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**Marinette County**  
**2024CV000043**

STATE OF WISCONSIN    CIRCUIT COURT    MARINETTE COUNTY

THOMAS OLDENBURG,

Plaintiff,

v.

WISCONSIN ELECTIONS  
COMMISSION et al.,

Defendants.

Case No. 24-CV-43

Case Code: 30701

Hon. James A. Morrison

**BRIEF IN SUPPORT OF MOTION TO INTERVENE OF PROPOSED  
INTERVENOR-DEFENDANTS DEMOCRATIC NATIONAL COMMITTEE  
AND KATHLEEN F. EASTMAN**

**I. Introduction and Summary of the Argument**

To safeguard Wisconsin voters’ access to the franchise, Defendant Wisconsin Elections Commission (“WEC”) created the online MyVote system, which, among other essential functions, allows qualified electors to easily and securely request absentee ballots. An absentee voter can then cast their ballot by placing it in an approved return envelope and signing the envelope’s certificate. In recent elections, MyVote has been a rousing success and a widely used tool for eligible voters. Just last month, of the 362,353 voters who requested absentee ballots during the spring election and presidential preference primary, 54% used MyVote to do so. (Decl. of Roger Lau (“Lau Decl.”) ¶ 9) Two years ago, during the 2022 midterm election, 823,411 Wisconsin voters requested absentee ballots; 44% of them used MyVote. (*Id.*)

Now, in the midst of the 2024 election cycle—with elections just weeks away<sup>1</sup>—Plaintiff Thomas Oldenburg seeks to upend Wisconsin’s absentee-ballot system and threaten the fundamental rights of eligible voters. He claims that an absentee ballot requested through MyVote can be counted only if the voter includes a signed copy of their request form in the return envelope. But, as currently configured, the MyVote system does not send voters their automatically generated request forms; rather, the request forms are sent only to local election officials. Plaintiff therefore asks this Court to impose a requirement on hundreds of thousands of absentee voters that is, as of now, impossible to satisfy. This requested relief would thus have a particularly pernicious effect on ordinary voters: Wisconsinites who use MyVote to request absentee ballots and sign only the return envelope—as so many have successfully done in past elections—would be wholly disenfranchised.

Plaintiff also challenges use of the WEC-approved absentee-ballot return envelope, seeking to impose unnecessary hardships and costs for Wisconsin’s election officials by forcing them to retool their procedures and redo their materials at the same time they must administer this year’s primary and general elections. Such an eleventh-hour attack on absentee voting would be inexcusable in any event, but Plaintiff’s lawsuit fails on the law no less than the equities.

Proposed Intervenor-Defendants Democratic National Committee (“DNC”) and Kathleen F. Eastman (together, “Proposed Intervenors”) seek to intervene in this matter to ensure that all Wisconsin voters have fair and open access to the ballot box in 2024 and beyond. DNC is the

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<sup>1</sup> A special election to fill the vacancy in the Fourth Senate District is scheduled for July 30 and is likely to be preceded by a primary on July 2. *See Executive Order #225*, Office of Governor (May 14, 2024), <https://evers.wi.gov/Documents/EO/EO225-SpecialElectionSD4.pdf>; Rich Kremer, *Special Elections for State Senate, US House Come Under Special Circumstances*, Wis. Pub. Radio (May 15, 2024), <https://www.wpr.org/news/special-elections-for-state-senate-us-house-come-under-special-circumstances>.

national committee of the Democratic Party, while Ms. Eastman is a Marinette County voter who relies on MyVote to request absentee ballots. Proposed Intervenors therefore have undeniable interests in these proceedings and satisfy the standards for both intervention as of right under Wis. Stat. § 803.09(1) and permissive intervention under Wis. Stat. § 803.09(2). This motion is timely, Proposed Intervenors have interests in both the ability of voters to cast absentee ballots and the electoral success of Democratic candidates—both of which would be impaired by Plaintiff's requested relief—and neither Defendants nor any other government officials adequately represent Proposed Intervenors' parochial interests. Moreover, DNC regularly litigates voting- and election-related disputes in Wisconsin and can bring to these proceedings the unique perspectives of voters, candidates, and other non-government stakeholders. For these reasons and those detailed below, intervention is both required and appropriate.

