STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY
BRANCH 10

STATE OF WISCONSIN
EX REL. ARDIS CERNY,

Petitioner,

v.

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.

Case No. 2024CV1353
Case Code: 30952

Hon. Paul Bugenhagen, Jr.

MEMORANDUM IN SUPPORT OF FORWARD LATINO AND VOCES DE LA FRONTERA'S MOTION TO INTERVENE

INTRODUCTION

Petitioner Ardis Cerny—a single Wisconsin voter—seeks to compel election officials to make unprecedented changes to Wisconsin election law just weeks before absentee voting begins,

based on laws that have been in effect for more than two decades and have never been understood to impose the requirements Cerny seeks. If Cerny succeeds, Wisconsin election officials would have just weeks to somehow develop a system to purge voter files and bar new voter registrations based on often-outdated citizenship information in state records. Such relief would particularly harm Proposed Intervenor-Respondents Voces de La Frontera and Forward Latino and their members and constituents, who include recently naturalized citizens particularly likely to be erroneously reflected as ineligible to vote in other state records. The Court should allow Proposed Intervenors to intervene to defend against Cerny's eleventh-hour effort to disrupt Wisconsin elections.

Proposed Intervenors meet all requirements for intervention of right. They have a clear interest in this matter, both on their own behalf and on behalf of their members and constituents, including a substantial number of recently naturalized citizens. Forward Latino is a 501(c)(3) organization that, among other things, conducts a non-partisan get-out-the-vote effort for Latino citizens in Wisconsin, many of whom are naturalized citizens. Voces de la Frontera ("Voces") is a membership non-profit organization that advocates for Latino rights and helps eligible Wisconsin residents apply for U.S. citizenship. Voces has approximately 1,200 members in Wisconsin, including many members who became naturalized citizens with Voces's help. The relief Cerny seeks threatens to remove such citizens from the rolls or make it harder for them to register to vote, when outdated state records show them to be non-citizens. If Cerny's case succeeds, Proposed Intervenors' members and constituents would face new barriers to voting, and Proposed Intervenors would need to divert its efforts from other areas to help such citizens check their registration status and overcome those barriers. And Respondents do not adequately represent Proposed Intervenors' interests here, because they have no particularized interest in protecting the

voting rights of Proposed Intervenors' members and constituents, but merely the duty to enforce whatever the law may require.

For these reasons and those set forth below, Proposed Intervenors are entitled to intervene in this case as a matter of right under Wis. Stat. § 803.09(1), and should alternatively be granted permissive intervention under Wis. Stat. § 803.09(2). As required by Wis. Stat. § 803.09(3), a responsive pleading setting forth the defenses for which intervention is sought accompanies Proposed Intervenors' motion.

BACKGROUND

I. Wisconsin election law protects against non-citizen voting.

Wisconsin has many checks in place to ensure that only citizens vote. Wisconsin requires voters to attest that they are a citizen when registering to vote. All voters must register in Wisconsin "before voting in any election." Wis. Stat. § 6.27. By statute, the Wisconsin Elections Commission is required to "design the [registration] form to obtain from each elector information as to . . . citizenship," along with other biographical information. Wis. Stat. § 6.33(1). Both online and on Wisconsin's mail-in voter registration application, citizenship is the first question, and registrants are instructed not to complete the application if they are unable to attest that they are a U.S. citizen. Pet. Exs. A & B. Voters must also certify that the information on the application is accurate, and they are reminded on the form that any false information may subject them to fines and/or imprisonment. *See id.*

Noncitizens who register to vote or vote face criminal liability under Wisconsin law, Wis. Stat. § 12.13(1)(a), and under federal law, 18 U.S.C. § 611. They also render themselves permanently "inadmissible" under federal immigration law, 8 U.S.C. § 1182(a)(6)(C)(ii), (10)(D), which can lead to deportation and will prevent them from ever renewing a visa, becoming a naturalized citizen, or returning to the United States if they leave. These are extremely serious

consequences, and Cerny offers neither evidence nor allegations that any meaningful number of noncitizens have voted anywhere in the United States, much less in Wisconsin specifically. A Heritage Foundation analysis has identified only 21 instances of noncitizens voting anywhere in the United States between 2003 and 2023.[1] Just *one* of those instances occurred in Wisconsin, in 2016, and the prosecutor concluded that the voter had not deliberately broken the law. *See Election Fraud Cases.*

