

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

Robert Pellegrini,

Plaintiff,

v.

Case No. 2022CV04

Code: 30703

Wisconsin Elections Commission, et al.,

Defendants.

**BRIEF IN SUPPORT OF MOTION TO INTERVENE OF PROPOSED
INTERVENOR-DEFENDANTS, DISABILITY RIGHTS WISCONSIN, WISCONSIN
FAITH VOICES FOR JUSTICE, AND THE LEAGUE OF WOMEN VOTERS OF
WISCONSIN**

INTRODUCTION

This matter is stayed pending the outcome of *Teigen v. WEC*, No. 22AP91, which is pending in the Supreme Court of Wisconsin. Movants are the Intervenors-Defendants-Appellants in *Teigen*. The parties to this matter acknowledge that *Teigen* is likely to address “the legality of [an] absentee-ballot drop box ... one of the main issues in this case.” [Dkt. 15] The parties recognized that *Teigen* may resolve “whether any issues remain in this case.” [Dkt. 15] If *Teigen* does not resolve this case in full, Movants hereby seek to intervene in this matter.

Drop boxes are a longstanding component of Wisconsin’s absentee-ballot voting system. During the 2020 general election, they exploded in popularity as absentee ballot

voting itself doubled, comprising 59.7% of all votes cast in the 2020 general election, up from 27.3% in 2016. It is easy to see why: drop boxes provide a safe, secure, and convenient method to return absentee ballots, particularly amid a global pandemic.

Nevertheless, before and after the 2020 general election, drop boxes came under scrutiny as the subject of a series of state and federal lawsuits.¹ Disability Rights Wisconsin (DRW), Wisconsin Faith Voices for Justice (WFVFJ), and the League of Women Voters of Wisconsin (LWVWI) (together, Movants) have participated as parties to and *amici* in much of this litigation. Movants are all nonprofit, nonpartisan organizations devoted to protecting the fundamental right to vote. For Movants, absentee-ballot drop boxes are an essential tool in vindicating that core right. As such, Movants have been active participants in the legal saga surrounding drop boxes.

Teigen's route to the Supreme Court of Wisconsin began here, in Waukesha County Circuit Court. While that matter was pending before the Hon. J. Michael Bohren, Movants sought to intervene to protect their interests in (1) educating, informing, and motivating eligible Wisconsinites, including their own members and the general public, to cast a ballot; and (2) ensuring that the methods of voting available to eligible voters are as accessible and accommodating as possible. Judge Bohren agreed that intervention as a

¹ Before any ballots were counted, justices of the Supreme Court of the United States acknowledged drop boxes' availability as part of Wisconsin's voting system. "[A]bsentee voters ... may place their absentee ballots in secure absentee ballot drop box[es]. Some absentee ballot drop boxes are located outdoors, either for drive-through or walk-up access, and some are indoors at a location like a municipal clerk's office." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 36 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay); see also *id.* at 29 ("[V]oters may return their ballots [to] various 'no touch' drop boxes staged locally.") (Gorsuch, J., concurring). Following the election, coordinated challenges to drop boxes sprung up in Wisconsin courts. See *Fabick v. Wis. Elec. Comm'n.*, Case No. 2021AP428-OA, Order (Wis. June 25, 2021); *Teigen v. Wis. Elec. Comm'n.*, Case No. 2022AP91 (Wis.). This case is the latest challenge to drop boxes.

matter of right was appropriate and granted Movants party status to assert those interests. *Teigen v. WEC*, Waukesha County Circuit Court Case No. 21CV958 (Dkt. No. 58, Oct. 15, 2021.) As the same conditions for intervention exist here as in *Teigen*, Movants now seek mandatory or, in the alternative, permissive intervention to proceed as intervenor-defendants to this case as well.²

STATEMENT OF INTERESTS

Movants are Wisconsin nonprofit organizations and members of the Wisconsin Voting Rights Coalition. They work individually and collectively to encourage civic engagement and to provide the public with nonpartisan information about elections and voting (including absentee voting), educate voters on available methods and timing of voting, and train volunteers to educate voters. Movants invest time and resources in educating their members, constituencies, and the public at large about elections and how and when to cast a ballot. To that end, Movants, successfully intervened in *Teigen v. WEC*, Waukesha County Circuit Court Case Number 2021CV958. Below, each Movants' interest is identified with additional specificity.

