UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

SUSAN LIEBERT; ANNA HAAS; ANNA POI; *and* ANASTASIA FERIN KNIGHT,

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION; DON M. MILLIS; ROBERT F. SPINDEL; MARGE BOSTELMANN; ANN S. JACOBS; MARK L. THOMSEN; *and* JOSEPH J. CZARNEZKI, *in their official capacities as commissioners of the Wisconsin Elections Commission*; Meagan Wolfe, *in her official capacity as administrator of the Wisconsin Elections Commission*; MICHELLE LUEDTKE, *in her official capacity as city clerk for the City of Brookfield*; MARIBETH WITZEL-BEHL, *in her official capacity as city clerk for the City of Madison*; *and* LORENA RASE STOTTLER, *in her official capacity as city clerk for the City of Janesville*,

Defendants.

Case No. 3:23-cv-00672-slc

THE WISCONSIN STATE LEGISLATURE'S
REPLY IN SUPPORT OF MOTION TO INTERVENE

INTRODUCTION

The Wisconsin State Legislature ("Legislature") has moved to intervene as a defendant both as a matter of right under Federal Rule of Civil Procedure 24(a)(2), and permissively under Rule 24(b)(1)(B). Dkt.29 ("Mot."). This Court should grant the Legislature's Motion for mandatory intervention: First, it is undisputed that the

Legislature timely filed its motion. Mot.9–10. Second, this case implicates the Legislature's interest in defending the validity of state law on behalf of the State under *Berger v. North Carolina State Conference of the NAACP*, 142 S. Ct. 2191 (2022). Mot.10–11. And, as an alternative interest of the Legislature, this case also challenges the Legislature's separate interest in defending its own constitutional powers to enact laws "[p]roviding for absentee voting," Wis. Const. art. III, § 2, given that Plaintiffs seek to enjoin many such laws as unconstitutional. Mot.12. Third, it is undisputed that Plaintiffs' lawsuit, which seeks to enjoin critical features of Wisconsin's absentee-voting regime, would impair the Legislature's interests. Mot.12–13. Finally, no existing party—including Defendant the Wisconsin Elections Commission ("WEC")—can adequately represent the Legislature's unique interests implicated here, considering the controlling standard set forth by the Supreme Court in *Berger*. Mot.13–16. Alternatively, and at a minimum, this Court should grant the Legislature permissive intervention, given that its Motion is timely, its proposed Answer and proposed Motion To Dismiss raise defenses to Plaintiffs' claims that share a question of law with the main action, and intervention would further the important interests of federal-state comity without unduly burdening or complicating the Court's administration of this case. Mot.16–18.

WEC bizarrely opposes the Legislature's intervention, Dkt.35 ("Opp."), even though it did not oppose the Legislature intervening as a defendant alongside WEC in materially identical, parallel state-court litigation challenging the same absentee-voting laws at issue here, brought by the same lawyers. In its Opposition, WEC

primarily claims that the Legislature cannot intervene as of right because it does not have an interest in defending state law on behalf of the State under Wis. Stat. § 803.09(2m) *even though the Wisconsin Supreme Court and the Seventh Circuit have conclusively rejected that exact argument* in *Democratic National Committee v. Bostelmann*, 977 F.3d 639 (7th Cir. 2020), and the related certification request in *National Committee v. Bostelmann*, 2020 WI 80, ¶ 1, 394 Wis. 2d 33, 949 N.W.2d 423. Nor do WEC's other arguments fare any better. On the adequacy element, it misunderstands that *Berger* imposes only a "minimal burden" on the Legislature to establish the inadequacy of the pending representation, which the Legislature easily meets here. And as for permissive intervention, WEC does not dispute that the Legislature's involvement here would further the needs of federal-state comity, and it cannot explain how the Legislature's involvement would cause any complication or delay, especially considering that the Legislature is currently litigating alongside WEC as a defendant in the parallel state-court litigation, without any issue.

This Court should grant the Legislature's Motion To Intervene.

ARGUMENT

I. The Legislature Has A Right To Intervene Under Rule 24(a), And The U.S. Supreme Court's Decision In *Berger* And The Wisconsin Supreme Court's Decision in *Bostelmann* Foreclose WEC's Contrary Arguments

A. As the Legislature explained, it satisfies all four elements for mandatory intervention under Federal Rule of Civil Procedure 24(a), thus it is entitled to intervene as of right in these proceedings, *see* Mot., as also summarized above.

