No. 2024AP1643-OA

In the Supreme Court of Wisconsin

DAVID STRANGE, INDIVIDUALLY AND AS DEPUTY OPERATIONS DIRECTOR - WISCONSIN FOR THE DEMOCRATIC NATIONAL COMMITTEE,
PETITIONER,
V.
WISCONSIN ELECTIONS COMMISSION, MEAGAN WOLFE, IN HER CAPACITY AS ADMINISTRATOR OF WISCONSIN ELECTIONS COMMISSION, DON MILLIS, IN HIS CAPACITY AS COMMISSIONER OF WISCONSIN ELECTIONS COMMISSION, ROBERT SPINDELL, JR., IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN, IN HER CAPACITY AS COMMISSIONER OF WISCONSIN ELECTIONS COMMISSION, ANN JACOBS, IN HER CAPACITY AS COMMISSIONER OF WISCONSIN ELECTIONS COMMISSION, MARK THOMSEN, IN HIS CAPACITY AS COMMISSIONER OF WISCONSIN ELECTIONS COMMISSION AND CARRIE RIEPL, IN HER CAPACITY AS COMMISSIONER OF WISCONSIN ELECTIONS COMMISSION, AND WISCONSIN GREEN PARTY
RESPONDENTS.

MEMORANDUM IN SUPPORT OF RITA MANIOTIS AND TRAVIS KOBS' MOTION TO INTERVENE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Treatises

INTRODUCTION

David Strange seeks to kick the Green Party off the Presidential Ballot. His argument has far-reaching implications not just for the Green Party and citizens who may wish to vote for its candidates, but for all third parties and their potential supporters. If accepted, his argument will further entrench two-party rule in this state.

No party to this action is even a potential third-party voter. In contrast, Movants are: Rita Maniotis and Travis Kobs are Wisconsin electors who have voted or plan to vote for third-party candidates in the upcoming election. Maniotis plans to vote for the Green Party's Presidential and Vice Presidential candidates. Kobs identifies as libertarian and has voted for candidates of various political parties in the past. Both are worried about two-party entrenchment and desire to intervene to protect their unique interests as potential third-party voters.

Movants ask this Court to grant them intervention as a matter of right under Wis. Stat. § 803.09(1). Alternatively, Movants request permission to intervene under Wis. Stat. § 803.09(2).

BACKGROUND

Movants are Wisconsin electors. Maniotis Decl., ¶1; Kobs Decl., ¶1. Mainotis is a member of the Green Party. Maniotis Decl., ¶2. She plans to vote for Jill Stein and Butch Ware, the Green Party's nominees for President and

Vice President. Maniotis Decl., ¶3. She has dedicated time and resources to supporting Stein and Ware. Maniotis Decl., ¶4.

Kobs similarly plans to vote in the upcoming general election. Kobs Decl., ¶2. He identifies as Libertarian and has supported candidates from various political parties. *Id.*, ¶¶3 –4. He is worried about how the arguments advanced by Strange could impact third parties, including but not limited to the Green Party. *Id.*, ¶5.

Both Movants want to ensure that all political parties have a meaningful opportunity for ballot access and are concerned that if Strange is successful, then some parties will not have such an opportunity. Maniotis Decl., ¶5; Kobs Decl., ¶6.

ARGUMENT

Movants satisfy each requirement to intervene as a matter of right. Alternatively, Movants seek this Court's permission to intervene.

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

Movants satisfy each requirement to intervene as a matter of right under Wis. Stat. § 803.09(1):

> (1) their motion is timely;
>
> (2) they have interests sufficiently related to the subject of this action;
>
> (3) disposition of this action may, as a practical matter, impair or impede their ability to protect their interests; and
>
> (4) the existing parties do not adequately represent their interests.

The public policy underlying this statute is to "dispos[e] of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Wolff v. Town of Jamestown*, 229 Wis. 2d 738, 742–43, 601 N.W.2d 301 (Ct. App. 1999) (quoted source omitted). Movants' participation in this action is consistent with this policy.

A. This Motion is timely.

A motion is considered timely if "in view of all the circumstances the proposed intervenor acted promptly." *State ex rel. Bilder v. Township of Delavan*, 112 Wis. 2d 539, 550, 334 N.W.2d 252 (1983). A key consideration is whether a proposed intervenor acted quickly enough to prevent the existing parties from being prejudiced by an undue delay. *Id.*

This Motion is timely, so Movants satisfy the first requirement to intervene as a matter of right. The Petition itself is still pending, i.e., this Court has not yet decided whether or not to grant it. If it does, the action would be created, and this Motion could then be considered. As of right now, there is not even a legal action in which Movants could intervene.

