

STATE OF WISCONSIN    CIRCUIT COURT    RACINE COUNTY  
BRANCH 4

KENNETH BROWN,  
Plaintiff,

v.

WISCONSIN ELECTIONS  
COMMISSION,

and

TARA McMENAMIN,  
Defendants.

Case No. 2022CV1324  
Case Code: 30703  
Hon. Mark F. Nielsen

**WISCONSIN ALLIANCE FOR RETIRED AMERICANS'  
NOTICE OF MOTION AND MOTION TO INTERVENE**

**NOTICE OF MOTION**

TO:    Kenneth Brown  
      c/o Wisconsin Institute for Law & Liberty, Inc.  
      Richard M. Esenberg  
      Katherine D. Spitz  
      330 E. Kilbourn Avenue, Suite 725  
      Milwaukee, WI 53202

Wisconsin Elections Commission  
c/o Assistant Attorney General Steven C. Kilpatrick  
Assistant Attorney General Gabe Johnson-Karp  
Wisconsin Department of Justice  
17 West Main Street  
Madison, WI 53707-7857

Tara McMenamin  
c/o City Attorney Scott R. Letteney  
Assistant City Attorney Ian Pomplin  
City Attorney's Office  
730 Washington Avenue, Room 201  
Racine, Wisconsin 53403

Democratic National Committee  
c/o Jeffrey A. Mandell  
Stafford Rosenbaum LLP  
222 West Washington Ave., Suite 900  
Madison, WI 53701

PLEASE TAKE NOTICE that Proposed Intervenor-Defendant the Wisconsin Alliance for Retired Americans will appear before the Honorable Mark F. Nielsen, in his usual courtroom in the Racine County Courthouse and via videoconference, on Wednesday, March 15, 2023 at 9:00 AM,<sup>1</sup> and shall then and there present the following motion to intervene. As required by Wis. Stat. § 803.09(3), Proposed Intervenor has filed herewith its Proposed Answer to Plaintiff's Complaint, Exhibit A hereto.

### **MOTION TO INTERVENE**

Proposed Intervenor-Defendant Wisconsin Alliance for Retired Americans (the "Alliance") hereby moves the Court pursuant to Wis. Stat. § 803.09 to intervene in this action as a Defendant. In support of its motion to intervene, the Alliance states as follows:

1. The Alliance has over 1,700 members in the City of Racine and tens of thousands of members across Wisconsin. The Alliance is committed to protecting the voting rights of its members, because voting by the Alliance's membership is critical to the Alliance's mission of ensuring the health and economic security of Wisconsin seniors and their families.

2. Plaintiff Kenneth Brown's complaint seeks to restrict the locations where the City of Racine may conduct in-person absentee voting and to prohibit the use of a mobile voting van for in-person absentee voting, and his legal theory would limit the availability and access of in-

---

<sup>1</sup> The clerk has provided a date of March 15 at 9:00 AM to hear this motion. However, none of the parties oppose the Court hearing this motion on February 27 at the hearing scheduled for the Court to hear the Motion to Dismiss and DNC's motion to intervene, and in the interest of efficiency, the Alliance asks the Court to hear this motion then.

person absentee voting across the state. This case therefore threatens to make voting more difficult for the Alliance's members, and for many other Wisconsin voters.

3. The Alliance moves to intervene in this action as a Defendant. The Court should grant the Alliance's motion because, as explained in the accompanying brief, the Alliance satisfies the requirements for intervention as of right under Wis. Stat. § 803.09(1). Alternatively, the Alliance should be granted permissive intervention under Wis. Stat. § 803.09(2).

4. The clerk has set the Alliance's motion for a hearing on March 15, 2023 at 9:00 am. There is, however, already a hearing on Defendant McMenemy's motion to dismiss and the DNC's motion to intervene on February 27, 2023, and in the interest of efficiency, the Alliance requests that the Court address its motion on that earlier date. None of the parties oppose that request.

5. Counsel for Proposed Intervenor emailed counsel for Plaintiff Brown on February 15 2023 to request Plaintiff's position regarding this motion but was not able to determine Plaintiff's position.

6. Counsel for Proposed Intervenors emailed counsel for Defendant, Wisconsin Elections Commission and have been advised that WEC takes no position on our motion.

7. Counsel for Proposed Intervenors emailed counsel for Defendant, Clerk Tara McMenemy, and have been advised that she takes no position on our motion.

WHEREFORE, the Alliance respectfully requests that this Court set this motion for hearing and grant their intervention as Defendant in this action.

DATED this 15th day of February, 2023.