In compliance with Wis. Stat. § 803.09(3), Proposed Intervenors have submitted a responsive pleading setting forth the defenses for which they seek intervention as Exhibit A.<sup>2</sup>

## **II. Background**

### **A. This Litigation**

Plaintiff, a voter in Amberg, Wisconsin, initiated this suit on February 15, 2024. (Dkt. 3, Compl. for Declaratory Judgment ¶ 1) He alleges that an absentee ballot requested via MyVote cannot legally be counted or included in the certified result of an election unless a voter includes a signed copy of the EL-121 request form in the absentee-ballot envelope. He further alleges that WEC's current EL-122 absentee-ballot return envelope is invalid and cannot be used in future elections because, he claims, the envelope "has put all voters who return an absentee ballot through

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<sup>2</sup> Proposed Intervenors will also lodge a proposed response in opposition to Plaintiff's motion for judgment on the pleadings. (Dkt. 23)

MyVote in jeopardy of a criminal violation for which they may be imprisoned” by asking them to certify that the envelope itself is “an original or copy of the request.” (*Id.* ¶¶ 53–54)

In light of these allegations, Plaintiff asks the Court to declare that “[a]ny voter who returns a ballot requested through MyVote . . . without including in the return envelope [] an originally signed duplicate copy of the [absentee-ballot request] automatically generated by the MyVote system when the requester completes the online request process shall not be counted in any election and/or shall not be included in the certified count of any election.” (*Id.* at 21) He also seeks to enjoin any further use of the EL-122 envelope. (*Id.* at 22)

Several months of relative inaction followed the commencement of the lawsuit. That changed earlier this month when, following receipt of Defendants’ Answer (Dkt. 22), Plaintiff moved for judgment on the pleadings (Dkt. 23) and a temporary injunction (Dkt. 29). During a scheduling conference on May 15, this Court granted the motion for temporary injunction; an order memorializing that decision issued on May 17. (Dkt. 33)

## **B. Proposed Intervenors**

DNC is the oldest continuing party committee in the United States, dedicated to electing local, state, and national candidates of the Democratic Party to public office throughout the United States, including in Wisconsin. (Lau Decl. ¶¶ 3, 5) DNC is composed of its chair, vice chairs, and more than 200 members elected by Democrats in every U.S. state and territory and the District of Columbia. (*Id.* ¶ 3) DNC also represents millions of voters across the nation, including many in Wisconsin. (*Id.*)

DNC’s organizational purposes and functions are to communicate the Democratic Party’s position and messages on issues; protect voters’ rights; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats, but also to cast their ballots for

Democratic candidates. To accomplish its mission, DNC, among other things, makes expenditures for and contributions to Democratic candidates and provides active support through the development of programs benefiting candidates. (*Id.* ¶ 6) DNC works with individuals who affiliate and engage with it in Wisconsin, whom DNC also considers to be members and constituents. These include all Democratic voters in the state, whom DNC educates and works to ensure have access to the franchise. (*Id.*)

Ms. Eastman, in turn, is a Marinette County voter who relies on MyVote to cast absentee ballots. (Decl. of Kathleen F. Eastman ¶¶ 3, 6–7) Ms. Eastman has limited mobility and votes absentee to avoid the risk that she will be unable to make it to the polls on election day. (*Id.* ¶¶ 5–6) Ms. Eastman not only intends to vote absentee in this year’s August primary and November general elections, but has *already* requested absentee ballots for those upcoming elections using MyVote. (*Id.* ¶¶ 7–9) She thus has an interest in ensuring that these absentee ballots are counted.