II. The Department of Transportation does not have accurate citizenship data, particularly for naturalized citizens.

The Petition focuses on Wisconsin's free voter identification card. But most Wisconsinites identify themselves to vote using a driver's license or non-driver identification card. And when Wisconsinites initially apply for drivers licenses or non-driver identification cards, they must provide—among much else—"valid documentary proof that the individual is a citizen or national of the United States or an alien lawfully admitted for permanent or temporary residence in the United States," or one of seven other enumerated immigration statuses. Wis. Stat. § 343.14(2)(es). Non-citizens who are *not* permanent residents receive cards that are identified on their face as "temporary" or "limited term," and they must then show updated documentation of their immigration status when they renew. *See* Wis. Stat. § 343.165(4)(c); *see also* Wis. Stat. §§ 343.03(3m), 343.50(3)(a). Lawful permanent residents, however, receive ordinary drivers' licenses and identification cards and do not need to provide updated immigration documents when they renew them. *See* Wis. Stat. §§ 343.03(3m), 343.50(3)(a). And nothing requires newly naturalized citizens to tell the Department of Transportation that they have been naturalized. As a result, Wisconsinites who obtain drivers' licenses when they are lawful permanent residents but

[1] *See Election Fraud Cases*, Heritage Found, https://www.heritage.org/voterfraud/search?combine=citizenship&state=All&year=&case_type=All&fraud_type=24491&page=0 (last accessed Aug. 31, 2024) ("*Election Fraud Cases*").

who later become naturalized citizens may remain indicated as noncitizens in Department of Transportation records for years or decades after they become naturalized citizens.

III. Wisconsin law requires limited data sharing between DOT and WEC in compliance with federal law.

The Petition relies on a set of statutes enacted in Wisconsin more than two decades ago to implement the federal Help America Vote Act (HAVA), 52 U.S.C. §§ 21081 *et seq.* HAVA requires new voter registrants to provide their driver's license number or the last four digits of their social security number when registering to vote. 52 U.S.C. § 21083(a)(5)(A)(i). For new voters who register by mail, HAVA further requires either that the number provided match "an existing State identification record bearing the same number, name and date of birth" or that the registrant provide photo identification or a copy of certain types of documents. *Id.* § 21083(b)(3)(A)–(B). To make this possible, HAVA requires state election officials and state motor vehicle officials to "enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration." *Id.* § 21083(a)(5)(B)(i). Beyond that, however, HAVA leaves the scope of required verification to state law: "The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law." *Id.* § 21083(a)(5)(A)(iii).

Wisconsin implemented HAVA in laws first enacted in 2003. Consistent with HAVA, Wisconsin law requires new registrants to provide "the number of a current and valid operator's license issued to the elector under ch. 343 or the last 4 digits of the elector's social security account number." Wis. Stat. § 6.33(1). Wisconsin law goes further than HAVA by requiring proof of residence consistent with the HAVA identification requirements for *all* registrants, whether they

register electronically, by mail, or in person. *Id.* § 6.34(2), (3). But consistent with HAVA, Wisconsin law exempts electronic registrants from that requirement if they provide a drivers' license number "together with the elector's name and date of birth and the commission is able to verify the information" in Department of Transportation records. *Id.* § 6.34(2m), (4). To that end, like HAVA, Wisconsin law requires a data-sharing agreement between the Department of Transportation and the Wisconsin Elections Commission. *Id.* §§ 5.056, 85.61(1).