DRW's mission is to address the issues facing, and to ensure the rights of, all people with disabilities in the state. DRW is designated by the Governor the State of Wisconsin to act as the congressionally mandated protection and advocacy agency for Wisconsin citizens with mental illness, developmental disabilities, and other physical impairments, pursuant to Wis. Stat. § 51.62, 29 U.S.C. § 794e, 42 U.S.C. §§ 15041 *et. seq.*, and 42 U.S.C. §§ 10801 *et. seq.* Affidavit of Atty. Kit Kerschensteiner ("Kerschensteiner

² Again, intervention is sought here only if *Teigen* does not resolve all remaining issues in this case.

Aff.”), ¶¶3, 6. Important here, DRW promotes legal rights around voting issues in Wisconsin. This includes advocacy to ensure that people with disabilities have equal access to the polls; educating people with disabilities, service providers, and families about voting laws; working with election officials on both the state and local levels to ensure that people with disabilities have access to the polls; and, working one-on-one with clients to resolve individual problems with the voting process. *Id.*, ¶9. DRW educates its constituents and the public about voting issues and regularly engages in policy and legal advocacy to advance civil rights and election access for people with disabilities. *Id.*, ¶¶4, 9-11.

Beyond *Teigen*, DRW has also engaged in other litigation to protect voting rights, including *Gear, et al. v. Bostelmann, et al.*, No. 20-cv-278-wmc; *City of Green Bay v. Bostelmann*, No. 20-cv-479, 2020 WL 1492975 (E.D. Wis. Mar. 27, 2020); *Fabick v. Wisconsin Elections Commission*, No. 2021AP428-OA (Wis. June 25, 2021); and *Swenson v. Bostelmann* 20-cv-459-wmc, 488 F. Supp. 3d 776 (W.D. Wis. Sep. 21, 2020), *stay denied sub nom. Democratic National Committee v. Bostelmann*, No. 20-2835 & 20-2844, 2020 WL 5807297 (7th Cir. Sept. 27, 2020), *question certified on reconsideration*, 973 F.3d 764 (7th Cir. Sept. 29, 2020), *certified question answered*, 2020 WI 80, 394 Wis. 2d 33, 949 N.W.2d 423, *stay granted after certified answer*, 977 F.3d 639 (7th Cir. Oct. 8, 2020), *motion to vacate denied*, 141 S. Ct. 644 (U.S. Oct. 26, 2020); and *Jefferson v. Dane County*, 2020 WI 90, 394 Wis. 2d 602, 951 N.W.2d 556.

WFVFJ is a collection of clergy, religious leaders, and people of faith from faith traditions across the state of Wisconsin. Affidavit of Bonnie Margulis (“Margulis Aff.”),

¶2. WFVFJ actively promotes a social- and economic-justice agenda, educating its members and their communities about important issues in Wisconsin, including voting rights and civic engagement, because their faith traditions teach a shared duty to see to the needs of all people and work toward a more equitable society. *Id.*, ¶¶3-4. WFVFJ has invested significant financial resources in its voter engagement work, including by jointly establishing and operating the Wisconsin Interfaith Voter Engagement Campaign in collaboration with the Wisconsin Council of Churches. *Id.* ¶6. Beyond *Teigen*, WFVFJ has also actively engaged in litigation to assert its interests. *Id.*, ¶11. For example, WFVFJ filed amicus briefs in *Wis. Legislature v. Palm, et al.*, 2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900; *Fabick v. Palm, et al.*, No. 2020AP828-OA (Wis. May 27, 2020); *James v. Heinrich*, 2021 WI 58, 960 N.W.2d 350; and *Fabick v. Wisconsin Elections Commission, supra. Id.*

