STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

DENNIS EUCKE et al., Plaintiffs, v. WISCONSIN ELECTIONS COMMISSION et al., Defendants.	Case No. 2024CV007822 Case Code: 30952

BRIEF IN SUPPORT OF MOTION TO INTERVENE OF PROPOSED INTERVENOR-DEFENDANTS BLACK LEADERS ORGANIZING FOR COMMUNITIES, SOULS TO THE POLLS, AND WISDOM

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INTRODUCTION

Weeks before Election Day, three individuals ("Plaintiffs") seek to compel city and state officials to reassess the registration of over 50,000 Milwaukee voters based on unreliable, overinclusive data that they have sat on for months using an end-run around the statutory procedure for challenging individual voters' registrations. Plaintiffs' requested relief would sew chaos into the electorate, as voters find themselves uncertain about whether they can vote, where they can vote, and whether (and how) they can cast their mail ballots. This outcome would undoubtedly burden and disenfranchise thousands of eligible voters.

Black Leaders Organizing for Communities, Souls to the Polls, and WISDOM—collectively, the Proposed Intervenor-Defendants ("Intervenors")—are non-profit organizations dedicated to empowering voters in Wisconsin, particularly those in Black communities and faith communities. Intervenors have dedicated substantial resources this election cycle to ensuring that their members, constituent communities, and all eligible Milwaukee residents are able to participate fully in elections. Plaintiffs' litigation threatens to undo this important work, spreading uncertainty and forcing Intervenors to spend extensive time educating their members and the community on how to respond to Plaintiffs' belated challenges and prevent their disenfranchisement—time that Intervenors had planned on devoting to other, election-related tasks.

Intervenors seek to participate in this litigation to protect their members' voting rights and their own resources. They also seek to ensure the Court receives a full airing of the important issues in this case, so the Court may see Plaintiffs' dangerous, confidence-undermining arguments for what they are: garbage science and conspiracy mongering. While the state and local Defendants can express the government's interest in neutral administration of the law, none of the parties speak for the voters' interest in avoiding unwarranted burdens to their voting rights. Intervenors fill that crucial gap. Their motion should be granted.

STATEMENT OF INTEREST

Intervenors are non-profit organizations that work to engage eligible voters in the Milwaukee community, educate voters on available methods and timing of voting, and recruit and train volunteers to educate voters.

Black Leaders Organizing for Communities ("BLOC") was founded in 2017 to improve the quality of life for Black people in Milwaukee and throughout Wisconsin. Ex. A, Decl. of Angela Lang ¶ 4. BLOC's mission is to invest in its community and engage citizens to build long-term political power, and to ensure a high quality of life and access to economic opportunity for members of the Black community in Milwaukee and throughout Wisconsin. *Id.* ¶ 5. BLOC has devoted years to working in partnership with Black Milwaukee residents to identify problems that they face in the areas of safety, housing, health, education, employment and purpose, transportation, recreation, freedom and justice, and dignity and democracy. *Id.* ¶ 6. BLOC's core constituency—Black communities in Wisconsin—includes many Milwaukee residents and registered voters. *Id.* ¶ 5.

Voting is foundational to BLOC's mission and to each of the areas in which BLOC works to provide solutions for the Black community. *Id.* ¶ 7. BLOC engages in canvassing efforts, knocking on thousands of doors to engage and educate voters. *Id.* ¶ 8. BLOC has also co-hosted and participated in community events to help get out the vote in Wisconsin, and it shares information on its social media accounts to provide voters with resources about how to confirm their polling place and which deadlines apply at various stages of the election season. *Id.*

Souls to the Polls was founded in 2013 to unite Milwaukee faith leaders and their congregations with the goal of strengthening the voting power of the Black community. Ex. B, Decl. of Bruce Colburn ¶ 3. Since its founding, the organization has built a bloc of engaged community members that support its mission to channel their faith and bring thousands of "souls

to the polls." *Id.* ¶ 4. Like BLOC, Souls to the Polls' core constituency is the Black community in Milwaukee and throughout Wisconsin, which includes many Milwaukee residents and registered voters. *Id.*

Souls to the Polls understands the collective power of voting as a tool to build stronger, safer, and more supportive communities, and it devotes the organization's time and resources to engaging, educating, and serving Milwaukee voters. *Id.* ¶ 5. Souls to the Polls offers free round-trip rides to assist voters in the Milwaukee area with voting in person or returning an absentee ballot. *Id.* ¶ 6. Souls to the Polls also engages in canvassing and literature drops in an effort to engage voters in Milwaukee neighborhoods, regularly hosts faith and community events to get voters excited for upcoming elections, and shares information on social media to educate voters about election-related requirements and deadlines. *Id.* ¶ 7.