### III. Legal Standards

To intervene as of right under Wis. Stat. § 803.09(1), a movant must show:

- (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. Muns.*, 2008 WI 9, ¶ 38, 307 Wis. 2d 1, 745 N.W.2d 1 (footnote omitted). Intervention must be granted if these elements are satisfied. *Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 471, 516 N.W.2d 357 (1994).

Although “[a] movant must meet each of these four criteria to claim a right of intervention,” the Wisconsin Supreme Court has stressed that “[c]ourts have no precise formula for determining

whether a potential intervenor meets the requirements”; instead, “[t]he analysis is holistic, flexible, and highly fact-specific.” *Helgeland*, 2008 WI 9, ¶¶ 39–40 (footnote omitted) (quoting *Wolff v. Town of Jamestown*, 229 Wis. 2d 738, 742, 601 N.W.2d 301 (Ct. App. 1999)); see also *State ex rel. Bilder v. Township of Delavan*, 112 Wis. 2d 539, 548, 334 N.W.2d 252 (1983) (“The court 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 and analyzes these factors against the policies underlying the intervention statute.”).

The standard for permissive intervention is even less stringent: “Upon timely motion anyone may be permitted to intervene in an action when a movant’s claim or defense and the main action have a question of law or fact in common.” Wis. Stat. § 803.09(2); see also *City of Madison v. Wis. Emp. Rels. Comm’n*, 2000 WI 39, ¶ 11 n.11, 234 Wis. 2d 550, 610 N.W.2d 94 (“While intervention as a matter of right requires a person to be necessary to the adjudication of the action, permissive intervention requires a person to be merely a proper party.”).

#### IV. Argument

Proposed Intervenors readily satisfy the requirements for both intervention as of right and permissive intervention.

##### A. Proposed Intervenors are entitled to intervention as of right.

Proposed Intervenors meet the necessary elements for intervention as of right: They have filed this motion in a timely manner, they have interests sufficiently related to the issues at stake in the action, the disposition of the case could impair those interests, and the existing parties do not represent Proposed Intervenors’ interests.

##### 1. Proposed Intervenors’ motion is timely.

The timeliness requirement for intervention as of right is measured by the movant’s diligence and the impact the motion will have on the existing litigants. Two factors guide the

analysis: (1) whether, in light of all the circumstances, the proposed intervenor acted promptly and (2) whether the intervention will prejudice the original parties. *See Bilder*, 112 Wis. 2d at 550 (intervention motion timely where court had not approved stipulation to settle case). The promptness consideration focuses on when the proposed intervenor discovered its interest was at risk and how far the litigation has proceeded at the time of the motion to intervene. *Roth v. La Farge Sch. Dist. Bd. of Canvassers*, 2001 WI App 221, ¶¶ 16–17, 247 Wis. 2d 708, 634 N.W. 2d 882. Prejudice has been found where intervention “would significantly delay trial” or other stages of the proceedings. *Town of East Troy v. Village of Mukwonago*, 2002 WI App 165, ¶ 7, 256 Wis. 2d 696, 647 N.W.2d 469.

Here, Plaintiff commenced this action on February 15 and Defendants filed their Answer on April 4. Significant substantive developments in the matter have unfolded only in the past several weeks: Plaintiff filed motions for judgment on the pleadings on May 6 and for a temporary injunction on May 14, the latter of which the Court granted at a status conference held just one day later. Proposed Intervenors have moved diligently since the temporary injunction was granted to intervene and safeguard the interests of themselves and, for DNC, Democratic voters in Wisconsin. Proposed Intervenors’ intervention would not prejudice any party, as this matter is still in its preliminary stages, and they will abide by any schedule the Court sets moving forward. Given the relative early stages of the litigation and the absence of prejudice, Proposed Intervenors satisfy the first requirement for intervention as of right. *See Bilder*, 112 Wis. 2d at 550 (“The critical factor is whether in view of all the circumstances the proposed intervenor acted promptly.”).