IV. Cerny's lawsuit seeks to impose an unprecedented verification regime just weeks before voting starts.

Cerny brought this lawsuit on August 16, less than three months before election day and barely one month before municipal clerks must mail absentee ballots to voters on September 19. Cerny seeks to compel the Commission to adopt a brand new system to compare the existing voter registration list and all new voter registrations with the Department of Transportation's often-inaccurate citizenship data, and to remove and prevent from voting—on the eve of the election—any registrants who are indicated as non-citizens in the Department of Transportation's records. *See* Pet. at 28–30. If successful, the lawsuit would bring electoral chaos and harm voters across Wisconsin whose citizenship information is not up-to-date at Department of Transportation but who are U.S. citizens eligible to vote.

The case is still in its infancy. Respondents were not served until August 26, and the first hearing in the matter—a status conference—is set for September 10.

V. Proposed Intervenors

Forward Latino is a Wisconsin-based, nonpartisan nonprofit organization centered on Latino rights, including the rights of noncitizens and new citizens. *See* Ex. A, Declaration of Darryl Morin, ¶ 5 ("Morin Decl."). Forward Latino is a volunteer-run organization with approximately 225 members in Wisconsin, as well as affiliates including Crusaders of Justicia of Manitowoc, La

Casa de Esperanza of Waukesha, LULAC Council #333 of Milwaukee, and LULAC Council #339 of Kenosha. *Id.* ¶ 7. Many of Forward Latino's members, and many of the Latino voters whose interests Forward Latino seeks to represent, are naturalized citizens. *Id.*

Forward Latino's mission is to inspire and engage communities, strengthen democracy, improve the lives of working families, protect the environment, and stand up for equality and civil rights. *Id.* ¶ 5. Forward Latino accomplishes this mission by actively promoting legislation and public policies that support the Latino community in Wisconsin and by ensuring that Latinos are able to meaningfully and actively participate in and vote in Wisconsin's elections. *Id.* ¶ 8. To support this mission, Forward Latino engages in large-scale nonpartisan voter education and mobilization efforts in Wisconsin focused on educating and turning out Latino voters. *Id.* In the most recent election, Forward Latino contacted nearly 70,000 voters, and it intends to meet or surpass that number for the upcoming election. *Id.*. It also trains poll monitors and operates an election-day hotline to answer questions from voters and prospective voters, including those seeking same-day registration. *Id.* Many of those voters are naturalized citizens.

Because many members of the communities Forward Latino seeks to mobilize—and some members of Forward Latino itself—are naturalized citizens, they are among those likely to be wrongly removed from voter rolls, or barred from registering, if Cerny succeeds in her effort to require election officials to purge voters based on out-of-date Department of Transportation citizenship records. *Id.* ¶¶ 11–12. If this case succeeds, Forward Latino will need to divert resources to ensuring its members provide or update their citizenship information with the DOT or find other means to ensure they remain eligible to vote. *Id.* ¶¶ 13–15. It will also need to overhaul its get-out-the-vote ("GOTV"), poll monitor, and election-day hotline programs in order to ensure

that Forward Latino's volunteers are prepared to assist citizens who have been wrongfully purged or denied registration based on outdated Department of Transportation citizenship records. *Id.*

Voces is a membership-based non-profit that works to protect civil rights and workers' rights in Wisconsin through leadership development, community organizing, and programs to empower works, immigrants, and youth. Ex. B, Declaration of Christine Neumann-Ortiz, ¶ 5 ("Ortiz Decl."). Voces has approximately 1,200 members statewide and six regional chapters, including a chapter based in Waukesha. *Id.* Its goal is a world free of poverty and discrimination, where safe, dignified work, a quality education, and health care are accepted as rights for all. *Id.*

Voces works to achieve this goal through targeted campaigns and programs, such as Citizenship for All, which is a campaign to work towards a pathway to citizenship for immigrants; Driver's Licenses for All, which seeks to mobilize opposition to efforts to make it more difficult for immigrants to obtain driver's licenses; and the New American Program, which is a comprehensive program through which Voces has helped approximately 1,300 lawful permanent residents (including many Voces members) obtain U.S. citizenship. *Id.* ¶¶ 6–8. Voces also offers critical services to the communities it serves, including legal services and Know Your Rights workshops. *Id.* ¶ 6.

