

**FILED**  
**10-11-2024**  
**Clerk of Circuit Court**  
**Waukesha County**  
**2024CV001353**

**BY THE COURT:**

**DATE SIGNED: October 11, 2024**

Electronically signed by Michael P. Maxwell  
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT- BRANCH 8

WAUKESHA COUNTY

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STATE OF WISCONSIN  
EX REL. ARDIS CERNY,

Petitioner,

Case No: 24-CV-1353

vs.

WISCONSIN ELECTIONS COMMISSION,

ANN S. JACOBS, DON M. MILLIS,  
CARRIE RIEPL, ROBERT F.  
SPINDELL, JR., MARK L. THOMSEN,  
in their official capacities as  
Commissioners,

MEAGAN WOLFE, in her official  
Capacity as Administrator of the Wisconsin  
Elections Commission,

WISCONSIN DEPARTMENT OF  
TRANSPORTATION,

and

CRAIG THOMPSON, in his official  
Capacity as Secretary of the Wisconsin  
Department of Transportation

Respondents.

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**DECISION AND ORDER – MOTION TO INTERVENE**

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## RELEVANT FACTS

This case concerns a petition by Ardis Cerny for a writ of mandamus and declaratory relief. Cerny seeks a writ of mandamus ordering WEC and the DOT to take actions verifying the citizenship of applicants registering to vote. (See Petition for Writ of Mandamus and Declaration Construing Statutes, Dkt. 10, p. 3). He alleges WEC and the DOT have certain positive and plain duties under Wisconsin law. First, he argues they have a duty to match citizenship information contained in the DOT's records with WEC's registration records under Wis. Stat. 85.61(1). (Id., p. 5). Second, he argues that if citizenship information in the DOT's records do not match that of a registrant in WEC's records, WEC has a duty to remove the registrant. (Id., p. 5). He additionally argues that WEC is failing to investigate unlawful voter registrations, failing to bring suit for such unlawful registrations, failing to promulgate rules ensuring lawful registrations, and failing to issue procedures to municipal clerks to ensure lawful registrations. (Id., p. 21-23).

Voces de la Frontera and Forward Latino ("Proposed Intervenors") have moved to intervene in this action. Forward Latino is a 501(c)(3) organization that conducts a "get-out-the-vote" effort for Latino citizens in Wisconsin. (See Memorandum in Support of Forward Latino and Voces de la Frontera's Motion to Intervene, Dkt. 38, p. 2). Voces de la Frontera is a non-profit organization that advocates for the rights of Latinos and assists eligible Wisconsin residents to apply for U.S. citizenship. (Id.). Proposed Intervenors allege that if Cerny prevails in this case, their constituents will face new barriers to vote and they will need to divert their resources from other programs to assist their constituents to overcome those barriers. (Id.).

## DISCUSSION

There are two ways a non-party can intervene in an action. First, they can intervene as of right if they meet the statutory requirements of Wis. Stat. § 803.09(1). Second, the court may permit a non-party to intervene if they meet the less rigorous requirements of Wis. Stat. § 803.09(2).

To intervene as of right, the movant must show the following: “(A) that the movant’s motion to intervene is timely; (B) that the movant claims an interest sufficiently related to the subject of the action; (C) that disposition of the action may as a practical matter impair or impede the movant’s ability to protect that interest; and (D) that the existing parties do not adequately represent the movant’s interest.” *Helgeland v. Wis. Municipalities*, 2008 WI 9, ¶38, 307 Wis. 2d 1, 745 N.W.2d 1; Wis. Stat. § 803.09(1).

If the movant does not meet these requirements, the court may, in its discretion, permit them to intervene so long as their motion to intervene was timely and “the movant’s claim or defense and the main action have a question of law or fact in common.” *Helgeland*, 2008 WI 9, ¶120; Wis. Stat. § 803.09(2). In exercising its discretion, the court must consider “whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Wis. Stat. § 803.09(2).