**2. Proposed Intervenors have interests sufficiently related to the subject of the action.**

Consistent with the “broader, pragmatic approach” taken by Wisconsin courts regarding intervention, the “interests” requirement for intervention serves to efficiently “dispos[e] of

lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Helgeland*, 2008 WI 9, ¶¶ 43–44 (quoting *Bilder*, 112 Wis. 2d at 548–49).

Here, Proposed Intervenors have several important and protected interests in the subject matter of this litigation.

First, Plaintiff seeks relief that threatens Wisconsin’s longstanding absentee-ballot regime—use of the MyVote system in particular—which would burden Democratic voters’ abilities to cast absentee ballots and participate in upcoming elections, including Ms. Eastman, who has an undeniable interest in her own ability to successfully access the franchise. *See, e.g., League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 434–35 (5th Cir. 2011) (citing federal cases where voters were allowed to intervene to safeguard their voting-related interests); *see also Helgeland*, 2008 WI 9, ¶ 37 (“Wisconsin Stat. § 803.09(1) is based on Rule 24(a)(2) of the Federal Rules of Civil Procedure, and interpretation and application of the federal rule provide guidance in interpreting and applying § 803.09(1).”). Moreover, political entities like DNC have an “associational interest on behalf of [their] members” to challenge or defend laws that might affect those members’ right to vote. *Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023); *see also, e.g., Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008) (plurality opinion) (agreeing, in more demanding context of standing, that political party had “standing to challenge the validity of” law that imposed voting requirements on party’s members); *Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 573–74 (6th Cir. 2004) (similar); *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005) (“A plaintiff need not have the franchise wholly denied to suffer injury.”). Indeed, political parties are routinely granted intervention as of right in similar circumstances. *See, e.g., Ne. Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 585 (6th Cir. 2012) (Ohio Democratic Party allowed to intervene in case

where challenged practice would lead to disenfranchisement of its voters); Minute Entry at 2, *Wood v. Raffensperger*, No. 1:20-cv-04651-SDG (N.D. Ga. Nov. 19, 2020) (granting intervention to national and state Democratic Party committees in action seeking to invalidate election in Georgia). If Plaintiff obtains his requested relief, then voters (Democratic and otherwise) could have their absentee ballots discarded and suffer the irreparable harm of disenfranchisement. DNC has an overriding interest in preventing that outcome and ensuring that the voting rights of its supporters are not burdened, while Ms. Eastman has a clear interest in ensuring that her own MyVote-requested absentee ballots are counted.

*Second*, by restricting Wisconsin voters' ability to successfully exercise their right to vote absentee, Plaintiff's requested relief would interfere with DNC's core mission of supporting the election of Democratic candidates to federal, state, and local offices—especially given the high number of Democratic voters who cast absentee ballots requested through MyVote. During the 2022 general election, 823,411 Wisconsin voters requested absentee ballots—44% of whom used MyVote to do so. (Lau Decl. ¶ 9) DNC estimates that 64% of the voters who cast absentee ballots requested through MyVote supported Democratic candidates. (*Id.*) Similarly, during the 2020 general election, 804,624 Wisconsin voters requested absentee ballots using MyVote. (*Id.*) Again, an estimated 64% of voters who cast MyVote-requested absentee ballots voted Democratic. (*Id.*) Given that Wisconsin elections (especially presidential elections) are often decided by razor-thin margins—in 2020, President Joe Biden defeated former President Donald Trump by a mere 20,682 votes out of more than 3 million cast statewide<sup>3</sup>—Plaintiff's attempted disruption of the MyVote absentee-ballot process could have an outcome-determinative effect on future elections. This

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<sup>3</sup> See *County by County Report: 2020 General Election*, WEC 5 (Nov. 30, 2020), <https://elections.wi.gov/sites/default/files/legacy/County%20by%20County%20Report%20-%20President%20of%20the%20United%20States%20post%20recount.pdf>.