Like Forward Latino, Voces is concerned that its members and the members of the communities it serves are likely to be mistakenly purged from the rolls or barred from registering if the state is forced to cancel voter registrations based on out-of-date indications of citizenship in Department of Transportation records. *Id.* ¶ 10. If Cerny's suit is successful, Voces will need to divert resources away from other programs in order to ensure that it can help its members and constituents avoid wrongful disenfranchisement. *Id.* ¶ 12.

LEGAL STANDARD

A court must grant a motion to intervene as of right if the motion is timely; the movant claims an interest sufficiently related to the subject of the action; the movant shows that that the disposition of the action may, as a practical matter, impair or impede its ability to protect that interest; and the movant shows that the existing parties do not adequately represent its interest. *Helgeland v. Wis. Muns.*, 2008 WI 9, ¶ 38, 307 Wis. 2d 1, 745 N.W.2d 1; Wis. Stat. § 803.09(1); *see also Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 471, 516 N.W.2d 357 (1994). The four criteria are not to be "analyzed in isolation from one another"; rather, a "strong showing" on one "may contribute to the movant's ability to meet other requirements." *Helgeland*, 2008 WI 9, ¶ 39. Although precedent is informative, the analysis ultimately is "holistic, flexible, and highly fact-specific." *Id.* ¶ 40. Courts balance two interests: allowing the original parties "to conduct and conclude their own lawsuit" and encouraging "the speedy and economical resolution of controversies" by permitting interested parties to join the suit. *Id.* (quoting *State ex rel. Bilder v. Delavan Twp.*, 112 Wis. 2d 539, 548, 334 N.W.2d 252 (1983)). And because Section 809.09(1) "is based on Rule 24(a)(2) of the Federal Rules of Civil Procedure" the interpretation and application of the federal rule may "provide guidance" about the Wisconsin rule's interpretation and application. *Id.* ¶ 37.

The Court has discretion to grant permissive intervention "[u]pon timely motion" if "a movant's claim or defense and the main action have a question of law or fact in common." Wis. Stat. § 803.09(2).

ARGUMENT

I. Intervenors are entitled to intervene as a matter of right.

Intervenors satisfy all the requirements to intervene as of right: (A) their motion is timely; (B) they have significant interests in this litigation; (C) disposition of the case could practically impair those interests; and (D) no existing party adequately represents their interests.

A. The motion is timely.

This motion to intervene, which comes barely two weeks after the Petition was filed and before any dispositive motions have been heard or resolved, is timely. Though "[t]here is no precise formula to determine whether a motion to intervene is timely," courts consider two factors. *Bilder*, 112 Wis. 2d at 550. The "critical factor" is whether the proposed intervenor "acted promptly," *id.*, which turns on "when the proposed intervenor discovered its interest was at risk and how far litigation has proceeded." *Olivarez v. Unitrin Prop. & Cas. Ins. Co.*, 2006 WI App 189, ¶ 15, 296 Wis. 2d 337, 723 N.W.2d 131. The second factor is whether intervention "will prejudice" the original parties to the suit. *Bilder*, 112 Wis. 2d at 550. Proposed Intervenors discovered that their interests were at risk in this litigation only recently, and the litigation is still in the very early stages. Proposed Intervenors are moving to join the litigation before any progress has been made toward resolving the claims in the case—a crucial marker dividing timely from untimely motions to intervene. *See id.* at 550–51 (holding intervention timely where "the circuit court had not yet considered" the substance of the case). Proposed Intervenors attach a proposed Answer as well as a Motion to Dismiss to this motion, and will proceed according to any schedule the Court sets, so intervention at this stage will not prejudice any party. The motion to intervene thus satisfies the timeliness requirement.