WISDOM is a statewide network of congregations and other local organizations across the state of Wisconsin with a shared mission to build an equitable, democratic society in which all Wisconsinites can thrive and share power. Ex. C, Decl. of David Liners ¶¶ 3–5. Together, its member organizations include more than 100,000 Wisconsinites, about 10,000 of whom reside in Milwaukee County. *Id.* ¶ 4. The majority of WISDOM's members, in Milwaukee and throughout the state, are registered voters. *Id.*

Ensuring that Wisconsinites can cast their votes is a core component of WISDOM's work. *Id.* ¶ 6. WISDOM has held more than twenty voter engagement and education events in Milwaukee in 2024, attended by a total of more than 2,000 individuals. *Id.* ¶ 7. Through canvassing, events, and tabling, WISDOM has assisted more than 2,200 Milwaukee residents in registering to vote. *Id.* WISDOM also operates an online vote center that provides Wisconsin voters with information

about how to register to vote, where and how they can cast their ballots, and other requirements and resources to help make their votes count. *Id.*

ARGUMENT

Wisconsin law authorizes non-parties to intervene in a lawsuit, establishing criteria for both mandatory, Wis. Stat. § 803.09(1), and permissive intervention, *id.* § 803.09(2). Here, Intervenors satisfy both sets of standards.

I. Intervenors Satisfy the Criteria for Mandatory Intervention.

Courts must grant intervention if a movant shows that: (1) its motion to intervene is timely; (2) it claims an interest sufficiently related to the subject of the action; (3) disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) 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 (citing Wis. Stat. § 803.09(1)). Wisconsin courts take a "flexible and pragmatic approach" to applying this test. *Id.* ¶ 40 n.30. Intervenors satisfy each component.

A. Intervenors' motion is timely.

An intervention motion is timely if the intervenor acted "promptly." *State ex rel. Bilder v. Delavan Twp.*, 112 Wis. 2d 539, 550, 334 N.W.2d 252 (1983). Whether an intervenor acted promptly turns on "when the proposed intervenor discovered its interest was at risk," "how far litigation has proceeded," *Olivarez v. Unitrin Property & Cas. Ins. Co.*, 2006 WI App 189, ¶ 15, 296 Wis. 2d 337, 347, 723 N.W.2d 131, and whether intervention will prejudice the original parties, *Bilder*, 112 Wis. 2d at 550.

Here, Intervenors acted promptly. The request to intervene comes three weeks after Plaintiffs filed their Complaint (and only two weeks after Intervenors learned of the Complaint) and while judicial substitution requests remain pending, meaning that the Court presiding over this

matter will effectively receive this motion at approximately the same time as it receives the Complaint. Given the early posture of the case, intervention will not delay the pending proceedings.

Nor will Intervenors' participation cause delays down the road. Intervenors seek primarily to advance legal arguments concerning the merits of Plaintiffs' claims and the procedural rules Plaintiffs have tried to circumvent in bringing them. Allowing Intervenors to present these arguments will not slow the proceedings or otherwise prejudice either side's ability to litigate its position. Indeed, far from hampering the litigation, Intervenors' participation will provide important perspective and analysis that will help the Court resolve the dispute. For these reasons, the motion is timely.