Additionally, the Petition was filed on August 19, 2024, and a response was not ordered until August 22, 2024. In one day, Movants found counsel and filed an amicus brief. Four days later, they filed this motion to intervene. Movants have proceeded at breakneck speed.

Accordingly, Strange, whose attorneys likely spent months cooking up the Petition, cannot possibly be prejudiced by any "undue delay."

B. Movants have multiple sufficient interests in this action.

Movants have multiple interests sufficient to warrant intervention as of right. A proposed intervenor's interest is sufficient if the proposed intervenor "will either gain or lose" as a "direct operation of the judgment." *City of Madison v. WERC*, 2000 WI 39, ¶11 n.9, 234 Wis. 2d 550, 610 N.W.2d 94 (quoted source omitted). Movants' interests need not be legally cognizable in any technical sense because this Court considers intervention interests from a practical perspective. *Bilder*, 112 Wis. 2d at 547–48; *see also Grutter v. Bollinger*, 188 F.3d 394, 398 (6th Cir. 1999) ("[A]n intervenor need not have the same standing necessary to initiate a lawsuit."); 2 *Wis. Pl. & Pr. Forms* § 13.38 (5th ed. Updated June 2023) ("[T]he liberal policy evidenced by modern provisions for bringing into an action all persons whose rights are involved, almost requires that the courts should grant the application of any person who has an interest to protect, and who applies, for that purpose, to be made a party to pending litigation."). Therefore, whether Movants could file a separate action to protect their interests is irrelevant. *Wolff*, 229 Wis. 2d at 744.

Most obviously, Movants, who want to be able to consider all candidates whose parties meet the requirement for ballot access, have an interest in ensuring that third parties (also called "minor parties") in Wisconsin have a meaningful opportunity to list their candidates for President and Vice President on the ballot for Wisconsinites. If Strange is successful, most immediately, the Green Party candidates will be off the ballot. Additionally,

other third parties, in the same circumstance as the Greens, may also be affected.

Additionally, assuming Strange has any legally recognized interest (he does not), Movants have an even greater interest. Strange does not even claim to be considering voting for a third party. His legal position will frustrate other voters, like Movants, from effectively organizing for the purpose of engaging in constitutionally protected political activities. As the United States Supreme Court has noted, reasonable access to the ballot by third parties is a constitutional imperative.

C. Disposition of the action may, as a practical matter, impair or impede Movants' ability to protect their interests.

Disposition of this action in favor of Petitioners will, as a practical matter, impair or impede Movants' ability to protect their stated interests. Movants far exceed this "minimal" burden. *See Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001) (quoted source omitted). Movants would not, as a practical matter, be able to protect their interests outside of this action.

First, timing does not permit Movants to protect their interests in any other way. If this Court removes the Green Party from the ballot, Movants have no practical way to get the Green Party back on the ballot except an appeal to the United States Supreme Court. To make that appeal, they need to be a party. Their federal constitutional rights are at stake.

Second, because this Court is the "final arbiter" on questions of state law, if Movants do not fully participate herein, then they will have no other way to advance their interpretations of state law on various statutory interpretation questions. *Jensen v. Wisconsin Elections Bd.*, 2002 WI 13, ¶25, 249 Wis. 2d 706, 639 N.W.2d 537 (per curiam).

Accordingly, if Petitioners are successful, Movants could not go to a lower court in this state and hope to have their interests protected. *See* 7C *Fed. Prac. & Proc. Civ.* § 1908.2 (3d ed. Updated April 2023) (noting several federal courts, interpreting an analogous federal intervention statute, "have held that stare decisis by itself may, in a proper case, supply the practical disadvantage that is required for intervention"); *see also Appellate Prac. & Proc. in Wis.* § 25.3 (9th ed. 2022–23) ("Other courts may be barred from taking any action on the subject matter of a case once the supreme court accepts original jurisdiction.").

A "precedent," reached without Movants' "input," would be "harmful." *Ceres Gulf v. Cooper*, 957 F.2d 1199, 1204 (5th Cir. 1999). Adopting Petitioner's argument would make it more difficult for third parties, like those who the Movants have supported, to obtain ballot access. This action is "the most logical forum"—indeed, the only forum—for Movants to be heard, given the procedural path Petitioners have chosen. *M & I Marshall & Ilsley Bank v. Urquhart Cos.*, 2005 WI App 225, ¶16, 287 Wis. 2d 623, 706 N.W.2d 335; *see also See Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 475, 516 N.W.2d 357 (1994) (explaining

a proposed intervenor's reputation would be irreparably injured by the release of a public record given that people who learn the information in a record cannot unlearn that information and permitting him to intervene as a matter of right to argue why the record should not be released).