**I. Proposed Intervenors do not have a right to intervene, because they do not meet the statutory requirements of Wis. Stat. § 803.09(1).**

Proposed Intervenors do not meet all four statutory requirements of Wis. Stat. § 803.09(1), so they do not have a right to intervene in this action. Proposed Intervenors’ motion was timely, they do assert a sufficiently related interest, and there is a risk that their interests will be impaired by disposition of this action; but they have not shown that they will be inadequately represented.

**A. Proposed Intervenor's motion was timely.**

“The question of the timeliness of a motion to intervene is left to the discretion of the circuit court.” *Helgeland*, 2008 WI 9, ¶42. The Proposed Intervenor filed their motion only two weeks after the petition was filed and before any hearing had been held in this case. Their motion was timely.

**B. Proposed Intervenor's have a sufficiently related interest.**

There is no precise test “for determining which type of interest is sufficient to allow a party to intervene as a matter of right.” *Helgeland*, 2008 WI 9, ¶43 (citation omitted). Courts take a practical, flexible approach when making this determination by “measuring the sufficiency of the interest by focusing on the facts and circumstances of the particular case...as well as the stated interest in intervention.” *Id.* at ¶44 (quoting *Bilder v. Delavan*, 112 Wis. 2d 539, 547, 333 N.W.2d 252 (1983)). Consequently, “a claimed interest does not support intervention if it is only remotely related to the subject of the action. There must be some sense in which the interest is of such direct and immediate character that the intervenor will either gain or lose by the direct operation of the judgment.” *Id.* at ¶45 (quoting *Bilder*, 112 Wis. 2d at 548).

Proposed Intervenor's do have such an interest in this case. The Court of Appeals analyzed a similar issue in *Braun v. Vote.org*, 2024 Wisc. App. Lexis 637. In that case, a voter registration organization moved to intervene in a lawsuit challenging WEC's acceptance of the National Mail Voter Registration Form. *Id.* at ¶20. They argued that if WEC was no longer allowed to use the form, as the lawsuit sought, they would have to divert resources from their get-out-the-vote campaign to the development of a new registration system for the compliant form. *Id.* There, the court held that this interest was sufficiently related to the lawsuit. *Id.*

So too here, Proposed Intervenor argues they will have to divert resources from their get-out-the-vote campaign to help naturalized citizens ensure they are registered to vote and to prove their citizenship if necessary. Thus, they will either “gain or lose” depending on the outcome of this case.

**C. Proposed Intervenor’s interest may be impaired.**

For the same reason, Proposed Intervenor has shown that disposition of this action may impair their ability to protect that interest. If Cerny prevails in this lawsuit, they assert that they will have to divert resources from the activities they are currently engaging in toward activities that will assist their constituents adapt to the consequences of this suit. This criteria, like B above, relies on the Proposed Intervenor’s assertion of a significant number of their constituents being affected by the relief requested by Cerny. At this juncture, this is simply speculation on the part of the Proposed Intervenor, but it is enough in this Court’s view to satisfy the impairment prong.

**D. Proposed Intervenor is not inadequately represented in this case.**

“If a movant’s interest is identical to that of one of the parties, or 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. When the potential intervenor’s interests are substantially similar to interests already represented by an existing party, such similarity will weigh against the potential intervenor.” *Helgeland*, 2008 WI 9, ¶86.

Additionally, adequate representation is presumed in two situations. First, “adequate representation is ordinarily presumed when a movant and an existing party have the same ultimate objective in the action.” *Id.* at ¶90. Second, “when the putative representative is a

governmental body or officer charged by law with representing the interests” of the proposed intervenor, adequate representation is presumed. *Id.* at ¶91.