*Electronically signed by Diane M. Welsh*

Diane M. Welsh, SBN 1030940

PINES BACH LLP

122 W. Washington Ave, Suite 900

Madison, WI 53703

Telephone: (608) 251-0101

Facsimile: (608) 251-2883

dwelsh@pinesbach.com

Respectfully submitted,

David R. Fox\*

Christina Ford\*

Samuel T. Ward-Packard, SBN 1128890

ELIAS LAW GROUP LLP

250 Massachusetts Avenue NW, Suite 400

Washington, D.C. 20001

Telephone: (202) 968-4652

dfox@elias.law

cford@elias.law

swardpackard@elias.law

*Attorneys for Proposed Intervenor-  
Defendant*

\*Motion for admission *pro hac vice*  
forthcoming

RETRIEVED FROM DEMOCRACYDOCKET.COM

KENNETH BROWN,  
Plaintiff,

v.

WISCONSIN ELECTIONS  
COMMISSION,

and

TARA McMENAMIN,  
Defendants.

Case No. 2022CV1324  
Case Code: 30703  
Hon. Mark F. Nielsen

**[PROPOSED] ANSWER BY INTERVENOR-DEFENDANT  
WISCONSIN ALLIANCE FOR RETIRED AMERICANS**

Intervenor-Defendant Wisconsin Alliance for Retired Americans, by and through its attorneys, submits the following answer to Plaintiff Kenneth Brown's Complaint.

**INTRODUCTION**

1. This paragraph contains legal conclusions to which no response is required; to the extent a response is required the allegations are denied.
2. Deny.
3. Intervenor-Defendant admits that Brown filed a complaint with the Wisconsin Elections Commission ("WEC") and that WEC and that WEC found no probable cause to believe that a violation of law or an abuse of discretion occurred. The remaining allegations of this paragraph are legal conclusions to which no response is required; to the extent a response is required the allegations are denied.

## **PARTIES**

4. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in the first two sentences of this paragraph and therefore denies them. The remaining allegations of this paragraph are legal conclusions to which no response is required; to the extent a response is required the allegations are denied.

5. Admit.

6. Admit.

## **JURISDICTION AND VENUE**

7. Intervenor-Defendant admits that WEC issued its decision on Brown's complaint on November 4, 2022. The remaining allegations of this paragraph are legal conclusions to which no response is required; to the extent a response is required the allegations are denied.

8. This paragraph contains legal conclusions to which no response is required; to the extent a response is required, the allegations are denied.

## **FACTUAL BACKGROUND**

9. This paragraph contains legal conclusions to which no response is required; to the extent a response is required, the allegations are denied.

10. This paragraph contains legal conclusions to which no response is required; to the extent a response is required, the allegations are denied.

11. This paragraph contains legal conclusions to which no response is required; to the extent a response is required, the allegations are denied.

### *The August 9, 2022 Primary*

12. Deny.

13. Intervenor-Defendant admits that during the August 9, 2022 primary election, in-person absentee voting occurred in Racine at City Hall and at designated locations throughout the

city, where a vehicle was parked. Intervenor-Defendant further admits that the Racine Clerk's office is located in City Hall. Intervenor-Defendant denies that this violated Wis. Stat. § 6.855. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies them.

14. Deny.

15. Intervenor-Defendant admits that the Clerk has created and maintained a website for Racine voters. Intervenor-Defendant denies the remaining allegations.

16. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

17. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

18. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

19. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

20. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

21. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

22. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

23. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

24. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

25. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

26. Deny.

The August 9, 2022 Primary

27. Admit.

28. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

29. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

30. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

31. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

32. Admit.

33. Deny.

**PROCEDURAL BACKGROUND**

34. Intervenor-Defendant admits the allegations in the first sentence of this paragraph. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies them.

35. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.



36. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

37. Intervenor-Defendant admits that Brown filed his reply on September 13, 2022. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies them.

38. Admit.

39. Admit.

40. This paragraph contains legal conclusions to which no response is required; to the extent a response is required, the allegations are denied.

41. Deny.

#### **CAUSES OF ACTION**

##### **CLAIM I – Review under Wis. Stat. § 5.06(8) (against both Defendants)**

42. Intervenor-Defendant incorporates the preceding responses.

43. Deny.

##### *Alternate Sites Were Not "As Near as Practicable" to the Clerk's Office*

44. Intervenor-Defendant admits that this paragraph quotes an incomplete portion of the cited statute.

45. Intervenor-Defendant denies the allegations in the first sentence of this paragraph. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in the remainder of this paragraph and therefore denies them.

46. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

47. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

48. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

49. Deny.

50. Deny.

*Alternate Sites Afforded Political Advantage*

51. Intervenor-Defendant admits that this paragraph quotes an incomplete portion of the cited statute.

52. Deny.

53. Deny.

*The Clerk Improperly Permitted In-Person Absentee Voting in City Hall*

54. Intervenor-Defendant admits that this paragraph quotes an incomplete portion of the cited statute.

55. Intervenor-Defendant denies the allegations in the first sentence of this paragraph. Intervenor-Defendant admits the allegations in the second sentence of this paragraph. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in the remainder of this paragraph and therefore denies them.