Therefore, Petitioners satisfy the third requirement to intervene as a matter of right pursuant to Wis. Stat. § 803.09(1).

D. Existing parties do not adequately represent Movants' interests.

Finally, Movants satisfy the fourth requirement to intervene as of right: The existing parties in this action do not adequately represent Movants' interests.

As a preliminary matter, this Court, quoting the United States Supreme Court, has held that "the showing required for proving inadequate representation 'should be treated as minimal.' " *Armada Broad., Inc.*, 183 Wis. 2d at 362 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)); *see also* 3 *Wis. Prac., Civil Proc.* § 309.2 (4th ed. Updated Oct. 2023) ("Because it may be supposed that the proposed intervenor is the best judge of the representation of the intervenor's own interests, courts should be liberal in finding that one who is willing to bear the cost of separate representation may not be adequately represented by the existing parties."). This requirement is "not onerous," and proposed intervenors "ordinarily should be allowed to intervene unless it is clear that the [existing] parties will provide

adequate representation." *Public Crossroads Grassroots Pol'y Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015) (quoted sources omitted).

A proposed intervenor need only show that the parties are unlikely to "defend" the proposed intervenor's interest with the "vehemence" that the proposed intervenor would. *Armada Broad., Inc.*, 183 Wis. 2d at 476; *see also Davis v. Lifetime Cap., Inc.*, 560 F. App'x 477, 495 (6th Cir. 2014) ("The proposed intervenor need only show that there is a *potential* for inadequate representation." (quoted source omitted)). A proposed intervenor can make this showing by pointing to the "personal nature" of his or her interest. *Armada Broad., Inc.*, 183 Wis. 2d at 476. Additionally, a proposed intervenor can show that a party that should have a similar interest will not act on that interest. *Id.*

First, WEC cannot assert (at least directly) federal constitutional rights. So, it cannot adequately represent Movants' interests.

Second, while the Green Party's interests somewhat overlap with Movants', the Green Party does not speak for voters like Kobs. His interest is not simply to get the Green Party candidates on the ballot. He is a libertarian who wishes to consider other third party candidates. He worries not only about

the Greens, but about the larger precedent that could be set in this action and how it could affect various third parties and his ability to consider them.[1]

Accordingly, none of the named Respondents can adequately represent Movants' interests in this matter and Movants therefore satisfy the fourth requirement to intervene as a matter of right pursuant to Wis. Stat. § 803.09(1).

* * *

Having satisfied all four elements to intervene as a matter of right, Movants respectfully request this Court grant their motion and allow them to intervene in this action.

II. Alternatively, Movants should be granted permissive intervention.

Alternatively, this Court should grant Movants' motion to intervene on a permissive basis. Movants satisfy all three requirements for permissive intervention under Wis. Stat. § 803.09(2):

(1) their motion is timely;

(2) they assert defenses that have a question of law or fact in common with this action; and

[1] Movants support the Republican Party of Wisconsin's motion to intervene; however, RPW is not an "existing party" under Wis. Stat. § 803.09(1). So, Movants have no obligation to explain how their interests are inadequately represented by RPW. Even if they did though, RPW, like WEC, may not be able to directly assert federal constitutional rights. Additionally, RPW is potentially adverse to Kobs. If third parties are going to be kicked off the ballot, RPW may have an interest in seeing certain third parties, e.g., the Libertarian Party, kicked off the ballot as well, speculating (as do Democrats with the Greens) that its candidates will attract voters who might otherwise support the Republican candidate.

(3) Movants' involvement will not "unduly delay or prejudice the adjudication of the rights of the original parties."

As already explained, Movants have acted promptly. Movants also assert defenses that have questions of law or fact in common with this action because they disagree with the arguments made and outcomes sought by Petitioner, as they have already explained herein. In addition, Movants' involvement will not unduly delay or prejudice the adjudication of the rights of the original parties. Of course, Movants commit to complying with all relevant deadlines.

At bottom, this Court should not decline to fully hear the arguments of the only potential third-party voters in this action. Equity demands that these arguments be heard. If this Court does not want to hear them, it should also not hear Strange's arguments. He lacks standing.

For these reasons, if Movants cannot intervene as a matter of right, then Movants respectfully request that this Court grant them permission to intervene in this action pursuant to Wis. Stat. § 803.09(2).

CONCLUSION

For the foregoing reasons, this Court should grant Movants' Motion to intervene.

Dated: August 26, 2024.

Respectfully submitted,

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Electronically signed by Skylar Croy

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.81 for a brief produced with a proportional serif font. The length of this brief is 2,304 words, calculated using Microsoft Word.

Dated this 26th day of August, 2024.

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