FILED
10-12-2023
CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN

No. 2023AP1399

REBECCA CLARKE, RUBEN ANTHONY, TERRY DAWSON, DANA GLASSTEIN, ANN GROVES-LLOYD, CARL HUJET, JERRY IVERSON, TIA JOHNSON, ANGIE KIRST, SELIKA LAWTON, FABIAN MALDONADO, ANNEMARIE MCCLELLAN, JAMES MCNETT, BRITTANY MURIELLO, ELA JOOSTEN (PARI) SCHILS, NATHANIEL SLACK, MARY SMITH-JOHNSON, DENISE (DEE) SWEET, AND GABRIELLE YOUNG,

Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION; DON MILLIS, ROBERT F. SPINDELL, JR., MARK L. THOMSEN, ANN S. JACOBS, MARGE BOSTELMANN, AND JOSEPH J. CZARNEZKI, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN ELECTIONS COMMISSION; MEAGAN WOLFE, IN HER OFFICIAL CAPACITY AS THE ADMINISTRATOR OF THE WISCONSIN ELECTIONS COMMISSION; SENATOR ANDRÉ JACQUE, SENATOR TIM CARPENTER, SENATOR ROB HUTTON, SENATOR CHRIS LARSON, SENATOR DEVIN LEMAHIEU, SENATOR STEPHEN L. NASS, SENATOR JOHN JAGLER, SENATOR MARK SPREITZER, SENATOR HOWARD L. MARKLEIN, SENATOR RACHAEL CABRAL-GUEVARA, SENATOR VAN H. WANGGAARD, SENATOR JESSE L. JAMES, SENATOR ROMAINE ROBERT QUINN, SENATOR DIANNE H. HESSELBEIN, SENATOR CORY TOMCZYK, SENATOR JEFF SMITH, AND SENATOR CHRIS KAPENGA, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN SENATE,

Respondents,

WISCONSIN LEGISLATURE,

Intervenor-Respondent.

PETITIONERS' RESPONSE TO PENDING MOTIONS TO INTERVENE

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As instructed by this Court's Order dated October 6, 2023, Petitioners Rebecca Clarke, Ruben Anthony, Terry Dawson, Dana Glasstein, Ann Groves-Lloyd, Carl Hujet, Jerry Iverson, Tia Johnson, Angie Kirst, Selika Lawton, Fabian Maldonado, Annemarie McClellan, James McNett, Brittany Muriello, Ela Joosten (Pari) Schils, Nathaniel Slack, Mary Smith-Johnson, Denise (Dee) Sweet, and Gabrielle Young ("Petitioners") make this submission in response to those motions to intervene timely filed on October 10, 2023.

1. Governor Evers's Motion

With respect to the motion filed by Governor Tony Evers, Petitioners raise no objection, consistent with their response to the Legislature's motion to intervene. *See* Letter from Daniel S. Lenz filed Sept. 5, 2023. Given the Court's acceptance of the separation-of-powers claim and the Court's decision to grant the Legislature intervention, *see* Order entered Oct. 6, 2023 at 3, it seems that the Governor's motion should be treated similarly.

2. Nathan Atkinson *et al.*'s Motion

With respect to the motion filed by Nathan Atkinson, Stephen Joseph Wright, Gary Krenz, Sarah J. Hamilton, Jean-Luc Thiffeault, Samesh Jha, Joanne Kane, and Leah Dudley, Petitioners raise no objection.

3. Billie Johnson, *et al.*'s Motion

With respect to the motion filed by Billie Johnson, Chris Goebel, Ed Perkins, Eric O'Keefe, Joe Sanfelippo, Terry Moulton, Robert Jensen, Ron Zahn, Ruth Elmer, and Ruth Streck ("proposed Johnson Intervenors"), Petitioners acknowledge this Court's discretion over requests for permissive intervention and maintain the view that this motion should be treated consistent with the Court's previous decisions.

The precedent most directly on point is *Koschkee v. Evers*, No. 2017AP2278-OA (Wis.) (merits subsequently decided *sub nom. Koschkee v. Taylor*, 2019 WI 76, 387 Wis. 2d 552, 929 N.W.2d 600). Unlike this case, *Koschkee* was a collateral attack on this Court's prior judgment and permanent injunction issued in *Coyne v. Walker*, 2016 WI 38, 368 Wis. 2d 444, 879 N.W.2d 520. The *Koschkee* case was filed by the same lawyers representing the proposed Johnson Intervenors here.

The plaintiffs who litigated the *Coyne* case from its inception in the circuit court through ultimate affirmance in this Court sought to intervene, articulating the goal of protecting the results of their earlier litigation victory. *See* Mot. to Intervene on Behalf of Peggy Coyne, Mary Bell, Mark W. Taylor, Corey Otis, Marie Stangel, Jane Weidner, and Kristin A Voss at ¶¶1, 3–4, *Koschkee v. Evers*, No. 2017AP2278-OA (Wis. filed Sept. 14, 2018). The *Koschkee* petitioners opposed the motion, arguing *inter alia* that the interests of the *Coyne* plaintiffs were sufficiently represented by existing parties. Br. in Opp. to Mot. to Intervene at 5, *Koschkee v. Evers*, No. 2017AP2278-OA (Wis. filed Sept. 25, 2018) (citing *Helgeland v. Wis.*

Municipalities, 2008 WI 9, ¶¶89–90, 307 Wis. 2d 1, 745 N.W.2d 1). As the *Koschkee* petitioners explained, where "both Proposed Intervenors and Respondents seek the continuing validity and applicability of" the prior judgment, it follows that "Respondents, who are zealously pursuing these goals, can and will adequately represent [Proposed Intervenors'] interests." *Id.* at 5–6.

This Court denied any form of intervention to the *Coyne* plaintiffs, apparently adopting the *Koschkee* petitioners' position without any noted dissent. *See* Order at 2, *Koschkee v. Evers*, No. 2017AP2278-OA (Wis. Nov. 13, 2018). The Court did allow the *Coyne* plaintiffs to participate in the case as *amici curiae*, and it ultimately permitted them to participate in oral argument using a portion of Respondents' allotted time. *See id.* at 2; *see also* Order, *Koschkee v. Evers*, No. 2017AP2278-OA (Wis. Mar. 12, 2019).

Dated: October 12, 2023.

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CERTIFICATION REGARDING LENGTH

I certify that this response to the pending motions to intervene conforms to the requirements set forth in the Court's October 6, 2023 Order. The length of this response is 575 words.

Dated: October 12, 2023.

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