B. In its Opposition, WEC concedes by silence that the Legislature's Motion was timely (element one) and that, if the Legislature did have an interest here, that

interest would be impaired if Plaintiffs were to prevail in this case (element three). WEC argues that the Legislature does not have a protectible interest here (element two) and that, in any event, WEC and the Attorney General adequately represent that interest (element four). But when the Legislature sought to intervene as a defendant in other cases related to the same absentee-voter law at issue here and on the basis of precisely the same interests, WEC did not oppose intervention. *See* Mem. In Support Of Mot. To Intervene at 9–10, *Priorities USA v. Wis. Elections Comm'n*, No.2023CV001900 (Wis. Cir. Ct., Dane Cnty. Aug. 22, 2023), Dkt.41; Mem. In Support Of Mot. To Intervene at 13–15, *League of Women Voters of Wis. v. Wis. Elections Comm'n*, No.2022CV2472 (Wis. Cir. Ct., Dane Cnty. Oct. 3, 2022), Dkt.8. But even putting that aside, the U.S. Supreme Court's decision in *Berger* and the Wisconsin Supreme Court's decision in *Bostelmann* foreclose WEC's arguments.

On the interest element, WEC argues that the Legislature's interest in defending state law on behalf of the State "is not the Legislature's interest," but rather "is the State's" interest. Opp.6–8. But the U.S. Supreme Court in *Berger* held that states may organize themselves in a variety of ways, and if a state chooses to allocate authority to the legislature, defending the state's laws may very well be an interest of the legislature, thus entitling a legislature to intervene as of right, 142 S. Ct. at 2197, and in this case, Wisconsin has delegated to the Legislature this type of authority. The Wisconsin Supreme Court in *Bostelmann* specifically and unambiguously held that Wis. Stat. §§ 13.365 and 803.09(2m) authorize the Legislature to represent the State when its laws are challenged. *Bostelmann*, 2020

WI 80, ¶ 14; *accord Serv. Emps. Int'l Union, Loc. 1 ("SEIU") v. Vos*, 2020 WI 67, ¶¶ 65–71, 393 Wis. 2d 38, 946 N.W.2d 35. Now that Wisconsin has designated the Legislature to defend its interests, that choice should be respected: "federal courts should rarely question that a State's interests will be practically impaired or impeded if its duly authorized representatives are excluded from participating in federal litigation challenging state law." *Berger*, 142 S. Ct. at 2201.

Bostelmann addressed the argument that WEC raises here, regarding the Legislature's supposed lack of authority to appear on behalf of the State, Opp.6–9, and consideration of the history of that case makes clear that WEC's arguments are entirely wrong and have been fully rejected already.

In 2020, the Democratic National Committee and other plaintiffs challenged various Wisconsin election-law statutes in this Court, and the Legislature intervened as a defendant alongside WEC to defend the State's laws. *See Democratic Nat'l Comm. v. Bostelmann*, 488 F. Supp. 3d 776 (W.D. Wis. 2020). When the district court enjoined certain portions of these laws, *id.* at 816–18, the Legislature appealed to the Seventh Circuit and moved for an emergency stay pending appeal, *Democratic Nat'l Comm. v. Bostelmann*, 976 F.3d 764, 766 (7th Cir. 2020) (per curiam). WEC did not appeal or request any emergency relief from the Seventh Circuit. *Id.*

Upon considering the Legislature's appeal and emergency motion, the Seventh Circuit *sua sponte* raised the issue of whether the Legislature had the authority to speak on behalf of the State in defense of state law, under the Supreme Court's decision in *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945 (2019). *Id.* at

767. In *Bethune-Hill*, the Supreme Court had held that the Virginia House of Delegates did not have standing to represent Virginia's interests on appeal because Virginia had designated by statute the attorney general—and only the attorney general—to litigate on its behalf. 139 S. Ct. at 1952. As the Supreme Court explained, "Virginia, had it so chosen, could have authorized the House to litigate on the State's behalf, either generally or in a defined class of cases," but it did not do so. *Id.* Despite Section 803.09(2m)'s plain text, the Seventh Circuit initially concluded that Wisconsin, like Virginia, had *not* authorized the Legislature to represent the State's interest in state law in court, misunderstanding *SEIU* as holding that "the legislature cannot represent the state's interest," but only "its own interest" in court. *Bostelmann*, 976 F.3d at 768 (emphasis omitted). Thus, the Seventh Circuit concluded that the Legislature lacked standing to defend the State's interests in the validity of the election laws at issue and ordered the Legislature to show why its appeal should not be dismissed for lack of appellate jurisdiction. *Id.* at 768.