LWVWI works to promote political responsibility through informed and active participation in government. Affidavit of Debra Cronmiller (“Cronmiller Aff.”), ¶2. Its mission is to empower voters and defend democracy. *Id.*, ¶3. LWVWI began as an organization focused on the needs of women voters, but has evolved into an organization concerned with educating, advocating for, and empowering all Wisconsin voters. *Id.* LWVWI works with and through twenty local Leagues around Wisconsin to expand informed, active participation in state and local government, giving a voice to all Wisconsin voters. *Id.* Beyond *Teigen*, LWVWI has engaged in litigation to protect the ability of Wisconsin voters to cast absentee ballots, including the federal court actions *Gear v. Bostelmann, supra*, and *Lewis, et al. v. Bostelmann, et al.*, No. 20-cv-284-wmc, which resulted in a ruling extending the mail-in absentee ballot return deadline for the April 7,

2020 election. *Id.*, ¶5. See *Gear v. Bostelmann, supra*, and *Lewis, et al. v. Bostelmann, et al.*, No. 20-cv-284-wmc, *preliminary injunction granted in part sub. nom. Democratic National Committee v. Bostelmann*, 451 F.Supp.3d 952 (W.D. Wis. April 2, 2020), *aff'd in part and stay granted in part*, No. 20-1538, 20-1546, 20-1539 & 20-1545, 2020 WL 3619499 (7th Cir. Apr. 3, 2020), *aff'd as modified*, 140 S. Ct. 1205 (U.S. Apr. 6, 2020).

LEGAL STANDARD FOR INTERVENTION

Section 803.09 of the Wisconsin Statutes governs intervention motions. The statute provides two avenues for intervention: mandatory under subdivision (1), or permissive under subdivision (2).

For mandatory intervention (also known as intervention as a matter of right) under § 803.09(1), Movants must show:

- (A) their motion to intervene is timely;
- (B) they claim an interest sufficiently related to the subject of this action;
- (C) disposition of this action may as a practical matter impair or impede their ability to protect that interest; and
- (D) the existing parties do not adequately represent their interest.

See *Helgeland v. Wis. Municipalities*, 2008 WI 9, ¶38, 307 Wis. 2d 1, 745 N.W.2d 1. Courts take a “flexible and pragmatic approach to intervention as of right.” *Id.*, ¶40 n.30. “[T]here is interplay between the requirements,” which “must be blended and balanced to determine whether [Movants] have a right to intervene.” *Id.*, ¶39 (footnote omitted). “The analysis is holistic, flexible, and highly fact-specific.” *Id.*, ¶40.

The test for permissive intervention is even more flexible. A court may grant permissive intervention to anyone who would be a proper party. See, e.g., *City of Madison v. Wis. Emp’t Relations Comm’n*, 2000 WI 39, ¶11 n.11, 234 Wis. 2d 550, 610 N.W.2d 94.

Under Section 803.09(2), the court “shall consider whether the invention will unduly delay or prejudice the adjudication of the rights of the original parties.” *Id.*

ARGUMENT

Movants satisfy the criteria for both mandatory and permissive intervention. Under either avenue, intervention is appropriate and this Motion should be granted.

I. MOVANTS MEET THE MANDATORY-INTERVENTION CRITERIA.

Movants satisfy all requirements for mandatory intervention. Wisconsin courts’ favorable view of intervention as a tool for “disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process,” *Helgeland*, 2008 WI 9, ¶44 (quoting *State ex rel. Bilder v. Delavan Twp.*, 112 Wis. 2d 539, 548-49, 334 N.W.2d 252 (1983)), militates strongly in favor of intervention here. The four requirements must be “blended and balanced to determine whether [a party has] the right to intervene.” *Id.*, ¶39 (footnote omitted). The “holistic, flexible” analysis that the Wisconsin Supreme Court has prescribed, *id.* ¶40 (footnote omitted), makes clear that this Motion satisfies the legal standard and must be granted.

