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**COURT OF APPEALS**

**WISCONSIN COURT OF APPEALS – DISTRICT IV**  
No. 2024AP165

RISE, INC. AND JASON RIVERA,

*Plaintiffs-Respondents,*

v.

WISCONSIN ELECTIONS COMMISSION, MARIBETH WITZEL-BEHL; CITY CLERK FOR THE CITY OF MADISON, WISCONSIN, TARA MCMENAMIN; CITY CLERK FOR CITY OF RACINE, WISCONSIN AND CELESTINE JEFFREYS; CITY CLERK FOR THE CITY OF GREEN BAY, WISCONSIN,

*Defendants,*

WISCONSIN STATE LEGISLATURE,

*Intervenor-Appellant.*

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Appeal from the Circuit Court for Dane County  
The Honorable Ryan D. Nilsestuen, Presiding  
Circuit Court Case No. 2022-CV-2446

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**BRIEF OF AMICUS CURIAE THE LEAGUE OF  
WOMEN VOTERS OF WISCONSIN**

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## INTERESTS OF AMICUS CURIAE

The League of Women Voters of Wisconsin (“LWVWI” or “League”) was founded in 1920 by the suffragists who fought to win the right to vote for women through the Nineteenth Amendment. LWVWI is an affiliate of The League of Women Voters of the United States, which has 750 state and local Leagues in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. The League works to expand informed, active participation in state and local government, giving a voice to all Wisconsinites.

The League is dedicated to encouraging its members and the people of Wisconsin to exercise their right to vote as protected by the U.S. Constitution, the Voting Rights Act, and the Civil Rights Act of 1964. LWVWI’s mission is to empower voters and defend democracy. LWVWI does this by promoting political responsibility through informed and active participation in government and acting on select governmental issues. The League seeks to maximize eligible voter participation through its voter registration, education, and outreach efforts and to encourage civic engagement through registration and voting.

LWVWI has been directly involved in the issue of witness addresses on absentee ballot certificates since 2016, when it provided public testimony at WEC’s October 14, 2016 hearing regarding the requirements of federal law and its implications for WEC’s guidance. LWVWI advocated for the adoption of the

previous, now-enjoined policy on curing technical, immaterial omissions or defects in the witness certification.

Following the decision of the Waukesha County Circuit Court in *White v. Wisconsin Elections Commission*, the League filed suit to secure the rights of its members and Wisconsin voters under 52 U.S.C. § 10101(a)(2)(B) of the Civil Rights Act of 1964 (“the Materiality Provision”), the Due Process Clause of the Fourteenth Amendment, and state law. *League of Women Voters of Wis. v. Wis. Elections Comm’n*, Dane Cnty. Cir. Ct. Case No. 2022CV2472 (filed Sep. 30, 2022). On January 2, 2024, the circuit court, Judge Ryan D. Nilsestuen presiding, issued its Decision and Order on Summary Judgment, finding in favor of the League on its Materiality Provision claim. On January 30, 2024, the circuit court issued its Declaratory Judgment and Permanent Injunction declaring that, “the Materiality Provision applies to the requirement under Wisconsin statute that each absentee ballot contain address information for an eligible adult U.S. citizen who witnessed the voter casting the absentee ballot.” Order, *League of Women Voters of Wis. v. Wis. Elections Comm’n*, Dane Cnty. Cir. Ct. Case No. 2022CV2472 (Jan. 30, 2024). That case is now pending before the Wisconsin Court of Appeals, District I.

## ARGUMENT

Given its position as the Plaintiff-Appellant-Cross-Respondent in *League of Women Voters of Wisconsin v. Wisconsin Elections Commission*, the League offers this short *amicus* brief to address the differences between that pending appeal and the instant case.

### **I. This Court should not address the Legislature’s merits arguments regarding the 1964 Civil Rights Act’s Materiality Provision.**

The Legislature spends a significant portion of its opening brief in this case arguing that the Materiality Provision does not apply to, or does not impact, the requirement that a witness provide their address under Wis. Stat. § 6.87. (Leg. Br. 35–38.) However, as the Legislature seems to admit, those arguments are not part of this case. Rather, they are the same arguments that the Legislature presented in the *League* case. (See *id.* 35 (“Here, the Materiality Provision does not apply for the same three reasons that the Legislature presented to the Circuit Court in LWV, the companion to this case below.”)) The circuit court rejected the Legislature’s federal law arguments and granted summary judgment in the League’s favor, finding that the Materiality Provision does apply and issued appropriate injunctive relief, which is now the subject of the Legislature’s cross-appeal in the *League* case.

As the Plaintiffs-Respondents Rise and Mr. Rivera (collectively, “Rise”) correctly observe, there is no basis for this Court to address merits arguments

presented by the Legislature over the meaning and application of the Materiality Provision, which was not part of the case below and was instead adjudicated in the League's separate case. (Rise Br. 28.) That case is currently on appeal to District I, with merits briefing underway. There is no Civil Rights Act claim or any other federal claim in the *Rise* case, and any consideration or argument premised on the avoidance of federal law questions does not provide grounds for the Legislature or this Court to engage the merits of those federal law questions. A court may note that resolution of a state law claim obviates the need to resolve one or more federal law questions without engaging the merits of those questions.

Furthermore, District I already denied the Legislature's motion to stay the circuit court's judgment and injunction in *League*, finding that the circuit court properly exercised its discretion in finding that the Legislature does not have a strong likelihood of success on the merits of its arguments regarding the 1964 Civil Rights Act. Order, *League of Women Voters of Wis. v. Wis. Elections Comm'n*, No. 2024AP166, at \*4 (Ct. App. Feb. 8, 2024). This Court should reject the Legislature's current attempts to shoehorn what amounts to merits arguments pending in the *League* appeal into this separate appeal. Rise correctly notes that the existing judgment and injunction in *League* resolves a federal law question that arises from enforcement of the same Wisconsin statutory provision challenged in *Rise*. But the most that this Court may do in



this separate appeal, which is solely premised on state law, is note the possibility of avoiding one or more federal law questions—without engaging the merits of any of those questions.

The first briefs in *League* are due in less than one month on June 3. This will include arguments in the Legislature’s cross-appeal over the application of the Materiality Provision. District I will have the opportunity to consider and decide the Civil Rights Act issues in the League’s appeal with the benefits of full briefing and a record in due course.

### CONCLUSION

For the reasons stated herein, respectfully this Court should not determine the merits of whether and how the Materiality Provision applies to the witness address certification requirement of Wis. Stat. § 6.87.

Dated May 7, 2024.

*Electronically signed by Daniel S. Lenz*

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**CERTIFICATION REGARDING FORM AND LENGTH**

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8) (b), (bm), and (c) for a brief. The length of this brief is 1,032 words.

Dated May 7, 2024.

*Electronically signed by Daniel S. Lenz*  
Daniel S. Lenz

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