The Legislature then moved the Seventh Circuit for reconsideration and to certify the question of the Legislature's authority to represent the State's interest in the state law under Section 803.09(2m) to the Wisconsin Supreme Court. *See* Emergency Mot. To Certify A Question Of Law, *Democratic Nat'l Comm. v. Bostelmann*, No.20-2844 (7th Cir. Sept. 30, 2020), Dkt.40; Pet. For Rehearing, *Bostelmann*, No.20-2844 (7th Cir. Sept. 30, 2020), Dkt.45. Granting the motion to certify, the Court certified to the Wisconsin Supreme Court the question of "whether, under Wis. Stat. § 803.09(2m), the State Legislature has the authority to represent

the State of Wisconsin's interest in the validity of state laws." Order, *Democratic Nat'l Comm. v. Bostelmann*, No.20-2844 (7th Cir. Oct. 2, 2020), Dkt.51.

Accepting certification in *Bostelmann*, the Wisconsin Supreme Court "answer[ed] the question in the affirmative," explaining that "the Legislature has the authority to represent the State of Wisconsin's interests in the validity of state laws under § 803.09(2m)." *Bostelmann*, 2020 WI 80, ¶ 1; *see also id.* ¶ 10 (explaining that Section 13.365 is "the vehicle by which each legislative entity may exercise its authority to intervene under § 803.09(2m)"). As the Wisconsin Supreme Court explained, "Wisconsin has adopted a public policy that gives the Legislature a set of litigation interests," *id.* ¶ 8, including where a party "otherwise challenges the . . . validity of a statute, as part of a claim or affirmative defense," *id.* (quoting Wis. Stat. § 803.09(2m)). Thus, in answering this certified question, the Wisconsin Supreme Court adopted an interpretation of Section 803.09(2m) that is precisely the opposite of the position that WEC takes here. *Compare id.*, *with* Opp.6–8.

Then, in light of the Wisconsin Supreme Court's answer to the certified question, the Seventh Circuit reversed its prior decision regarding the Legislature's lack of standing to assert the State's interest in state law on behalf of the State, under Section 803.09(2m). *Bostelmann*, 977 F.3d at 641. The Wisconsin Supreme Court "accepted the certification and replied that the State Legislature indeed has th[e] authority" to "represent the State of Wisconsin's interest in the validity of state laws" in court. *Id.* (citations omitted). So, the Court "grant[ed] the petition for reconsideration and . . . address[ed] the Legislature's motion [for an emergency stay]

on the merits," ultimately granting the Legislature its requested stay-pending-appeal relief. *Id.*

This fulsome litigation history of *Bostelmann* directly refutes WEC's claim that "Wisconsin law does not authorize the Legislature to intervene and appear as the State" in defense of state law, sufficient to satisfy the interest element for intervention. Opp.7; *see* Opp.6–8. Again, the Wisconsin Supreme Court held in *Bostelmann* that "*the Legislature has the authority to represent the State of Wisconsin's interest in the validity of state laws under § 803.09(2m).*" *Bostelmann*, 2020 WI 80, ¶ 1 (emphasis added). Then, in light of that holding, the Seventh Circuit concluded that the Legislature could appear in federal court to defend the validity of state law, even when no other state party was doing so. *See Bostelmann*, 977 F.3d at 641. Further, the Legislature's authority to appear on behalf of the State gives it precisely the same interest that *Berger* expressly found sufficient for mandatory intervention, 142 S. Ct. at 2201: Wisconsin has a "legitimate interest in the continued enforce[ment] of [its] own statutes," *id.* (citations omitted), which interest the State has assigned to its "legislature to litigate on the State's behalf," *id.* at 2202 (citations omitted). Nothing that WEC says in its Opposition now could possibly allow this Court to ignore this binding interpretation of Section 803.09(2m) here, issued by the Wisconsin Supreme Court and accepted by the Seventh Circuit. *See* Opp.6–8.