lawsuit thus poses a risk to DNC's competitive prospects, which constitutes another interest that has been found adequate to support intervention in similar circumstances. *See, e.g.*, Order at 1–2, *Teigen v. WEC*, No. 2021CV000958 (Waukesha Cnty. Cir. Ct. Oct. 15, 2021) (granting intervention to DNC in challenge to drop boxes where plaintiffs' requested relief would interfere with its mission of supporting election of Democratic candidates); *Issa v. Newsom*, No. 20-cv-01044-MCE-CKD, 2020 WL 3074351, at \*3 (E.D. Cal. June 10, 2020) (granting intervention to political-party organizations where "Plaintiffs' success on their claims would disrupt the organizational intervenors' efforts to promote the franchise and ensure the election of Democratic Party candidates" (quoting *Paher v. Cegavske*, No. 20-cv-00243-MMD-WGC, 2020 WL 2042365, at \*2 (D. Nev. Apr. 28, 2020))). No Defendant in this action (nor any proposed intervenor-defendant of which DNC is aware) has an interest in the election of candidates, let alone Democratic candidates specifically.

*Third*, if Plaintiff succeeds, DNC would have to divert resources from other mission-critical work to ensure that Democratic voters are not unreasonably burdened or prevented or deterred from voting. (Lau Decl. ¶ 10) In particular, DNC would need to educate absentee voters who have relied on MyVote for the past several election cycles about the other means of requesting absentee ballots, since Plaintiff's challenge would make it impossible to successfully cast an absentee ballot requested through MyVote as the system is currently operated. (*Id.*) This would require a diversion of DNC's limited resources from the basic blocking-and-tackling activities needed to win elections. (*Id.*) Moreover, given the historical closeness of presidential and other elections in Wisconsin and the high number of Democratic voters who cast absentee ballots, additional resources would need to be redirected to help Democratic candidates make up for the shortfall in absentee votes caused by Plaintiff's requested relief. (*Id.*) Courts have regularly found

this type of diversion of resources by political committees to be adequate even for Article III standing. *See, e.g., Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (challenged law “injure[d] the Democratic Party by compelling the party to devote resources” that it would not have needed to absent new law), *aff’d*, 553 U.S. 181 (2008); *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2023 WL 8183070, at \*10 (D. Ariz. Feb. 16, 2023) (organizational plaintiffs had standing where voting laws would require them to divert resources from other activities to assist their supporters who might be disproportionately disenfranchised or discouraged from voting); *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) (organizations had standing to challenge recently adopted voter-identification laws based on get-out-the-vote expenditures); *see also Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶ 17, 402 Wis. 2d 587, 977 N.W.2d 342 (noting that Wisconsin courts have largely embraced federal standing requirements and “look to federal case law as persuasive authority regarding standing questions”).

A 2022 decision of the U.S. Court of Appeals for the Fifth Circuit illustrates this point. The court affirmed the Republican National Committee’s right to intervene in a suit challenging a Texas law “pertaining to voter registration, voting by mail, poll watchers, and more” because the party “expend[s] significant resources in the recruiting and training of volunteers and poll watchers who participate in the election process” and the law at issue “unquestionably regulates the conduct of [its] volunteers and poll watchers.” *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 304, 306 (5th Cir. 2022). That reasoning applies equally here: Plaintiff’s requested relief implicates the right of all Wisconsinites to have their absentee ballots counted, and DNC expends significant resources educating voters about voting requirements and facilitating the proper completion and submission of ballots. Plaintiff’s requested relief “unquestionably” implicates DNC’s voter-

education initiatives, and the threatened diversion of DNC's resources thus constitutes another significant interest in this litigation. *See, e.g., Issa*, 2020 WL 3074351, at \*3 (granting intervention and citing this interest).

