

**FILED**  
**10-12-2023**  
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**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.*

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**PETITIONERS' RESPONSE TO PENDING MOTIONS TO INTERVENE**

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*COUNSEL LISTED ON FOLLOWING PAGE*

Mark P. Gaber\*  
Brent Ferguson\*  
Hayden Johnson\*  
Benjamin Phillips\*  
CAMPAIGN LEGAL  
CENTER  
1101 14th St. NW, Ste. 400  
Washington, DC 20005  
202.736.2200

Annabelle E. Harless\*  
CAMPAIGN LEGAL  
CENTER  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
202.732.2200

Ruth M. Greenwood\*  
Nicholas O. Stephanopoulos\*  
ELECTION LAW CLINIC  
AT HARVARD LAW  
SCHOOL  
4105 Wasserstein Hall  
6 Everett Street  
Cambridge, MA 02138  
617.998.1010

Daniel S. Lenz, SBN 1082058  
T.R. Edwards, SBN 1119447  
Elizabeth M. Pierson, SBN 1115866  
Scott B. Thompson, SBN 1098161  
LAW FORWARD, INC.  
222 W. Washington Ave.  
Suite 250  
Madison, WI 53703  
608.556.9120

Douglas M. Poland, SBN 1055189  
Jeffrey A. Mandell, SBN 1100406  
Rachel E. Snyder, SBN 1090427  
STAFFORD ROSENBAUM  
LLP  
222 W. Washington Ave.  
Suite 900  
P.O. Box 1784  
Madison, WI 53701  
608.256.0226

Elisabeth S. Theodore\*  
John A. Freedman\*  
ARNOLD & PORTER KAYE  
SCHOLER LLP  
601 Massachusetts Ave. NW  
Washington, DC 20001  
202.942.5000

*\*Admitted pro hac vice*

*Attorneys for Petitioners*

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.

By Electronically signed by Daniel S. Lenz

Daniel S. Lenz, SBN 1082058

T.R. Edwards, SBN 1119447

Elizabeth M. Pierson, SBN 1115866

Scott B. Thompson, SBN 1098161

LAW FORWARD, INC.

222 W. Washington Ave., Suite 250

Madison, WI 53703

608.556.9120

dlenz@lawforward.org

tedwards@lawforward.org

epierson@lawforward.org

sthompson@lawforward.org

Douglas M. Poland, SBN 1055189  
Jeffrey A. Mandell, SBN 1100406  
Rachel E. Snyder, SBN 1090427  
STAFFORD ROSENBAUM LLP  
222 West Washington Avenue, Suite 900  
P.O. Box 1784  
Madison, WI 53701-1784  
608.256.0226  
dpoland@staffordlaw.com  
jmandell@staffordlaw.com  
rsnyder@staffordlaw.com

Mark P. Gaber\*  
Brent Ferguson\*  
Hayden Johnson\*  
Benjamin Phillips\*  
CAMPAIGN LEGAL CENTER  
1101 14th St. NW Suite 400  
Washington, DC 20005  
202.736.2200  
mgaber@campaignlegal.org  
bferguson@campaignlegal.org  
hjohnson@campaignlegal.org  
bphillips@campaignlegal.org

Annabelle E. Harless\*  
CAMPAIGN LEGAL CENTER  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
202.736.2200  
aharless@campaignlegal.org

Ruth M. Greenwood\*  
Nicholas O. Stephanopoulos\*  
ELECTION LAW CLINIC AT  
HARVARD LAW SCHOOL  
4105 Wasserstein Hall  
6 Everett Street  
Cambridge, MA 02138  
617.998.1010  
rgreenwood@law.harvard.edu  
nstephanopoulos@law.harvard.edu

Elisabeth S. Theodore\*  
John A. Freedman\*  
ARNOLD & PORTER KAYE  
SCHOLER LLP  
601 Massachusetts Ave. NW  
Washington, DC 20001  
202.942.5000  
elisabeth.theodore@arnoldporter.com  
john.freedman@arnoldporter.com

\*Admitted *pro hac vice*

*Attorneys for Petitioners*

### **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.

By Electronically signed by Daniel S. Lenz  
Daniel S. Lenz, SBN 1082058  
LAW FORWARD, INC.  
222 W. Washington Ave., Suite 250  
Madison, WI 53703  
608.556.9120  
dlenz@lawforward.org