WEC next makes a poorly developed argument that, if Sections 13.365(3) and 803.09(2m) were interpreted to authorize the Legislature to defend the State's interests in state law on behalf of the State in court—which, to be clear, they

obviously were in *Bostelmann*—this would "violate the separation of powers" doctrine in the Wisconsin Constitution. Opp.8–9. But in *SEIU*, the Wisconsin Supreme Court held that Sections 13.365(3) and 803.09(2m) "survived a facial challenge to [their] compatibility with the separation of powers in the Wisconsin Constitution." *Bostelmann*, 2020 WI 80, ¶ 1 (citing *SEIU*, 2020 WI 67, ¶ 73). As *SEIU* explained, "representing the State in litigation . . . is within those borderlands of shared powers" under the Wisconsin Constitution between the Legislature and the Executive, "most notably in cases that implicate an institutional interest of the legislature." 2020 WI 67, ¶ 63. And here, Plaintiffs' case implicates at least two such "institutional interests" of the Legislature, meaning that the Legislature appearing on behalf of the State in defense of state law, per Sections 13.365(3) and 803.09(2m), would not violate the Wisconsin Constitution's separation of powers. First, the Legislature has an institutional interest in cases challenging the validity of state laws—such as this case—given that the Legislature is, of course, the body that enacts laws. *See* Wis. Const. art. IV, § 1; *Flynn v. Dep't of Admin.*, 216 Wis. 2d 521, 529, 576 N.W.2d 245 (1998); Ex.1 (*SEIU, Loc. 1 v. Vos*, No.2019-CV-302, slip op. at 8 (Wis. June 11, 2019)). ***Indeed, the Attorney General conceded in* SEIU *that the Legislature had such a valid interest in the validity of state law, and that Sections 13.365(3) and 803.09(2m) were constitutional in such instances***. Principal Br. Of The Wis. State Leg. at 26, *Democratic Nat'l Comm. v. Bostelmann*, No.2020AP1634 (Wis. Oct. 5, 2020) (citing Attorney General's briefing in *SEIU*). Accordingly, the Attorney General cannot now claim that Section 803.09(2m) is unconstitutional even in such

circumstances, under judicial estoppel principles. *See New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). Second, as expressly recognized in *SEIU*, this case also implicates the Legislature's institutional interest in controlling the public fisc, 2020 WI 67, ¶ 69, because virtually all cases challenging the validity of state law in federal court, including this one, place the "spending [of] state money" directly "at issue," *id.*, at ¶ 71, given federal fee-shifting provisions, *see* 28 U.S.C. § 1920; 42 U.S.C. § 1988(b); Fed. R. Civ. P. 54(d).

WEC also challenges the Legislature's assertion of its state-constitutional interest in passing laws for Wisconsin, Opp.5–6—an interest the Legislature presented as an alternative to its interest under *Berger* in defending the laws of the State. WEC claims that the Legislature's interest is neither legally protectable nor unique from WEC's interest in defending the law. Opp.5–6. This Court need not consider this additional interest, as the Legislature's interest in defending the validity of its laws is sufficient under *Berger*. 142 S. Ct. at 2201–03. Nevertheless, there is no question that the Legislature's alternative, state-constitutional interest is significant, as it is the "authority over a State's most fundamental political processes." *Berger*, 142 S. Ct. at 2201 (quoting *Alden v. Maine*, 527 U.S. 706, 751 (1999)). The Wisconsin Constitution specifically provides the Legislature with the responsibility to enact laws "[p]roviding for absentee voting." Wis. Const. art. III, § 2.[1] Finally, all of this also shows that WEC's claim that this interest of the

[1] WEC asserts that *Wisconsin Legislature v. Palm*, 2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900, has no application is in this case because it involved, unlike this case, a "separation of powers claim against actions of an executive official." Opp.6 n.1. But *Palm*

Legislature is not "unique" is wrong: only the Legislature has the state-constitutional authority to make laws for the State of Wisconsin, Wis. Const. art. IV, § 1, including laws "[p]roviding for absentee voting," Wis. Const. art. III, § 2.

Moving to the adequacy-of-representation element, WEC argues that "the intermediate or highest standard" for determining adequacy applies, not the "more lenient default rule." Opp.9–11. But *Berger* forecloses that argument. In *Berger*, the Supreme Court held that "a presumption of adequate representation is inappropriate when a duly authorized state agent seeks to intervene to defend a state law," and it emphasized that it is "*especially* inappropriate when wielded to displace a State's prerogative to select which agents may defend its laws and protect its interests." 142 S. Ct. at 2204–05. When such an "authorized state agent" seeks to intervene, it has only a "minimal burden" to establish the inadequacy of the pending representation. *Id.* at 2205. As explained *supra*, the Legislature is exactly the type of "authorized state agent" identified by the *Berger* Court, and, thus, the Supreme Court specifically condemned the standards WEC suggests the Court apply in this case.