**3. Disposition of the action in Proposed Intervenors' absence would impair their ability to protect their interests.**

As with the other elements, Wisconsin courts take “a pragmatic approach” to this requirement and “focus on the facts of each case and the policies underlying the intervention statute.” *Helgeland*, 2008 WI 9, ¶ 79. The Wisconsin Supreme Court has identified two factors to weigh in considering this prong: (1) “the extent to which an adverse holding in the action would apply to the movant’s particular circumstances” and (2) “the extent to which the action into which the movant seeks to intervene will result in a novel holding of law.” *Id.* ¶¶ 80–81. Intervention is more warranted when a novel holding is at stake because its stare decisis effect is “more significant when a court decides a question of first impression.” *Id.* ¶ 81.

Here, Proposed Intervenors easily satisfy this element. As discussed above, an adverse ruling would seriously impair DNC's ability to protect its own interests and those of its supporters and constituents, while Ms. Eastman would be threatened with disenfranchisement. When a proposed intervenor has protectible interests in the outcome of litigation, as Proposed Intervenors do here, courts have “little difficulty concluding” that its interests will be impaired. *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011); *see also Wolff*, 229 Wis. 2d at 747 (granting intervention where intervening town had interest in outcome of litigation because any decision would impact town's residents and property and town “may not again have the opportunity in another forum to offer reasons” why their position was correct). DNC in particular has identified three interests that would be directly impacted by this litigation: A ruling in Plaintiff's favor would threaten to disenfranchise Democratic voters, create a competitive

disadvantage for Democratic candidates, and require DNC to divert resources in response. Given these direct harms to DNC, intervention is warranted. *See, e.g., Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 572 (7th Cir. 2009) (granting intervention where proposed intervenors “would be directly rather than remotely harmed by the invalidation” of challenged statute).

**4. No existing party adequately represents Proposed Intervenors’ interests.**

The burden to satisfy this final factor is “minimal.” *Armada Broad.*, 183 Wis. 2d at 476 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Because the future course of litigation is difficult (if not impossible) to predict, the proper test is whether representation “*may be*” inadequate, not whether it *will be* inadequate. *Wolff*, 229 Wis. 2d at 747 (emphasis added).

Here, the fact that Defendants and Proposed Intervenors might share a “mutually desired outcome” and make “similar arguments” does not bar intervention. *Id.* at 748. Instead, where there is a realistic possibility that the existing parties’ representation of a proposed intervenor’s interests might be inadequate, “all reasonable doubts are to be resolved in favor of allowing the movant to intervene and be heard on [its] own behalf.” 1 Jean W. Di Motto, *Wisconsin Civil Procedure Before Trial* § 4.62, at 48 (7th ed. 2021) (citing *Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir. 1989)). Such is the case here. Proposed Intervenors have “special, personal [and] unique interest[s]” that are distinct from Defendants’ interests as government officials, *Helgeland*, 2008 WI 9, ¶ 116, and thus Defendants cannot be expected to litigate “with the vehemence of someone who is directly affected” by the litigation’s outcome, *Armada Broad.*, 183 Wis. 2d at 476. As the Fifth Circuit has explained, a political party committee’s “private interests are different in kind from the public interests of” a government agency or official because a political group “represent[s] its members to achieve favorable outcomes,” whereas “[n]either the State nor its officials can vindicate such an interest while acting in good faith.” *La Union del Pueblo Entero*,

29 F.4th at 309. Ms. Eastman, meanwhile, has a personal stake in her own absentee ballots that the State does not share. Defendants' interests in this litigation are defined by their statutory duties to conduct elections and administer Wisconsin's election laws; by contrast, DNC faces significant harm to its supporters and its core mission of electing Democratic candidates as a result of Plaintiff's lawsuit, while Ms. Eastman faces the possibility that her absentee ballots will not be counted. As another court explained in granting intervention under similar circumstances,

[a]lthough Defendants and the Proposed Intervenors fall on the same side of the dispute, Defendants' interests in the implementation of the [challenged law] differ from those of the Proposed Intervenors. While Defendants' arguments turn on their inherent authority as state executives and their responsibility to properly administer election laws, the Proposed Intervenors are concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election . . . and allocating their limited resources to inform voters about the election procedures. As a result, the parties' interests are neither "identical" nor "the same."