B. Proposed Intervenors have a significant interest in this litigation.

Proposed Intervenors have a significant interest in this case on their own behalf and on behalf of their members and constituents. Courts interpret the interest requirement of § 803.09(1) "with the same flexibility" that they "bring to the statute as a whole." *Helgeland*, 2008 WI 9, ¶ 44. "No precise test exists" to determine whether an interest is sufficient to warrant intervention as of right; rather, the related-interest requirement has "generated a spectrum of approaches." *Id.* ¶ 43. The Wisconsin Supreme Court favors a "broader, pragmatic approach," which "measures the sufficiency of the interest by focusing on the facts and circumstances of the particular case before it as well as the stated interest in intervention." *Bilder*, 112 Wis. 2d at 548. Under that approach, "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." *Helgeland*, 2008 WI 9, ¶ 45 (cleaned up). Proposed Intervenors' significant stake in this case easily satisfies these standards.

First, each Proposed Intervenor has a significant organizational stake in this case. In the coming months, Forward Latino will engage in a substantial non-partisan get-out-the-vote program targeting nearly 70,000 Latino voters in Wisconsin. Morin Decl. ¶ 8. Many of those voters are naturalized citizens who are particularly likely to be incorrectly identified in outdated Department of Transportation records as noncitizens. *Id.* ¶¶ 10–11. Indeed, more than 10,000 Wisconsinites have naturalized since the 2020 election alone.[2] If this lawsuit succeeds, the efficacy of Forward Latino's get-out-the-vote effort will be directly undermined when many of the voters who Forward

[2] *See* Office of Homeland Security Statistics, *State Immigration Statistics*, U.S. Department of Homeland Security, https://ohss.dhs.gov/topics/immigration/state-immigration-data-sheets/state-immigration-statistics (last accessed Sept. 3, 2024) (select "Naturalizations" and "Totals" from sidebar, select "Wisconsin" from "Select State" dropdown menu, then use "Select Year" dropdown to toggle between years).

Latino reaches find themselves purged from the voter rolls and unable to actually register or vote. *Id.* ¶¶ 12–15. To reduce the harm, Forward Latino would need to divert mission-critical resources to rework its programming to prepare targeted voters to check their registration status and be prepared to prove their citizenship at the polling place if needed, which is not something voters are ordinarily prepared to do. *Id.* ¶¶ 13–15.[3]

For its part, Voces works to help lawful permanent residents become naturalized U.S. citizens through its New American Program and also assists its members and constituents with voter registration. Ortiz Decl. ¶¶ 6–8. If this lawsuit is successful, Voces will need to revise its programs to ensure that newly naturalized citizens are not wrongfully disenfranchised because their DOT information is out of date. *Id.* ¶ 11.

Second, both groups' Wisconsin members and constituents include naturalized citizens whose ability to vote is directly threatened by this case. Morin Decl. ¶ 11; Ortiz Decl. ¶¶ 8–10. Naturalized citizens are precisely the voters who stand to have their voter registrations unlawfully cancelled by election officials based on out-of-date Department of Transportation records if Cerny is successful. The risks to these members and constituents give Proposed Intervenors a substantial interest in this case. *See Wis.'s Env't Decade, Inc. v. Pub. Serv. Comm'n of Wis.*, 69 Wis. 2d 1,

[3] Courts routinely hold that diversion of organizational resources suffices to confer Article III standing—a far more demanding standard than that required for intervention. *See, e.g.*, *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (finding Article III standing where the challenged law injured the intervening organization by compelling it to divert resources), *aff'd*, 553 U.S. 181 (2008) (plurality op.); *Common Cause Ind. v. Lawson*, 937 F.3d 944, 952 (7th Cir. 2019) (affirming finding that organizations had standing where they would "be required to increase the time or funds (or both) spent on certain activities to alleviate potentially harmful effects of" challenged law); *League of United Latin Am. Citizens (LULAC) of Wis. v. Deininger*, No. 12-C-0185, 2013 WL 5230795, at *1 (E.D. Wis. Sept. 17, 2013) (holding that organizations had standing to challenge recently adopted voter identification laws based on get-out-the-vote expenditures); *see also Bilder*, 112 Wis. 2d at 547–48 (looking to federal cases for guidance in interpreting Section 803.09 and holding that the Wisconsin standard for intervention is more liberal than the standard for Article III standing).