Both presumptions apply here. The Court of Appeals’ analysis in *Braun* is persuasive on this question as well. First, they held that Vote.org and WEC had the same interest because both sought the same outcome—continued acceptance of the National Mail Voter Registration Form. *Braun v. Vote.org*, 2024 Wisc. App. Lexis 637, ¶29. Here, both WEC and Proposed Intervenors seek to prevent the DOT from sharing citizenship information with WEC and WEC’s subsequent use of that information to remove non-citizens from the WisVote List. Second, they held that since “WEC is a governmental body represented by the Department of Justice in this matter, and both entities are charged by law with the duty of representing the rights of electors so that all may enjoy the benefits of the correct application of the laws governing elections,” the presumption applied. *Id.* at ¶91. The same is true here. WEC and the Department of Justice are charged with representing the rights of all electors, including Proposed Intervenors. Thus, the presumption applies.

Proposed Intervenors have failed to make a “compelling showing” that they will not be adequately represented in this case. They have not, for instance, shown that there is collusion between WEC or the DOT and Cerny. Proposed Intervenors argue that WEC does not have a direct stake in protecting naturalized citizens from unlawful barriers to voting and potential disenfranchisement (Dkt.83, p. 7) Yet, WEC’s most important function is to ensure that every lawful voter, naturalized or otherwise, has the opportunity to cast a ballot if they so choose to do so. Proposed Intervenors contend that they will litigate more vigorously. Even if that is the case, it is not enough to overcome the presumption of adequate representation that applies here. *Id.* at 31.

Since Proposed Intervenors have not shown that they will be inadequately represented, they do not have a right to intervene in this case.

## **II. Permissive Intervention**

Although this Court has the discretion to permit intervention in this case, intervention is not warranted, because there is a risk of undue delay, Proposed Intervenors' arguments are nearly identical to WEC's, and Respondent's counsel will provide competent representation.

Proposed Intervenors meet the two statutory requirements for permissive intervention: timeliness and a common question of law and fact. Wis. Stat. § 803.09(2). First, their motion is timely. As stated previously, their motion to intervene was filed two weeks after Cerny's petition was filed and before any hearing was filed in the case. Second, they have raised common questions of law and fact. They argue that the DOT has no duty to share citizenship information with WEC and that WEC has no duty to compare this data against its own and remove registrants whose information does not match.

However, in considering whether to permit intervention, this Court must consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Wis. Stat. § 803.09(2). Because of the time-sensitive nature of this case, Proposed Intervenors' participation in this case would, indeed, create a risk of undue delay and prejudice to the parties. Because of the expedited schedule in this case, the issues raised and relief sought related to the upcoming election, any delay would prove prejudicial to the original parties. The Court has already set a hearing on the merits of the preliminary injunctive relief requested in just a few days. Said hearing would not likely be possible if permissive intervention was granted.

Further, Proposed Intervenors are likely to make arguments very similar, if not identical, to WEC's arguments against the Petitioner's preliminary injunctive relief request. They have not indicated that they intend to raise any novel defense to Petitioner's claims. Thus, their participation here could lead to unnecessary redundancy.

The Wisconsin Department of Justice has provided two attorneys to oppose the petition at issue in this case. The Court, in its discretion, believes the Respondents fully capable to representing the interests of all lawful voters in this state – including those that are members of the Proposed Intervenors.

### **CONCLUSION**

Proposed Intervenors have not shown that they have a right to intervene in this case. Since WEC and the Wisconsin DOJ are charged by law with representing all voters, adequate representation is presumed. An additional presumption applies because Proposed Intervenors and Respondents have the same ultimate objective in this action. Proposed Intervenors have not made a compelling showing to overcome these presumptions. Since they are adequately represented, Proposed Intervenors have failed to satisfy all four requirements for intervention as of right.

Permissive Intervention in this case is not warranted. Due to the time sensitive-nature of this case, there is a risk of undue delay and prejudice to the parties. Respondents representation is more than adequate and Proposed Intervenors participation would be largely unnecessary.

### **IT IS HEREBY ORDERED,**

- 1) Proposed Intervenors Forward Latino and Voces de la Frontera's motion to intervene is denied.
- 2) Proposed Intervenor's Motion to Dismiss is denied as moot.

**THIS IS A FINAL ORDER FOR PURPOSES OF APPEAL**