*Issa*, 2020 WL 3074351, at \*3 (citation omitted). The same reasoning applies here.

The fact that Proposed Intervenors and Defendants approach this case from fundamentally different perspectives has a practical implication for the Court's adjudication of this matter: The parties can and will make distinct arguments in defending against Plaintiff's lawsuit. For example, Proposed Intervenors can make arguments regarding the constitutionality of Wisconsin's election laws (and Plaintiff's interpretation of those laws) that Defendants and their counsel cannot necessarily make as representatives of the State. This is in addition to the unique factual vantage Proposed Intervenors would bring to these proceedings on behalf of voters and candidates.

Ultimately, "the government's representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a [political party] merely because both entities occupy the same posture in the litigation." *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1255–56 (10th Cir. 2001); *see also, e.g., Coal. of Ariz./N.M. Cntys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 845 (10th Cir. 1996) (government defendants necessarily

represented “the public interest” rather than proposed intervenors’ “particular interest[s]” in protecting their resources and rights of their candidates and voters). Because Proposed Intervenors cannot rely on Defendants to fully protect their distinct interests in this litigation, they satisfy the fourth requirement of Wis. Stat. § 803.09(1) and are entitled to intervention as of right. *See Issa*, 2020 WL 3074351, at \*4.

**B. Alternatively, Proposed Intervenors should be granted permissive intervention.**

If the Court concludes that Proposed Intervenors do not satisfy the requirements for intervention as of right, it should nevertheless exercise its broad discretion to permit intervention.

Permissive intervention is appropriate 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, ¶¶ 119–20. Proposed Intervenors readily satisfy these criteria. Their motion is timely and, given that this litigation is at a relatively early stage and that Proposed Intervenors would proceed in accordance with any schedule the Court sets, intervention will not unduly delay or prejudice the adjudication of the original parties’ rights. As evidenced by their proposed Answer (Ex. A), Proposed Intervenors would raise common questions of law and fact, including the core issue of whether Wisconsin’s current absent-ballot regime complies with the state’s election laws. Lastly, Proposed Intervenors’ intervention would serve to fully and efficiently resolve the issues before the Court, especially since DNC has regularly litigated election-related issues in Wisconsin state and federal courts and is uniquely positioned to offer the perspective of candidates and voters who would be significantly harmed by Plaintiff’s requested relief.

Political parties and individual voters are often allowed to permissively intervene in litigation implicating voting rights. *See, e.g., League of United Latin Am. Citizens, Dist. 19*, 659

F.3d at 434–35 (collecting cases where individual voters were granted intervention); *DNC v. Bostelmann*, No. 20-cv-249-wmc, 2020 WL 1505640, at \*5 (W.D. Wis. Mar. 28, 2020) (granting federal and state political committees’ motions to intervene permissively in litigation challenging application and enforcement of absentee voting laws during COVID-19 pandemic); *Thomas v. Andino*, 335 F.R.D. 364, 371 (D.S.C. 2020) (granting state political party’s motion to intervene permissively in challenge to enforcement of certain absentee-voting requirements during COVID-19 pandemic). This case warrants the same treatment.

## V. Conclusion

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

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Dated: May 29, 2024

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*\*Motion for Admission Pro Hac Vice  
forthcoming*

*Attorneys for Proposed Intervenor-Defendants  
Democratic National Committee and Kathleen F. Eastman*

**CERTIFICATE OF SERVICE**

I certify that, in compliance with Wis. Stat. § 801.18(6), I am electronically filing this Brief in Support of Motion to Intervene of Proposed Intervenor-Defendants Democratic National Committee and Kathleen F. Eastman with the Clerk of Court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Respectfully submitted this 29th day of May, 2024.

Electronically signed by Charles G. Curtis, Jr.  
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