19–20, 230 N.W.2d 243 (1975) (recognizing the doctrine of member-based associational standing in Wisconsin), *overruled in part on other grounds by Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶ 11, 402 Wis. 2d 587, 977 N.W.2d 342; *see also Metro. Builders Ass'n of Greater Milwaukee v. Village of Germantown*, 2005 WI App 103, ¶¶ 14–15, 282 Wis. 2d 458, 698 N.W.2d 301 (applying the doctrine).

C. The litigation threatens to impair Proposed Intervenors' interests.

Proposed Intervenors also satisfy their minimal burden to show that this case threatens practically to impair their interests. The practical-impairment requirement, like the interest requirement just discussed, "is flexible, and its application depends on a pragmatic analysis of the circumstances of a given case." *Helgeland*, 2008 WI 9, ¶ 79 n.70 (quoting 6 James William Moore, et al., *Moore's Fed. Prac.* § 24.03[3][a], at 24–42 (3d ed. 2002)). The requirement "is satisfied whenever disposition of the present action would put the movant at a practical disadvantage in protecting its interest." 7C Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc. Civ.* § 1908.2 (3d ed., 2022). Such a disadvantage often will be found when an "adverse holding" will apply "to the movant's particular circumstances," *Helgeland*, 2008 WI 9, ¶ 80, or when the case will result in "a novel holding of law" that will affect the movant in future litigation, *id.* ¶ 81.

Proposed Intervenors and their members and constituents would be directly harmed by a judgment for Cerny. As already explained, if Cerny succeeds, then many naturalized citizens are likely to have their registrations purged or rejected based on a comparison to Department of Transportation records that will not have been updated to reflect their new eligibility to vote. This will directly harm those voters, and it will by extension harm Proposed Intervenors in their efforts to mobilize and engage them. Nothing more is required to warrant intervention as of right. This is not a case, like *Helgeland*, where the potential effect on the Proposed Intervenors depends on

"remote and speculative" future events or is limited to *stare decisis*. *Id.* ¶ 53. A judgment for Cerny would itself immediately and directly harm Proposed Intervenors' members as voters and Proposed Intervenors themselves in conducting their civic engagement activities.

D. No existing party adequately represents Proposed Intervenors' interests.

Proposed Intervenors will not be adequately represented in this litigation absent a grant of intervention. In most cases, "the showing required for proving inadequate representation should be treated as minimal." *Id.* ¶ 85 (cleaned up). Because the course of litigation is difficult to predict, the relevant question is whether representation *may* be inadequate, not whether it *will* be inadequate. *See Wolff v. Town of Jamestown*, 229 Wis. 2d 738, 747, 601 N.W. 2d 301 (Ct. App. 1999). That standard is met if the proposed intervenor "may be in a position" to litigate "more vigorously" than the relevant existing party, or if the intervenor has "more at stake" than the existing party. *Id.* at 749–50. This is so even when the intervenor may offer "similar arguments" to the existing party. *Id.* The Wisconsin Supreme Court has recognized just two narrow exceptions to these otherwise-minimal standards: 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," then a more "compelling showing" of inadequacy may be required. *Helgeland*, 2008 WI 9, ¶ 86 (emphases added).

Applying these standards, no existing party adequately represents the Proposed Intervenors' interests in this litigation. Respondents lack Proposed Intervenors' direct stake in protecting naturalized citizens from disenfranchisement. No Respondent will have their ability to vote threatened by Cerny's proposed relief. But Proposed Intervenors and their members and constituents face the risk of individual harm. While the Commission no doubt aims to serve the voters of this state, its legal duty is at bottom to administer the election laws, not to ensure that any

set of voters get and remain registered. *See* Wis. Stat. §§ 5.05, 7.08. Only Proposed Intervenors can fully represent their own and their members' and constituents' interests in this litigation. And that difference in motivation means that Proposed Intervenors have "more at stake" and more incentive to litigate "vigorously" than the existing Respondents, *see Wolff*, 229 Wis. 2d at 748–49. These differences more than suffice to satisfy Proposed Intervenors' minimal burden as to this requirement.

