconsin Elections Commission*; MICHELLE LUEDTKE, *in her official capacity as city clerk for the City of Brookfield*; MARIBETH WITZEL-BEHL, *in her official capacity as city clerk for the City of Madison*; and LORENA RAE STOTTLER, *in her official capacity as city clerk for the City of Janesville*,

Defendants.

Case No. 3:23-cv-00672

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[PROPOSED] INTERVENORS' [PROPOSED] ANSWER TO PLAINTIFFS' COMPLAINT

1. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

2. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

3. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

4. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

5. Proposed Intervenors deny that the Wisconsin law violates the Voting Rights Act. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

6. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

7. Proposed Intervenors deny that Plaintiffs are subject "to an illegal restriction" on their voting rights. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

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JURISDICTION AND VENUE

8. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

9. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

10. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

11. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

12. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

PARTIES

13. Proposed Intervenors deny that "[t]he Witness Requirement burdens Ms. Liebert's exercise of her right to vote" and that she "faces a stark choice" to "forgo voting entirely." Proposed Intervenors otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny the allegations.

14. Proposed Intervenors deny that "[t]he Witness Requirement burdens Ms. Haas's exercise of her right to vote." Proposed Intervenors otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny the allegations. The cited legal authorities in the footnote speak for themselves. The footnote otherwise contains legal arguments and conclusions to which no response is required.

15. Proposed Intervenors deny that "[t]he Witness Requirement burdens Ms. Poi's exercise of her right to vote." Proposed Intervenors otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny the allegations.

16. Proposed Intervenors deny that "[t]he Witness Requirement burdens Ms. Knight's exercise of her right to vote." Proposed Intervenors otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny the allegations.

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17. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

18. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

19. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

20. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

21. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

22. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

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GENERAL ALLEGATIONS

23. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

24. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

25. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

26. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

27. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

28. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

29. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

30. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

31. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

32. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

33. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

34. This paragraph contains legal arguments and conclusions to which no response is required.

35. The cited legal authorities and voting materials speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

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36. The cited legal authorities and voting materials speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

37. The cited legal authorities and administrative materials speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

38. This paragraph contains legal arguments and conclusions to which no response is required.

39. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

40. The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

41. Deny.

42. Deny.

43. Proposed Intervenors deny that Wisconsin's witness requirement "injures Plaintiffs by burdening them with a risk of disenfranchisement because of technical and immaterial witness-related errors" and that "absentee voters face a risk of disenfranchisement from Wisconsin's requirement that an absentee voter provide the witness's 'address.'" The cited legal authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

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44. The cited legal authorities speak for themselves. Proposed Intervenors otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny the allegations.

45. Proposed Intervenors deny that "[a]bsentee voters, including Plaintiffs, thus face an ongoing threat that they will be disenfranchised because of shifting local interpretations of the Witness Requirement." The cited legal and regulatory authorities speak for themselves. Proposed Intervenors otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny the allegations.

46. Proposed Intervenors deny that Wisconsin's witness requirement imposes unlawful burdens on voters. Proposed Intervenors otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny the allegations.

47. Proposed Intervenors deny that "Wisconsin's rules for curing defective absentee ballot certificates are very burdensome." The cited regulatory authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

48. The cited legal and regulatory authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

49. Deny.

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CLAIMS FOR RELIEF

COUNT I
Voting Rights Act §201
52 U.S.C. §10501; 42 U.S.C. §1983; 28 U.S.C. §§2201, 2202

50. The preceding paragraphs are incorporated by reference.

51. Deny.

52. The cited legal and regulatory authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

53. The cited legal and regulatory authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

54. The cited legal and regulatory authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

55. Proposed Intervenors deny that Wisconsin's witness requirement violates the Voting Rights Act. The cited legal and regulatory authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

56. Deny.

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COUNT II
Civil Rights Act Materiality Provision
52 U.S.C. §10101(a)(2)(B); 42 U.S.C. §1983; 28 U.S.C. §§2201, 2202

57. The preceding paragraphs are incorporated by reference.

58. Deny.

59. The cited legal and regulatory authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

60. The cited legal and regulatory authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

61. Proposed Intervenors deny that Wisconsin's witness requirement "is an unnecessary requirement that substantially increases absentee voters' risk of ballot rejection or disqualification." The cited legal and regulatory authorities speak for themselves. This paragraph otherwise contains legal arguments and conclusions to which no response is required.

62. Proposed Intervenors deny that Plaintiffs are entitled to any relief.

AFFIRMATIVE DEFENSES

1. Plaintiffs lack standing to assert their claims.

2. Plaintiffs lack a cause of action to assert their claims.

3. Plaintiffs' complaint fails, in whole or in part, to state a claim upon which relief can be granted.

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4. The counts are barred in whole or in part by the doctrine of abstention.

5. The relief Plaintiffs seek is too speculative to support relief from this Court.

6. Proposed Intervenors reserve the right to assert any further defenses that may become evident during the pendency of this matter.

Dated: October 16, 2023

Respectfully submitted,

/s/ Thomas McCarthy

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