B. Intervenors' interests are sufficiently related to Plaintiffs' claims.

To satisfy the second prong, an intervenor must show that there exists "some sense in which the [the intervenor's] interest is of such direct and immediate character that the intervenor will either gain or lose by direct operation of the judgment." *Helgeland*, 2008 WI 9 ¶¶ 43, 45 (quotations omitted). Courts apply this test "practically, rather than technically." *Id.*

Here, Intervenors have two interests that independently meet this standard. First, Intervenors have an interest in safeguarding the fruits of their voter education efforts, and not deploying scarce resources to duplicate those efforts. This year, Intervenors have engaged in substantial efforts to make sure Wisconsinites can have their voices heard and votes counted, including (but not limited to) canvassing in Milwaukee, hosting events to educate and engage voters, sharing election-related resources with voters through their websites and social media accounts. *See* Ex. A ¶¶ 7–8; Ex. B ¶¶ 5–7; Ex. C ¶¶ 6–7. Plaintiffs seek to undo that work by forcing the Milwaukee Elections Commission to initiate a purge process of over 50,000 of the approximately 271,000 active registered voters in the County. *See* Compl. ¶¶ 23, 31, 35. Plaintiffs'

allegations about these voters' eligibility rests on methodology that courts and experts have repeatedly recognized as flawed. *See, e.g.*, *Fair Fight Inc. v. True the Vote*, 710 F. Supp. 3d 1237, 1251, 1253, 1255 n.21, 1268–70 (N.D. Ga. 2024); *Gibson v. Frederick Cnty.*, No. 22-cv-1642, 2022 WL 17068095, at *4 (D. Md. Nov. 16, 2022); *Majority Forward v. Ben Hill Cnty. Bd. of Elections*, 512 F. Supp. 3d 1354, 1369–70, 1375 (N.D. Ga. 2021); *Common Cause/New York v. Brehm*, 432 F. Supp. 3d 285, 297–98 (S.D.N.Y. 2020). Nonetheless, if Plaintiffs succeed in forcing Defendants to process the challenges, Intervenors will have to address the resulting uncertainty that comes from tens of thousands of people learning that their registration status is in jeopardy only weeks before the election. Intervenors' efforts to address the confusion will force them to divert significant resources from core activities, including planned voter education efforts as well as other projects.

Courts have routinely held that interests such as these suffice to justify intervention as of right.[1] *See, e.g.*, *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022) (holding that political party committee satisfied interest requirement when it expended resources to recruit and train volunteers and poll watchers, whose conduct would be regulated by the challenged law); *Issa v. Newsom*, No. 22-cv-01044, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (granting intervention of political party in voting rights case based on diversion of resources theory); *Kobach v. U.S. Election Assistance Comm'n*, No. 13-cv-4095, 2013 WL 6511874, at *4 (D. Kan. Dec. 12, 2013) (granting intervention to advocacy groups based on their interest in "either increasing participation in the democratic process, or protecting voting rights, or both, particularly amongst minority and underprivileged communities"); *accord Kasper v. Hayes*, 651 F. Supp. 1311, 1313

[1] "Because Wis. Stat. § 803.09 is based on Rule 24 of the Federal Rules of Civil Procedure, we may look to cases and commentary relating to Rule 24 for guidance in interpreting § 803.09." *Helgeland*, 2008 WI 9 ¶ 20 n.14.

(N.D. Ill. 1987) ("Disposition of plaintiffs' request for a more zealous canvass and stricter reinstatement procedures obviously will affect intervenors' interest in ensuring that eligible voters are not denied the right to vote."), *aff'd sub nom. Kasper v. Bd. of Election Comm'rs*, 810 F.2d 1167 (7th Cir. 1987).

Indeed, while an intervenor need not establish standing, *see Bilder*, 112 Wis. 2d at 547–48 (concluding that the test for intervention is "broader" than the test for standing), the interests Intervenors have identified here would suffice in that setting as well,. *see, e.g.*, *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (holding that Democratic party had standing where "the new law injures the Democratic Party by compelling the party to devote resources to getting to the polls those of its supporters who would otherwise be discouraged by the new law from bothering to vote"), *aff'd*, 553 U.S. 181 (2008); *see also Common Cause Ind. v. Lawson*, 937 F.3d 944, 952 (7th Cir. 2019) (holding that voting rights organizations had standing to challenge voter registration law based on diversion of resources theory).

