

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

Reverend Greg Lewis, Souls To The Polls, Voces De La Frontera, Black Leaders Organizing For Communities, American Federation Of Teachers Local, 212, AFL-CIO, SEIU Wisconsin State Council, and League Of Women Voters Of Wisconsin,

Plaintiffs,

v.

Dean Knudson, Julie M. Glancey, Robert F. Spindell, Jr., Mark L. Thomsen, Ann S. Jacobs, Marge Bostelmann, in their official capacity as members of the Wisconsin Election Commission, and Meagan Wolfe, in her official capacity as the Administrator of the Wisconsin Elections Commission,

Defendants,

and

Republican National Committee, Republican Party of Wisconsin, and the Wisconsin State Legislature,

Intervenor-Defendants.

Case No. 3:20-cv-284-wmc
(consolidated with Case Nos.
3:20-cv-249-wmc and
3:20-cv-278-wmc)

**THE WISCONSIN LEGISLATURE'S RESPONSE
TO *LEWIS* PLAINTIFFS' MOTION FOR LEAVE TO FILE
REPLY BRIEF ON THEIR RULE 41(A)(2) MOTION TO DISMISS**

Intervenor-Defendant the Wisconsin Legislature ("Legislature") submits this brief response to the *Lewis* Plaintiffs' Motion For Leave To File Reply Brief On Their Rule 41(a)(2) Motion To Dismiss, which they filed on May 29, 2020. Dkt. 212.*

* All docket citations are to the docket in *Democratic National Committee v. Bostelmann*, No. 3:20-cv-249-wmc.

On May 21, 2020, the *Lewis* Plaintiffs filed a motion to voluntarily dismiss their Complaint, which motion also sought statutory costs, while mentioning the possible pursuit of attorney’s fees and non-taxable costs. Dkt. 205 at 2. The *Lewis* Plaintiffs supported this motion with only a single short paragraph, which paragraph did not cite any authority or offer any meaningful argument to support the conclusion that these Plaintiffs are entitled to any costs or fees. *Id.* That short paragraph obviously does not carry the *Lewis* Plaintiffs’ burden to show that they are prevailing parties, which is necessary for any costs-or-fees award, *see Gautreaux v. Chi. Hous. Auth.*, 491 F.3d 649, 659 (7th Cir. 2007), and the Legislature opposed the motion on these grounds, Dkt. 210.

Yesterday, without waiting for this Court to grant their Motion For Leave To File Reply Brief, the *Lewis* Plaintiffs filed their proposed Reply Brief, which extensively presented—over a span of 21 pages—their affirmative arguments for why they are prevailing parties. Dkt. 214.

The *Lewis* Plaintiffs’ strategy—presenting an entirely conclusory argument to support their motion to voluntarily dismiss with costs, waiting for the other parties to respond, and only then presenting their affirmative case—is obviously prejudicial and improper. *See Carroll v. Lynch*, 698 F.3d 561, 567–68 (7th Cir. 2012).

The solution to the unfortunate situation that the *Lewis* Plaintiffs have created is straightforward: simply grant the *Lewis* Plaintiffs’ initial request in their Motion For Leave To File Reply Brief “to dismiss the *Lewis* case” and “reserve consideration of whether the *Lewis* Plaintiffs are entitled to award of statutory costs as ‘prevailing

parties’ until after they have filed a post-judgment motion,” Dkt. 212 at 2, and permit the parties to brief those issues at that time. That would allow the parties to submit full, adversarial briefing on this issue in the ordinary course—that is, *after* the *Lewis* Plaintiffs present their affirmative case.

If the Court does not wish to proceed in this manner, then the Court should grant the Legislature (and other parties) the opportunity to respond to the *Lewis* Plaintiffs’ 21-page proposed Reply Brief. In that brief, the Legislature would intend to argue: (1) why the *Lewis* Plaintiffs are not prevailing parties, and (2) why the Court cannot grant any fee award here, since no party with authority to represent the State was permitted to participate at the preliminary-injunction hearing. The Legislature referenced this latter argument in its opposition to the *Lewis* Plaintiffs’ motion to voluntarily dismiss, Dkt. 210 at 2, and the *Lewis* Plaintiffs did not mention it in their proposed Reply Brief, Dkt. 214.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2020, a true and accurate copy of the foregoing was served via the Court's CM/ECF system upon all counsel of record.

/s/ Misha Tseytlin

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