A. This Motion for Intervention is Timely.

There is “no precise formula to determine whether a motion to intervene is timely,” but the critical factor is whether the proposed intervenor acted “promptly.” *Bilder*, 112 Wis. 2d at 550. The Court should also consider whether intervention will prejudice the original parties. *Bilder*, 112 Wis. 2d at 550.

Here, Movants acted promptly by filing their motion to intervene while this matter is under a preliminary (and plenary) stay. Before the initial scheduling conference could

be held, the parties moved this Court for a stay pending the resolution of *Teigen*. [Dkt. 15.] Approximately one week later, the Court granted the order, staying the entire case pending the resolution of *Teigen*. [Dkt. 17.] As of now, this case remains stayed as the parties await *Teigen's* final disposition, a decision they concede is likely to address the central issue in this case. Thus, by filing this motion while this case remains under a preliminary stay, Movants have acted promptly to protect their interests before this matter proceeds to a substantive phase of litigation.

Similarly, Movants acted promptly by providing notice of their interest in advance of the parties' filing a proposed schedule to resolve any remaining issues in this case. Pursuant to this Court's order the parties must "confer and propose a schedule for resolving any remaining issues in this case." [*Id.*] By the date of this filing, all parties are on notice that this intervention motion is a potential "remaining issue[]" in this case" which may be incorporated into any proposed schedule. By filing their motion to intervene in advance of the proposed schedule, Movants have avoided any potential prejudice to the parties by guaranteeing that any defense or prosecution of this matter may be undertaken with an understanding of Movants' interests as set forth in this motion. Ultimately, by setting forth these interests before *Teigen's* publication and before substantive discussions on the governing calendar may be held, Movants have acted promptly in accordance with Wis. Stat. § 803.09(1)(A).

B. Movants' Interests Are Sufficiently Related to the Issues Raised by Plaintiffs.

No specific test exists for determining whether interests are sufficient to warrant intervention. Instead, a court is tasked with analyzing the facts and circumstances in light

of the “policies underlying the intervention statute.” *Helgeland*, 2008 WI 9, ¶¶43-44 (footnotes omitted). A proposed intervenor’s interest must be of “direct and immediate character” such that “the intervenor will either gain or lose by the direct operation of the judgment.” *Id.*, ¶45 (quoting *City of Madison*, 2000 WI 39, ¶11 n.9). An interest “too remote and speculative” will not “support a right of intervention.” *Id.*, ¶53.

Movants have direct and immediate interests at stake. The posture of this case, vis-à-vis *Teigen* makes this point crystal clear. The parties all moved this Court to stay this case, because *Teigen* is likely to address “the legality of [an] absentee-ballot drop box.” [Dkt. 15] Movants successfully intervened in *Teigen* to protect their interests pertaining to drop boxes and are now advocating on behalf of those interests before the Supreme Court of Wisconsin. There, Movants raised a set of jurisdictional questions, any of which (if dispositive) could leave the central legal question, the limitations if any on drop boxes, unresolved. If *Teigen* does not finally resolve this merits issue it will likely be reignited here, where it would remain “one of the main issues in the case.” *Id.* In such a circumstance, the same interests that triggered Movants’ intervention in *Teigen* would remain at stake here.

Movants continue to have interests (less than a year after intervention was granted in *Teigen*) in (1) educating, informing, and motivating eligible Wisconsinites, including their own members and the general public, to cast a ballot; and (2) ensuring that the methods of voting available to eligible voters are as convenient and accommodating as possible. Movants all pursue these interests yet do so on behalf of unique constituencies. See *Kerschensteiner Aff.*, ¶¶3, 9, 17, 18; *Margulis Aff.*, ¶¶4-5, 12; *Cronmiller Aff.*, ¶¶2,5,