WEC also criticizes the Legislature for explaining that the Legislature raised in its proposed Motion To Dismiss briefing more robust statutory arguments than WEC, as well as an abstention argument that WEC did not raise. Opp.12–14. But the Legislature was not, as WEC asserts, "brag[ging] that it . . . prepared a longer

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involved the Legislature's *statutory* claim that the relevant executive official promulgated an administrative rule without following required statutory procedures. 2020 WI 42, ¶ 13. *Palm* demonstrates that the Legislature has a recognized interest in the enforceability of its statutes, Mot.12, and such claim is "grounded in the concept of separation of powers." 2020 WI 42, ¶ 13.

brief," Opp.12, when it explained the additional arguments included in the Legislature's proposed motion to dismiss, Mot.15. The purpose of the Legislature's discussion was to show how the Legislature is preprepared to mount a more fulsome and simply different defense of the absentee-ballot witness requirement, on the State's behalf, just as *Berger* permits. And WEC's criticism of the Legislature's abstention argument, Opp.13, only highlights exactly how the parties' views on the issues before this Court vary. Differences in litigation strategy reflect how the Legislature's and WEC's pursuit of "related state interests" are not "identical ones," which is more than sufficient to overcome the Legislature's "minimal" burden on the adequacy-of-representation element. *See Berger*, 142 S. Ct. at 2204 (citations omitted); *id.* at 2205 ("[T]his litigation illustrates how divided state governments sometimes warrant participation by multiple state officials in federal court.").

II. At A Minimum, This Court Should Grant The Legislature Permissive Intervention

A. As the Legislature explained, Mot.16–18, the Court should at least exercise its discretion to grant the Legislature permissive intervention under Rule 24(b)(1)(B), because the Legislature satisfies both of the Rule's requirements and doing so would promote federal-state comity. The Legislature "timely" filed its Motion, *supra* pp.2–3, and it filed a proposed Answer and a proposed Motion To Dismiss that raise a "defense that shares with the main action a common question of law," Fed. R. Civ. P. 24(b)(1), namely that Wisconsin's absentee-ballot witness requirement does not violate federal law, *see generally* Dkt.28-3. Further, permitting the Legislature to intervene would further the interests of federal-state comity because its participation

is necessary for the Court to enjoy full adversarial briefing against each of Plaintiffs' claims seeking to set aside state election law, thus allowing the Court to avoid ruling on this important issue "based on an incomplete understanding of relevant state interests." *Berger*, 142 S. Ct. at 2202. The Legislature's participation would also promote the needs of federal-state comity because Wisconsin has chosen the Legislature to be the State's duly authorized representative in federal litigation challenging state law, like this case, *see* Wis. Stat. §§ 13.365, 803.09(2m), and the Legislature brings a different perspective from the other State actors involved here whose interests do not fully overlap, Mot.11–16. Finally, the Legislature's intervention would not impose any practical burden on the administration of this case, would not unnecessarily delay its resolution, and would not complicate the issues presented. Mot.18.

B. In its Opposition, WEC does not dispute that the Legislature satisfies the only requirements for permissive intervention—timeliness and the raising of defenses that share of a common question with the main action. Opp.14–16. Further, WEC ignores the Legislature's core argument on permissive intervention—namely, that such intervention is consistent with "the needs of federal-state comity." *Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d 793, 803 (7th Cir. 2019); *see Bradley v. Village of University Park*, 59 F.4th 887, 897 (7th Cir. 2023) (failing to address argument results in waiver). Instead, WEC argues that the Court should deny permissive intervention solely because, in WEC's view, the addition of the Legislature

would "complicate and delay this case." Opp.14–16. WEC's sole argument against granting the Legislature permissive intervention is incorrect.

To begin, WEC does not even try to explain how the Legislature's involvement in this case would somehow "complicate and delay" it, Opp.14–15, while the same cannot be said for the parallel state litigation, discussed above, *supra* pp.4, 14. In that state-court litigation, the Legislature is actively participating as an intervenor-defendant alongside WEC, *see* Order, *Priorities USA v. Wis. Elections Comm'n*, No.2023CV001900 (Wis. Cir. Ct., Dane Cnty. Sept. 11, 2023), Dkt.73, defending the *exact same* absentee-voting laws at issue here, *see* Compl. at 22–25, *Priorities USA v. Wis. Elections Comm'n*, (Wis. Cir. Ct., Dane Cnty. July 20, 2023), Dkt.2; *accord* Order, *League of Women Voters of Wis. v. Wis. Elections Comm'n*, No. 2022CV2472 (Wis. Cir. Ct., Dane Cnty. Oct. 10, 2022), Dkt.34 (granting Legislature's motion to intervene in case involving the absentee-ballot witness address requirement). WEC cannot show a single problem or burden with the Legislature's involvement in this parallel state litigation, which is why it has not even attempted to raise such arguments in its Opposition here. *See generally* Opp.14–16.