Second, Intervenors have an interest in ensuring that their own members and constituent communities can exercise their voting rights in the upcoming election. WISDOM's network comprises more than 100,000 Wisconsinites, about 10,000 of whom reside in Milwaukee County, and the majority of whom are registered voters. Ex. C ¶ 4. Similarly, large portions of the constituencies that BLOC and SOULS to the Polls serve are registered Milwaukee voters. Ex. A ¶ 5; Ex. B ¶ 4. Intervenors are at risk of seeing their members and constituent communities receive confusing, intimidating, and burdensome communications from the government demanding that they prove their residency to remain eligible to vote. If Intervenors' members and constituents do not receive the notice or do not have time to respond before voting begins, they could be improperly removed from the rolls and face disenfranchisement. Intervenors' substantial interest

in protecting their members and constituents from these outcomes is itself a sufficient basis for intervention. *See, e.g.*, *Jud. Watch, Inc. v. Ill. State Bd. of Elections*, No. 24-cv-1867, 2024 WL 3454706, at *4 (N.D. Ill. July 18, 2024) (union had protectable interest in ensuring its members to remain on the voter rolls); *see also Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1307 (N.D. Ga. 2018) (reaching similar holding); *Bellitto v. Snipes*, No. 16-cv-61474, 2016 WL 5118568, at *2 (S.D. Fla. Sept. 21, 2016) (reaching similar holding).

C. Disposition of this case may impair Intervenors' ability to protect their interests.

Wisconsin courts determine whether resolution of a case "may, as a practical matter, impair or impede [intervenors'] ability to protect [their] interests" by applying the same "pragmatic approach" used in evaluating the other components of the intervention standard. *Helgeland*, 2008 WI 9, ¶ 79. When, as here, a proposed intervenor has a protectable interest in the outcome of the litigation, courts have "little difficulty concluding" that the intervenor's interests may be impaired by the outcome. *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011) (quotation omitted).

In this case, Intervenors' interests are threatened in multiple ways. First, a ruling requiring Defendants to inform tens of thousands of voters that their registration is in jeopardy will result in a barrage of questions from concerned community members seeking Intervenors' assistance, and will force Intervenors to redirect some of their voter-education resources toward voters swept up in Plaintiffs' untimely, overbroad, and infirm purge process and helping them remain on the rolls in the last few crucial weeks before Election Day. Ex. A ¶ 10; Ex. B ¶ 9; Ex. C ¶ 8. Addressing these challenges will impair Intervenors' interests by diverting attention and resources away from their planned voter outreach activities. *See La Union del Pueblo Entero*, 29 F.4th at 307 (holding impairment requirement satisfied when outcome of lawsuit "may change what the [intervenors]

must do to prepare for upcoming elections," and intervenors "will have to expend resources to educate their members on the shifting situation in the lead-up" to the upcoming election).

Second, granting Plaintiffs relief could subject Intervenors' members and constituents to new burdens in the exercise of the franchise and potential disenfranchisement. Consequently, an adverse decision from this Court would substantially impair Intervenors' protectable interests in defending the right of their members and constituents to freely exercise their right to vote on equal terms. *See Bellitto*, 2016 WL 5118568, at *2.

D. The existing parties do not adequately represent Intervenors' interests.

The fourth element of the intervention test is not a high bar. *See Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967) (noting that, in the equivalent federal rule, this element was drafted in a way that "underscore[s] . . . the need for a liberal application in favor of permitting intervention"); *Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 476, 516 N.W.2d 357, 361–62 (1994) (endorsing a similar view of the Wisconsin rule). Indeed, a movant need only establish that "representation of his interest 'may be' inadequate." *Wolff v. Town of Jamestown*, 229 Wis. 2d 738, 747, 601 N.W.2d 301, 306 (Ct. App. 1999) (quotation omitted).