13-14. Collectively, Movants maintain extensive voter-registration and -engagement programs and devote significant staff and volunteer time and monetary resources to educating members, constituents, and the general public about voting and to working with the state and local government, partner organizations, and election officials across the state to ensure that all Wisconsinites are able to cast ballots for the candidates of each voter's choice by secure and accessible methods. Kerschensteiner Aff., ¶¶9-12; Margulis Aff., ¶¶6-7; Cronmiller Aff., ¶¶4-5. Indeed, Movants have each spent tens of thousands of dollars advancing these interests throughout Wisconsin. Kerschensteiner Aff., ¶¶9-12; Margulis Aff., ¶¶6, 8; Cronmiller Aff., ¶¶6-8. Their efforts include activities conducted here in Waukesha County. Kerschensteiner Aff., ¶15; Margulis Aff., ¶9; Cronmiller Aff., ¶¶11-12. Ultimately, Wisconsinites rely upon Movants' support and advocacy, particularly those who have come to rely upon the convenience, reliability, accessibility, and security of drop boxes to return their absentee ballots, and are, thereby, most directly impacted by this case.

These interests are directly related to this case, in which Plaintiffs ask this Court to 1) declare that state law prohibits Ms. Igl's use of drop boxes to collect absentee ballots as well as WEC's decision supporting Ms. Igl's usage of drop boxes, and 2) enjoin the use of drop boxes less than six weeks before Wisconsin's August elections. Plaintiffs advocate for an extremely narrow interpretation of state law,³ the consequences of which would include severely restricting voting by absentee ballot, thereby impacting Movants' members and constituents, as well as their voter-education programs. Although Movants

³ This is the same extremely narrow interpretation that Plaintiffs' counsel advances in *Teigen*.

need not demonstrate standing here because they seek intervention as defendants, not as plaintiffs, Movants have interests at stake that indisputably would be sufficient to demonstrate associational standing in this case, which demonstrates the significance of their interests. *See* Wis. Stat. §184.07; *Kerschensteiner Aff.*, ¶18; *Margulis Aff.*, ¶13; *Cronmiller Aff.*, ¶14; *see also, e.g., Ind. Prot. & Advocacy Servs. Comm'n v. Comm'r, Ind. Dep't of Corr.*, 642 F. Supp. 2d 872, 877-78 (S.D. Ind. 2009) (Hamilton, C.J.) (collecting cases finding that federally mandated protection and advocacy agencies, like DRW, have associational standing to participate in litigation that would affect those they exist to protect); *Wis.'s Envtl. Decade, Inc. v. Pub. Serv. Comm'n of Wis.*, 69 Wis. 2d 1, 20, 230 N.W.2d 243 (1975) (an organization has standing to sue on behalf of its members if a member of the organization would have standing to bring the action).

Even in the absence of associational standing, Movants would have standing in their own right, as a Court order changing current voting practices would require them to devote significant resources to modifying their informational materials and training programs to educate their members, constituents, and the general public. *See* *Kerschensteiner Aff.*, ¶19; *Margulis Aff.*, ¶14; *Cronmiller Aff.*, ¶15; *Common Cause Ind. v. Lawson*, 937 F.3d 944, 952-53 (7th Cir. 2019) (collecting cases finding that the potential drain on voter advocacy organizations' resources to address the impacts of election laws was sufficient injury in fact to support standing). Again, although Movants are not required to demonstrate standing, it is instructive to the question of intervention that their interests in this action are so strong that they would supply standing were it necessary.

Movants' interests in ensuring broad access to secure, convenient, and accessible voting, including by absentee ballot returned to drop boxes, for all Wisconsinites, including those who are disabled or otherwise disadvantaged, require mandatory intervention. Protecting these interests clearly outweighs any interest the original parties may have in conducting and concluding their own lawsuit, especially given the fact that, as described above, granting intervention at this early stage in the proceedings will in no way unduly complicate or delay the litigation. Granting intervention strikes the appropriate balance between the original parties' interests and "allowing persons to join a lawsuit in the interest of the speedy economical resolution of controversies without rendering the lawsuit fruitlessly complex or unending." *Helgeland*, 2008 WI 9, ¶44. Granting this Motion will thus uphold the policies underlying Wis. Stat. § 803.09.

