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The Honorable William M. Conley
U.S. District Court
Western District of Wisconsin
120 North Henry Street, Rm. 320
Madison, WI 53703

Re: Democratic National Committee et al. v. Bostelmann et al. (No. 3:20-cv-249-wmc)

Dear Judge Conley:

Proposed Intervenor, the Wisconsin State Legislature (“Legislature”), respectfully requests that this Court consider, on its own motion, consolidating this case, *Democratic National Committee, et al., v. Bostelmann et al.*, No. 3:20-cv-249, with two overlapping cases pending before this Court: *Gear et al., v. Knudson et al.*, No. 3:20-cv-00278; and *Lewis et al. v. Knudson et al.*, No. 3:20-cv-284. See 9A Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Civ. § 2383 n.17 (3d ed.) (collecting examples of courts consolidating on their own motion). All three cases concern overlapping challenges to provisions of Wisconsin’s election law for the April 7 election. The Legislature has already moved to intervene in this case and also intends to file motions to intervene in the two related cases.

Federal Rule of Civil Procedure 42(a) provides that this Court “may . . . consolidate” actions before it that “involve a common question of law or fact.” Fed. R. Civ. P. 42(a). The purpose of Rule 42 is to “give the district court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched *with expedition and economy* while providing justice to the parties.” 9A Wright & Miller, Fed. Prac. & Proc. Civ. § 2381 (emphasis added). These considerations all favor consolidation of the three cases here.

First, the three pending cases all include overlapping claims concerning Wisconsin’s election law and therefore all share “common question of law or fact” under Rule 42.

Multiple overlapping questions of law abound in these three cases. For example, Wisconsin law requires absentee voters to have a witness certify the truth of the information provided on the voter’s ballot. See Wis. Stat. § 6.87(2); *id.* § 6.87(4)(b)(1). *All three* complaints seek to enjoin enforcement of Wis. Stat. § 6.87’s witness requirement for absentee voting, making much the same arguments. See, e.g., Amend. Compl. ¶¶ 6, 12, 39, 50, 62, 63, pp. 18 ¶ A, 19 ¶ E, *D.N.C. v. Bostelmann*, No. 3:20-cv-249, Dkt.55; Compl. ¶¶ 86, 87, 138, p. 66 ¶ F, *Lewis v. Knudson*,

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No. 3:20-cv-284, Dkt.1; Compl. ¶ 1, p. 22 ¶ (c), *Gear v. Knudson*, No. 3:20-cv-00278, Dkt.1. The *Democratic National Committee* plaintiffs and the *Lewis* plaintiffs all challenge Wisconsin's by-mail registration deadline, Wis. Stat. § 6.28(1), certain proof-of-residency and photo ID requirements, *id.* §§ 6.34, 6.86, and the deadline for receipt of mailed absentee ballots, *id.* § 6.87. See Amend. Compl. at p. 18 ¶ A, *D.N.C. v. Bostelmann*, No. 3:20-cv-00249, Dkt.55; Compl. at p. 65 ¶ B, *Lewis v. Knudson*, No. 3:20-cv-00284, Dkt.1. Again, a review of the complaints also demonstrates that these three groups of plaintiffs have similar—indeed, often identical—concerns about these statutory provisions.

Second, consolidation would promote judicial economy, without posing any countervailing equitable concerns. See generally *Emerson v. Sentry Life Ins. Co.*, No. 18-CV-254-JDP, 2018 WL 4380988, at *3 (W.D. Wis. Sept. 14, 2018) (citing *SanDisk Corp. v. Phison Elecs. Corp.*, 538 F. Supp. 2d 1060, 1068 (W.D. Wis. 2008)). Litigating in parallel three lawsuits challenging the same Wisconsin election laws could well lead to unnecessary, duplicative briefing as to overlapping—again, often identical—issues, just days before the April 7 election date. Further, it appears probable that plaintiffs in these three cases are likely to file overlapping, serial emergency preliminary injunctions, in order to avoid their lawsuits becoming largely moot by the April 7 date, making similar arguments, supported by similar declarations. The other parties, intervenors (if any are granted such status), and many interested *amici* would need to respond to each such motion for emergency relief, repeating many of the same arguments relating to the crucial issues of democracy at issue here.

Sincerely,

/s/ Misha Tseytlin
Misha Tseytlin

CC: All counsel in *D.N.C. v. Bostelmann*, No. 3:20-cv-249 (via ECF)
Counsel of record in *Gear, v. Knudson*, No. 3:20-cv-00278 (via email)
Counsel of record in *Lewis v. Knudson*, No. 3:20-cv-284 (via email)*

* As of this filing, counsel for defendants in *Lewis v. Knudson* has not appeared. However, defendants in *Lewis v. Knudson* are the same as in *Gear*, and defendants' counsel has appeared in that case.