The precise showing a movant must make depends on whether either of two rebuttable presumptions of adequacy apply. The first applies "when a movant and an existing party have the same ultimate objection in the action," *Helgeland*, 2008 WI 9, ¶ 90; the second applies "'when the putative representative is a governmental body or officer charged by law with representing the interests of the absentee,'" *id.* at ¶ 91 (quotation omitted). If one or both of the presumptions is triggered, "a more compelling showing of inadequate representation may be required" than would otherwise be necessary to meet the "relatively low bar" to prove that adequate representation does

not exist. *Braun v. Vote.org*, 2024 WI App 42, ¶¶ 25–26, 413 Wis. 2d 88, 108–109, 11 N.W.3d 106, 116–117 (internal quotation marks and citation omitted).

Here, neither presumption applies. And even if either did, Intervenors' showing of inadequacy is strong enough to rebut it.

Starting with the presumptions, the first one does not apply because Intervenors and the two government-defendants differ in their "ultimate objectives" in the case. The City of Milwaukee Election Commission ("MEC") and Wisconsin Elections Commission ("WEC") share common objectives: each has an objective to correctly administer the various aspects of the election entrusted to it under state law and regulations, and both have an objective to dispose of the case. Intervenors approach the same issue from a different perspective and with different objectives: to protect the interests of their members, constituents, and other voters in the communities they represent and work alongside, and to preserve Intervenors' ability to expend their resources toward their existing voter education and engagement priorities in the limited time remaining before Election Day rather than toward combatting the effects of Plaintiffs' requested relief. *See* Exs. A-C.

Though an objective to ensure correct application of Wisconsin's list-maintenance law and an objective to ensure that all eligible voters can vote and do so free from unsubstantiated challenges place Defendants and Intervenors on the same side of the "*v.*" in this case, these objectives can diverge in ways that lead to different litigation strategies and priorities, particularly when considering Defendants' additional objective to dispose of the case. For instance, Defendants could conceivably agree to initiate list maintenance proceedings as to certain categories of the voters that Plaintiffs have targeted as a means of disposing of this lawsuit—and in doing so, could fail to consider whether Plaintiffs' error-prone matching efforts disproportionately implicate

Intervenors' members and constituent communities, and whether Intervenors will need to divert their time and resources from their planned activities toward preventing Milwaukee residents who were improperly swept up in Plaintiffs' efforts from being rendered ineligible.

This case is similar to *Friends of Scott Walker v. Brennan*, 2012 WI App 40, 340 Wis. 2d 499, 812 N.W.2d 540. There, a political campaign committee sued the Government Accountability Board—WEC's predecessor—arguing that the officials responsible for processing a recall petition has approved inadequate procedures for assessing the validity of the petition signatures. *Id.* ¶¶ 2–3. The sponsors of the recall petition sought to intervene, *id.* ¶ 7, and the court of appeals held that the circuit court erred in denying intervention because the government defendant could not adequately represent the sponsors' interests. *Id.* ¶¶ 49-50. The court explained that the sponsors had an interest in "not bearing an increased burden" to prove the validity of signatures, whereas the government had an interest in carrying out its constitutional and statutory duties and in the board's own "use of resources and ease of administration." *Id.* ¶¶ 45, 46. The court recognized that the board had "an interest in not striking valid signatures," but still concluded that the government might consider additional signature verification procedures without any "apparent interest in whether [those] procedures place an increased burden on recall petitioners." *Id.* ¶ 45. Thus, the government and the sponsors did not share the same "ultimate objective." *Id.* ¶¶ 47–50.

Here, as there, the government—in making decisions about settlement, appeal, and other aspects of strategy—has no reason to consider the costs this lawsuit could cause Intervenors to bear. And MEC and WEC do not have any apparent obligation to prioritize or pay particular heed to the effects and burdens of error-prone list maintenance efforts on the predominately Black voters who make up Intervenors' organizations. Thus, while the government and Intervenors may both seek "dismissal of the complaint" at the outset of this case, the "the different underlying interests"

of Defendants and Intervenors could "plausibly lead to divergence of their positions on significant questions" "[l]ater in the litigation" on "significant questions like whether to stipulate to certain facts, whether to settle and on what terms, or whether to appeal," *id.* ¶ 47—creating the requisite adversity.