C. The Disposition of this Case May Impair Movants' Ability to Protect Their Interests.

The outcome of this litigation "may, as a practical matter, impair or impede [the] ability to protect interests that may be related to the subject of [the] action." *Helgeland*, 2008 WI 9, ¶75 (footnote omitted). Just as a court should "approach intervention as of right generally," this inquiry is taken under a "pragmatic approach ... focus[ed] on the facts of each case and the policies underlying the intervention statute." *Id.*, ¶79.

Like the *Teigen* plaintiffs, Plaintiff here asks this Court to so narrowly interpret state law as to eliminate the use of absentee ballot drop boxes. If Plaintiffs were to prevail, access to voting by absentee ballot would thus be severely restricted, and Movants' interests in encouraging Wisconsin voters of all ability levels and socio-economic situations to exercise their constitutional right to vote by secure and convenient means

would be directly and significantly impaired. Kerschensteiner Aff., ¶18; Margulis Aff., ¶13; Cronmiller Aff., ¶14. Moreover, as discussed above, Movants' financial interests, including the significant investments they have already made in developing resources and providing educational experiences for members, volunteers, constituents, and the general public, will be directly affected. Becker Aff., ¶19; Margulis Aff., ¶14; Cronmiller Aff., ¶15. In effect, their prior investments will be lost, and Movants will be required to make substantial additional investments in modifying their websites, social media postings, and printed educational materials and in re-educating all of their members and volunteers who, in turn, would then be required to re-educate the public about the process for returning absentee ballots by methods other than by drop box or trusted third party. *Id.*

D. Neither the Wisconsin Elections Commission nor Darlene Igl Adequately Represent Movants' Interests.

"[T]he showing required for providing inadequate representation 'should be treated as minimal.'" *Id.*, ¶85 (quoting *Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 476, 516 N.W.2d 357 (1994) (quoting in turn *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972))). "If the interest of the proposed intervenor is not represented at all, or if all existing parties are adverse to the proposed intervenor, the proposed intervenor is not adequately represented." Jay E. Grenig, 3 Wis. Prac., Civil Procedure (4th ed.) § 309.2.

WEC does not share and has no duty to represent Movants' interests. While the WEC and Movants may ultimately seek the same result in this case and may make similar arguments, such similarities do not preclude intervention, nor do they compel the conclusion that Movants' interests are already adequately represented. Indeed, it is

sufficient that Movants show that “representation of [their] interest ‘may be’ inadequate.” *Wolff v. Town of Jamestown*, 229 Wis. 2d 738, 747, 601 N.W.2d 301 (Ct. App. 1999) (quoting *Trbovich*, 404 U.S. at 538 n.10).

The Wisconsin Legislature has charged WEC with administering elections in accordance with state law in its current iteration, whatever form that may take. While it certainly has an interest in defending its own conduct and past advice, WEC’s ultimate interest in the outcome of this suit is a determination of what Wis. Stat. §§ 6.855, 6.87(4)(b), 7.30, and 12.13 mean and what they require of election officials – not the potential impact of a decision on Movants’ and their members’ and constituencies’ shared interests in broad civic engagement and expansive access to convenient, secure, and accessible methods of voting.

Indeed, Movants’ interests differ so fundamentally from WEC’s that Movants have previously sued WEC and its commissioners and administrator (in their respective official capacities only) on multiple occasions because they did not protect the voting interests of Movants or their members and constituencies. *See Gear v. Bostelmann, supra, Lewis v. Bostelmann, supra, and Swenson v. Bostelmann* 20-cv-459-wmc, 488 F. Supp. 3d 776 (W.D. Wis. Sep. 21, 2020), *stay denied sub nom. Democratic National Committee v. Bostelmann*, No. 20-2835 & 20-2844, 2020 WL 5807297 (7th Cir. Sept. 27, 2020), *question certified on reconsideration*, 973 F.3d 764 (7th Cir. Sept. 29, 2020), *certified question answered*, 2020 WI 80, 394 Wis. 2d 33, 949 N.W.2d 423, *stay granted after certified answer*, 977 F.3d 639 (7th Cir. Oct. 8, 2020), *motion to vacate denied*, 141 S. Ct. 644 (U.S. Oct. 26, 2020).