56. Deny.

57. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in the first sentence of this paragraph and therefore denies them. Intervenor-Defendant denies the remaining allegations in this paragraph.

58. Deny.

*Designating an Alternate Site for Three Hours Does Not Comply with the Statute*

59. Intervenor-Defendant admits that this paragraph quotes an incomplete portion of the cited statute, and adds emphasis that does not appear in the original.

60. Deny.

*Mobile Voting Sites are Not Authorized by Statute*

61. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in the first sentence of this paragraph and therefore denies them. Intervenor-Defendant denies the remaining allegations in this paragraph.

62. Intervenor-Defendant admits that this paragraph quotes an incomplete portion of the cited statute. Intervenor-Defendant denies the remaining allegations in this paragraph.

63. Deny.

64. Intervenor-Defendant admits that this paragraph quotes an incomplete portion of the cited statute. Intervenor-Defendant denies the remaining allegations in this paragraph.

65. Intervenor-Defendant admits that this paragraph quotes an incomplete portion of the cited statute. Intervenor-Defendant denies the remaining allegations in this paragraph.

66. This paragraph contains legal conclusions to which no response is required; to the extent a response is required, the allegations are denied.

67. Deny.

68. Deny.

69. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

70. Deny.

71. Deny.

72. Deny.

73. Deny.

74. Deny.

**CLAIM II – Review under Wis. Stat. §§ 5.06(8) and/or 227.40 Violation of Wis. Stat. §§ 5.05(1e) and 5.06 (against Defendant WEC)**

75. Intervenor-Defendant incorporates the preceding responses.

76. This paragraph does not contain any factual allegations, so no response is required.

To the extent a response is required, it is denied.

77. Deny.

78. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

79. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

80. Deny.

81. Intervenor-Defendant admit that Exhibit I is a WEC-issued document. Intervenor-Defendant denies that the allegations in this paragraph accurately characterize the document.

82. This paragraph is too vague to permit a response; to the extent a response is required, it is denied.

83. Intervenor-Defendant admits that this paragraph quotes an incomplete portion of the cited document and adds emphasis that does not appear in the original.

84. Intervenor-Defendant admits that this paragraph quotes an incomplete portion of the cited document. Intervenor-Defendant denies that the allegations in this paragraph accurately characterize the document.

85. Intervenor-Defendant admits that this paragraph quotes an incomplete portion of the cited document. Intervenor-Defendant denies that the allegations in this paragraph accurately characterize the document.

86. Deny.

87. Deny.

88. Deny.

89. Deny.

90. This paragraph contains legal conclusions to which no response is required; to the extent a response is required, the allegations are denied.

91. Intervenor-Defendant admits that this paragraph quotes an incomplete portion of the cited statute.

92. Intervenor-Defendant admits that this paragraph quotes an incomplete portion of the cited case.

93. Intervenor-Defendant admits that this paragraph quotes an incomplete portion of the cited case; Intervenor-Defendant denies that the remaining allegations in this paragraph accurately characterize the case.

94. Deny.

95. Deny.

96. Intervenor-Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

97. This paragraph is too vague to permit a response; to the extent a response is required, it is denied.

98. Deny.

99. Deny.

### **REQUEST FOR RELIEF**

Intervenor-Defendant denies that Brown is entitled to any relief.

### **AFFIRMATIVE DEFENSES**

Intervenor-Defendant asserts the following affirmative defenses without accepting any burdens regarding them:

1. Brown lacks standing to assert his claim.
2. Brown's complaint fails, in whole or in part, to state a claim upon which relief can be granted.
3. The Court lacks jurisdiction to hear Brown's claim based on Brown's failure to follow mandatory procedures for challenging an administrative rule.

Intervenor-Defendant reserves the right to assert any further defenses that may become evident during the pendency of this matter.

### **INTERVENOR-DEFENDANT'S REQUEST FOR RELIEF**

Having answered Brown's complaint, Intervenor-Defendant requests that the Court:

1. Deny Brown any relief;
2. Dismiss Brown's complaint with prejudice; and
3. Grant such other further relief as the Court deems just and proper.

DATED this 15th day of February, 2023.

Electronically signed by Diane M. Welsh

Diane M. Welsh, SBN 1030940

PINES BACH LLP

122 W. Washington Ave, Suite 900

Madison, WI 53703

Telephone: (608) 251-0101

Facsimile: (608) 251-2883

dwelsh@pinesbach.com

Respectfully submitted,

David R. Fox\*

Christina Ford\*

Samuel T. Ward-Packard, SBN 1128890

ELIAS LAW GROUP LLP

250 Massachusetts Ave NW, Suite 400

Washington, D.C. 20001

Telephone: (202) 968-4652

dfox@elias.law

cford@elias.law

swardpackard@elias.law

\*Motion for admission *pro hac vice*  
forthcoming

RETRIEVED FROM DEMOCRACYDOCKET.COM