These circumstances distinguish cases where courts have rejected intervention, such as *Braun*. In that case, a plaintiff argued that WEC's voter registration form was unlawful under Wisconsin law; a voting rights group sought to intervene, and the court denied intervention. 2024 WI App 42, ¶ 1. Because relief was binary—either the government continued to use the existing form or it didn't—the court reasoned that the voting group and the government necessarily shared the same ultimate objective. *See id.* ¶ 29. But here, the litigation can resolve in a variety of ways, including with the government agreeing to initiate the list maintenance proceedings as to certain categories of the voters that Plaintiffs have targeted but not others. In such a circumstance, the difference in the interests of Intervenors—to maximize enfranchisement—and Defendants—to neutrally apply election law—could create adversity beyond what was possible in *Braun*. The multiplicity of outcomes that could arise here makes this case like *Friends of Scott Walker*, not *Braun*. Thus, the first rebuttable presumption does not apply.

The second presumption does not apply for similar reasons. That presumption, as noted previously, applies only when an existing party is a government entity "charged by law with representing the interests of the absentee." *Helgeland*, 2008 WI 9, ¶ 91. Here, MEC and WEC are government entities that are charged by law with enforcing the law; but they are not required to represent the specific interests Intervenors seek to protect. No law mandates, for instance, that MEC and WEC safeguard Intervenors' resources; it thus has no obligation to consider those interests in attempting to resolve the case. Nor is MEC required by law to focus on the unique

needs of Black voters that comprise Intervenors' membership and constituency when attempting to resolve the case.

Considerations such as these help explain why the Supreme Court of Wisconsin and other courts have ruled that voting rights organizations have a right to intervene in election law cases even when government actors are participating as defendants. *See e.g.*, *Johnson v. Wis. Elections Comm'n*, No. 2021AP001450 (Wis. Oct. 14, 2021) (unpublished order authorizing voting rights groups, including Proposed Intervenor Black Leaders Organizing for Communities, to intervene in election law case defended by the government); *Pub. Int. Legal Found., Inc. v. Winfrey*, 463 F. Supp. 3d 795, 799, 801 (E.D. Mich. 2020) (granting intervention to voting rights organization in case where the plaintiff challenged the city's efforts to maintain accurate voter lists; the court reasoned that the voting rights organization's interest in preventing the city from adopting "unreasonable" list maintenance practices constituted a goal "distinct" from that of the government-defendants); *Kobach*, 2013 WL 6511874, at *4 (finding inadequate representation where "the existing government Defendants have a duty to represent the public interest, which may diverge from the private interest of" a voting rights organization); *see also La Union del Pueblo Entero*, 29 F.4th at 308–09 (holding the governmental-representative presumption did not apply where a political party sought to intervene in case involving a challenge to a voting reform bill).

Because neither presumption applies, Intervenors need only make a "minimal" showing of inadequacy to satisfy the fourth prong of the intervention test. *See Helgeland*, 2008 WI 9, ¶ 85. Their arguments clear that bar; indeed, even if the presumptions applied, Intervenors would still prevail because they have presented a sufficiently compelling rationale for intervention to rebut the presumptions.

To start, the difference in Intervenors' and Defendants' interests demonstrates Defendants' inadequacy to represent Intervenors. *Friends of Scott Walker*, 2012 WI App 40, ¶ 49 (granting intervention where the interests were not "identical" or "substantially similar"). Moreover, Intervenors have special knowledge and expertise "to provide full ventilation of the legal and factual context." *Wolff*, 229 Wis. 2d at 748 (quoting *Nuesse*, 385 F.2d at 704). When an intervenor possesses such expertise, a defendant who lacks it may be inadequate to protect the intervenor's interests even if the intervenor and the defendant are not "wholly adverse parties" and are likely to "offer similar argument." *Id.* Here, Intervenors have deep insights into the effects of any remedy on marginalized voters[2]; their counsel have vast experience litigating complex voting rights cases, including those involving attempts to institute mass voter purges[3]; and the expert they have retained brings deep knowledge of the proper methodologies for assessing a registration list's accuracy.[4] Nothing in the record suggests that WEC and MEC bring the same expertise to bear. *See Nuesse*, 385 F.2d at 703–04 (granting intervention to state banking commissioner because of his unique expertise on the relevant issues).