Neither of *Helgeland*'s exceptions to that minimal burden applies. As to the first exception, no Respondent's interests are "identical" to Proposed Intervenors' because none shares their exclusive focus on protecting naturalized citizens' ability to vote. Moreover, the Commission's interest in defending this case will be in emphasizing its discretion in applying Wisconsin law and arguing that it is not *required* to adopt Cerny's preferred system, whereas Proposed Intervenors interest is in arguing that the relief Cerny seeks is affirmatively unlawful and could not—and should not—be adopted even by a willing Commission. As to the second, no existing Respondent is charged by law with representing Proposed Intervenors and their members, specifically. *See* Wis. Stat. §§ 5.05, 7.08, 7.15. Unlike in *Braun v. Vote.org*, 2024 WI App 42, ¶ 29, --- N.W. 3d ---, the issues in this case are more complex than the legal sufficiency of a single form, and there may well be a diversion in litigation objectives as a result: Proposed Intervenors' sole concern is to protect their members and constituents, while the Commission is likely to focus at least equal attention on the aspects of the Petition that threaten its ability to exercise independent judgment such as by seeking to compel it to engage in rulemakings, investigations, and litigation. *See* Pet. at 29. Particularly at this early stage in the case, and given the Commission's many election-related responsibilities, there is no reason to believe that the Commission will adequately represent Proposed Intervenors' interests here. Federal courts have recognized that the interests of election

officials are distinct from civic organizations and voters in other cases where plaintiffs sued election officials to demand that they remove voters from the rolls. *See, e.g.*, *Bellitto v. Snipes*, No. 16-CV-61474, 2016 WL 5118568, at *2 (S.D. Fla. Sept. 21, 2016); *Jud. Watch, Inc. v. Illinois State Bd. of Elections*, No. 24 C 1867, 2024 WL 3454706, at *4-5 (N.D. Ill. July 18, 2024).

II. Alternatively, Proposed Intervenors should be granted permissive intervention.

As an alternative to intervention as of right, Proposed Intervenors qualify for permissive intervention under Wis. Stat. § 803.09(2). This Court has broad discretion to permit a party to intervene where the "movant's claim or defense and the main action have a question of law or fact in common," intervention will not "unduly delay or prejudice the adjudication of the rights of the original parties," and the motion is timely. Wis. Stat. § 803.09(2); *see also Helgeland*, 2008 WI 9, ¶ 120.

Proposed Intervenors easily satisfy these criteria. The motion to intervene is timely and, given that this litigation is in its earliest stages, intervention will cause no undue delay or prejudice to any party. Proposed Intervenors will raise common questions of law and fact, including the core issue of whether Wisconsin law requires a comparison between voter registration records and inaccurate citizenship status information in Department of Transportation data. Where that threshold requirement is satisfied, courts routinely exercise their discretion to grant interested organizations permissive intervention in election-law cases. *See, e.g.*, *Pub. Int. Legal Found., Inc. v. Winfrey*, 463 F. Supp. 3d 795, 800–02 (E.D. Mich. 2020) (granting permissive intervention to the League of Women Voters); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1307 (N.D. Ga. 2018) (granting permissive intervention to a campaign); *Campaign Legal Ctr. v. Fed. Election Comm'n*, 334 F.R.D. 1, 6 (D.D.C. 2019) (granting permissive intervention to two political action committees). As the only parties, present or proposed, that speak for actual Wisconsin voters,

Proposed Intervenors' full participation in this lawsuit warrants a favorable exercise of the Court's discretion. And given what will necessarily be the extraordinary pace of this case and the complexity of the issues, the Court is likely to benefit from Proposed Intervenors' briefing and perspective. There will be no resulting delay, as Proposed Intervenors are prepared to proceed in accordance with any schedule this Court sets, ensuring that its intervention assists in this Court's efficient resolution of this case.

CONCLUSION

For the reasons stated above, the Court should grant Proposed Intervenors' motion to intervene as a matter of right. In the alternative, the Court should exercise its discretion to grant permissive intervention.

DATED this 3rd day of September, 2024

Respectfully submitted,

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