Relatedly, while WEC complains of "complicat[ion] and delay" from the Legislature's presence here, Opp.14, *Berger* expressly recognized that federal courts regularly allow multiple state actors to defend state law side-by-side in litigation, without any issue. *Berger*, 142 S. Ct. at 2206. As the Court explained, it is not "unusual" in "suits testing the constitutionality of state or federal legislation" for federal courts to "routinely handle cases involving multiple officials sometimes

represented by different attorneys taking different positions," and "[w]hatever additional burdens" adding those state actors may pose "fall well within the bounds of everyday case management." *Id.* WEC provides no reason why this case, in particular, would be any different than these "routine[ ]" cases, *id.*, and so has effectively conceded the point, *see Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718–19 (7th Cir. 2012) (citations omitted). Indeed, the parallel state-court litigation removes any possibly reasonable doubt, as the Legislature's presence as an intervenor-defendant alongside WEC in defense of the same laws at issue here has not caused any such "complicat[ion] and delay." Opp.14; *supra* pp.4, 14.

Next, WEC complains of redundancy from the Legislature's presence here, Opp.15, but WEC itself recognizes *in this very opposition* that the Legislature has raised arguments that WEC has not raised, Opp.11–13—namely, that the absentee-ballot witness requirement does not constitute "a prerequisite" to voting or registering to vote under 52 U.S.C. § 10501(b); that the witness requirement does not violate Section 10501(a)(2)(B)'s materiality provision; and that this Court should abstain from adjudicating this case, *see* Mot.15–16. Thus, the Legislature respectfully submits that its participation as a party here would provide significant value to the Court's resolution of this important case, implicating the validity of state law without needlessly complicating or delaying its resolution in any way.

Finally, none of this Court's previous permissive-intervention decisions that WEC cites change the permissive-intervention calculus here. Opp.15–16. *One Wisconsin Institute, Inc. v. Nichol*, 310 F.R.D. 394 (W.D. Wis. 2015), considered a

denial of permissive intervention to a group of individuals—individual state legislators, local officials, and voters—none of whom were intervening as an agent of the State, *id.* at 397–99, as would trigger the need for "[a]ppropriate respect" for the State, *Berger*, 142 S. Ct. at 2201, or "the needs of federal-state comity" *Planned Parenthood*, 942 F.3d at 803. Here, by contrast, the Legislature *has* moved to intervene on behalf of the State, as its authorized agent to defend its duly enacted laws in federal court, thus implicating *Berger*'s caution that federal courts must afford "appropriate respect" in such situations, *Berger*, 142 S. Ct. at 2195, and *Planned Parenthood*'s recognition of the need to consider "the needs of federal-state comity" when making permissive intervention decisions, *Planned Parenthood*, 942 F.3d at 803. Similarly unpersuasive here is this Court's own decision in *Planned Parenthood, Inc. v. Kaul,* 384 F. Supp. 3d 982, 990 (W.D. Wis. 2019), given that that decision predated both *Berger* and the Seventh Circuit's own *Planned Parenthood* decision, and that the Legislature is participating in the parallel state-court litigation as an intervenor-defendant alongside WEC and at WEC's consent. While WEC unfairly criticizes the Legislature as seeking to "infuse additional politics into an already politically-divisive area of the law," Opp.15–16 (quoting *Planned Parenthood,* 384 F. Supp. 3d at 990), the Legislature's carefully drafted proposed Answer and proposed Motion To Dismiss show that this is not the case, *see* Dkts.28-1, 28-3. And again, tellingly, WEC did not oppose the Legislature's involvement in the parallel state-court litigation on the basis that it would "infuse additional politics," Opp.15, into the case, *see* Order, *Priorities USA*, No.2023CV001900 (Wis. Cir. Ct. Dane Cnty. Sept. 11,

2023), Dkt.73; Order, *League of Women Voters*, No.2022CV2472 (Wis. Cir. Ct., Dane Cnty. Oct. 10, 2022), Dkt.34.

CONCLUSION

This Court should grant the Legislature's Motion To Intervene.

Dated: November 13, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 2023, 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
MISHA TSEYTLIN