In sum, whether or not the presumptions apply, Intervenors have shown that the government defendants cannot adequately represent their interests. Because Intervenors satisfy the other prongs of the test for intervention-as-of-right, they should be allowed to participate under that standard.

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[2] *See* Ex. A ¶ 9; Ex. B ¶ 8.

[3] *See, e.g.*, *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756 (2018); *Common Cause Ind. v. Lawson*, 937 F.3d 944 (7th Cir. 2019); *Ga. State Conf. of NAACP v. DeKalb Cnty. Bd. of Registration & Elections*, 484 F. Supp. 3d 1308 (N.D. Ga. 2020).

[4] *See, e.g.*, *Fair Fight Inc. v. True the Vote*, 710 F. Supp. 3d 1237, 1268–69 (N.D. Ga. 2024) ("credit[ing Dr. Kenneth Mayer's] expert report and testimony"—including his "concerns about relying on the NCOA data as a basis for concluding that someone had moved permanently for a residency determination of a voter's registration address"—and "afford[ing] it great weight").

II. In the Alternative, Intervenors Meet the Criteria for Permissive Intervention.

Courts have discretion to authorize intervention if the motion is timely, "intervention will not unduly delay or prejudice the adjudication of the rights of the original parties," and the "movant's claim or defense and the main action have a question of law or fact in common." Wis. Stat. § 803.09(2). The movant must be a "merely a proper party" to warrant permissive intervention, *City of Madison v. Wis. Emp. Rels. Comm'n*, 2000 WI 39, ¶ 11 n.11, 234 Wis. 2d 550, 558, 610 N.W.2d 94, 98, meaning that it has an "an interest in the subject matter of an action," *Fish Creek Park Co. v. Vill. of Bayside*, 273 Wis. 89, 93, 76 N.W.2d 557, 559 (1956). Because these predicates are met here, the Court has discretion to allow Intervenors to participate. And given Intervenors' ability to efficiently provide important perspective and arguments, the Court should exercise that power.

Starting with the threshold requirements, as discussed previously: Intervenors' motion is timely, and their participation is unlikely to delay or prejudice the original parties. *See* Section I.A. Intervenors also have an interest in the action. The "interest" showing required for permissive intervention is lower than that required for intervention as of right, *see Fish Creek Park Co.*, 273 Wis. at 93, and Intervenors meet the higher standard, *see* Section I.B. Additionally, Intervenors' defense shares common questions of law with the main action. That standard requires showing only that, in defending their interests, intervenors intend to assert arguments "directly responsive to the claims" raised by the plaintiffs. *Kootenai Tribe v. Veneman*, 313 F.3d 1094, 1110 (9th Cir. 2002), *overruled in part on other grounds by Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1178 (9th Cir. 2011); *Hendrick v. Hendrick*, 2009 WI App 33, ¶ 20, 316 Wis. 2d 479, 491, 765 N.W.2d 865, 871 (stating that permissive intervention requires only "a nexus between the dispute and the interest of the proposed intervening party"). Intervenors' Proposed Answer (Ex. D) and

Motion to Dismiss (Ex. E) do just that, raising arguments that go to the core question of whether Plaintiffs' registration challenges are valid under Wisconsin law. Thus, Intervenors meet the baseline requirements for permissive intervention, and the Court therefore has the power to allow them to intervene.

Exercising that authority is appropriate. As community organizations that work closely with voters throughout the County—and particularly voters of color—Intervenors give voice to large swaths of the electorate that will be impacted by the uncertainty that would ensue if Plaintiffs prevail. Moreover, as discussed previously, counsel for Intervenors include attorneys with extensive experience litigating similar voting rights challenges. Their understanding of the relevant law, and their expert's understanding of the flawed premise underlying Plaintiffs' record-matching efforts, will provide the Court with important insights as it adjudicates the dispute before it. Finally, as Intervenors have demonstrated by quickly preparing concise filings, their involvement will not slow the proceedings. Given these considerations, permissive intervention is proper here.

CONCLUSION

For the reasons stated, this Court should grant Intervenors' motion.

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Respectfully submitted,

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