The same is true of Darlene Igl. Like all municipal clerks, Ms. Igl is tasked with “charge and supervision of elections and registration in [her] municipality.” Wis. Stat. § 7.15(1). Her statutory obligations are those defined far more narrowly (the boundaries of her municipality) than the institutional obligations and interests of Movants. Like WEC, she may seek the same result as Movants in this litigation, but this does not preclude Movants intervention motion, nor does it demonstrate that she would advocate on behalf of Movants’ interests. As a result, Ms. Igl does not (and cannot) adequately represent the interests of Movants.

II. MOVANTS ALSO MEET ALL PERMISSIVE INTERVENTION CRITERIA.

Alternatively, Movants should be permitted to intervene with this Court’s permission. A court may grant permissive intervention to anyone who would be a proper party. *See, e.g., City of Madison*, 2000 WI 39, ¶11 n.11. In considering a request for permissive intervention, the court shall “consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Wis. Stat. § 803.09(2). Absent prejudice, intervention is within the court’s discretion, as long as the movant’s claim or defense and the main action share a common question of law or fact. *Helgeland*, 2008 WI 9, ¶120.

In this case, Plaintiff argues that Wisconsin law prohibits staffed drop boxes for absentee-ballot return. [Dkt. 3, ¶12-19.] Plaintiff concedes that this legal issue is under consideration in *Teigen*, where Movants are parties. Movants would advance this same interests and arguments here, should *Teigen* fail to fully resolve the pending dispute over drop boxes. On behalf of themselves and the members, constituencies, and voters they

represent, Movants have a significant stake in the answer to this question, without regard for when or where it is ultimately resolved by our court system. Movants remain at risk of harm should this Court adopt Plaintiff's interpretation of state law. Thus, with this Motion, Movants have filed an answer in defense of their position, in direct rebuttal to Plaintiff's claims. Movants' defense of this action shares common questions of law or fact with the main action.

Plaintiff's claims implicate, and if sustained on appeal would injure, interests that Movants have in Waukesha County and throughout Wisconsin. All three organizations have invested significant financial, staff, and volunteer resources in their voter engagement activities, both on a statewide basis and in Waukesha County, specifically. With respect to Waukesha County, for example, in 2020-2021 LWVWI, through its Waukesha County league, engaged in a variety of voter service activities in the county, including sending out postcards with absentee voting information, contacting voters about absentee voting via a texting campaign, providing information about drop box locations within Waukesha County via its "Vote411" voter guide, and providing volunteer election observers. *Cronmiller Aff.*, ¶11-12. Likewise, DRW and Faith Voices are actively engaged in voter engagement activities within Waukesha County. *Kerschensteiner Aff.*, ¶15; *Margulis Aff.*, ¶9. This case directly threatens these interests and investments. It follows that Movants are proper parties. Intervention would not unduly delay or complicate the proceedings, nor would it prejudice either Plaintiff or Defendants. Should the Court find that Movants do not meet the standard for

intervention as of right, Movants respectfully request that it grant permissive intervention.

CONCLUSION

For the foregoing reasons, Proposed Intervenor-Defendants Disability Rights Wisconsin, Wisconsin Faith Voices for Justice, and the League of Women Voters of Wisconsin respectfully request that, should the Court not dismiss this case in light of *Teigen v. WEC*, it grant this Motion to Intervene and accept the attached Answer and Affirmative Defenses for filing.

Dated this 27th day of June, 2022.

Electronically Signed by:

/s/Scott B. Thompson
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