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DISTRICT II

November 18, 2026

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You are hereby notified that the Court has entered the following opinion and order:

2025AP55 Ardis Cerny v. Wisconsin Elections Commission
(L.C. #2024CV1353)

Before Gundrum, Grogan, and LoCoco, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Forward Latino and Voces de la Frontera, referred to collectively as "the nonprofits," appeal from a circuit court order denying their motion to intervene in a suit brought by Ardis Cerny. Cerny sought a writ of mandamus and declaratory relief ordering the Wisconsin Elections Commission (WEC) and the Wisconsin Department of Transportation (DOT) to take

actions verifying the citizenship of applicants registering to vote.[1] Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[2] We further conclude that the circuit court correctly denied the nonprofits' motion to intervene as of right, and did not erroneously exercise its discretion in denying the nonprofits' permissive intervention motion. Accordingly, we summarily affirm.

This appeal concerns only the denial of the nonprofits' intervention motion, meaning the merits of the underlying action are not before this court. We rely on the following facts in evaluating the issues here, which the circuit court set forth in its intervention decision:

> This case concerns a petition by Ardis Cerny for a writ of mandamus and declaratory relief. Cerny seeks a writ of mandamus ordering WEC and the DOT to take actions verifying the citizenship of applicants registering to vote. He alleges WEC and the DOT have certain positive and plain duties under Wisconsin law. First, he argues they have a duty to match citizenship information contained in the DOT's records with WEC's registration records under WIS. STAT. § 85.61(1). Second, he argues that if citizenship information in the DOT's records do not match that of a registrant in WEC's records, WEC has a duty to remove the registrant. He additionally argues that WEC is failing to investigate unlawful voter registrations, failing to bring suit for such unlawful registrations, failing to promulgate rules ensuring lawful registrations, and failing to issue procedures to municipal clerks to ensure lawful registrations.
>
> Voces de la Frontera and Forward Latino ("Proposed Intervenors") have moved to intervene in this action. Forward Latino is a 501(c)(3) organization that conducts a "get-out-the-vote" effort for Latino citizens in Wisconsin. Voces de la Frontera is a nonprofit organization that advocates for the rights of Latinos and assists eligible Wisconsin residents to apply for U.S.

[1] When appropriate, we refer collectively to the WEC and the DOT as "the government entities."

[2] All references to the Wisconsin Statutes are to the 2023-24 version.

> citizenship. Proposed Intervenors allege that if Cerny prevails in this case, their constituents will face new barriers to vote and they will need to divert their resources from other programs to assist their constituents to overcome those barriers.

Applying the governing legal principles to these facts, the circuit court denied the nonprofits' intervention motions. The court explained that the nonprofits did not have a right to intervene because they failed to establish that the government entities involved would inadequately represent their interest. It further denied the nonprofits' motion for permissive intervention, finding "intervention is not warranted, because there is a risk of undue delay, Proposed Intervenors' arguments are nearly identical to [the] WEC's, and Respondent's counsel will provide competent representation." The nonprofits' appeal, arguing both that the court erred in denying intervention as of right and erroneously exercised its discretion in denying permissive intervention.

We review de novo a circuit court order addressing a motion to intervene as of right under WIS. STAT. § 803.09(1), though we benefit from the circuit court's analysis. ***Helgeland v. Wisconsin Muns.***, 2008 WI 9, ¶41, 307 Wis. 2d 1, 745 N.W.2d 1. Section 803.09(1) provides:

> Upon timely motion anyone shall be permitted to intervene in an action when the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest, unless the movant's interest is adequately represented by existing parties.

Our supreme court has explained that this requires that the movant show that four criteria are met: (1) the movant made a timely application; (2) the movant has an interest relating to the subject of the action; (3) disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest; and (4) the movant's interest is not adequately represented by existing parties. ***Helgeland***, 307 Wis. 2d 1, ¶¶38-39.

While a "movant must meet" each of the four criteria, the criteria "need not be analyzed in isolation from one another, and a movant's strong showing with respect to one requirement may contribute to the movant's ability to meet" others. ***Id.***, ¶39 (footnotes omitted). Instead, we must "blend[] and balance[]" the fourth criterion with the first three. ***Id.***, ¶86. When the moving party's "interests are substantially similar to interests already represented by an existing party, such similarity will weigh against" the movant. ***Id.***

First, we assume without deciding that the nonprofits have made a sufficient showing that the first three criteria are met, though the government entities take issue with the nonprofits' ability to establish any of the four criteria for intervention as of right except for timeliness. However, the parties most vigorous dispute concerns whether the fourth criterion—adequate representation of the movants' interest—has been met. Our decision as to intervention as of right rests on this issue.

The ***Helgeland*** court explained that to determine "whether an existing party adequately represents a movant's interest," courts look to whether "there is a showing of collusion between the representative and the opposing party; if the representative fails in the fulfillment of his duty; or if the representative's interest is adverse to that of the proposed intervenor." ***Id.***, ¶87. As did the circuit court here, we conclude that the nonprofits have failed to show any collusion between Cerny, on the one hand, and either the government entities or the Wisconsin Department of Justice (DOJ), on the other hand; that the WEC, the DOT, or the DOJ could not or would not fulfill their shared duties to advocate for what those entities view as the correct application of the statutes to the legal issue presented by Cerny's lawsuit; or that the nonprofits' asserted interest is adverse to that of the government entities.

But our inquiry is not over. "We must also consider whether either of the following two rebuttable presumptions applies." ***Braun v. Vote.org***, 2024 WI App 42, ¶26, 413 Wis. 2d 88, 11 N.W.3d 106, *review denied*, 2025 WI 1, 15 N.W.3d 767. As we explained in ***Braun***:

> First, courts typically presume adequate representation when a movant and an existing party have the same ultimate objective in the action. Second, when the putative representative is a governmental body or officer charged by law with representing the interests of the absentee, a presumption of adequate representation arises whether the would-be intervenor is a citizen or subdivision of the governmental entity. If either presumption applies, a more compelling showing of inadequate representation may be required.

Id. (internal quotation marks and citations omitted).

The nonprofits argue that the circuit court erred in applying the presumption of adequacy and argue that they have sufficiently rebutted it. We disagree. As we now explain, for the same reasons that we concluded in ***Braun*** that the movant failed to successfully rebut these strong presumptions of adequate interest, we conclude that the nonprofits here similarly fail.[3]

In ***Braun***, Vote.org sought to intervene in a suit Braun brought against the WEC "related to the WEC's approval of the National Mail Voter Registration Form (the Form) as an accepted method of voter registration in Wisconsin." ***Id.***, ¶1. We upheld the circuit court's denial of Vote.org's motions for intervention. ***Id.***, ¶¶1, 13. We concluded that "[b]oth Vote.org and the WEC seek to maintain the WEC's position that the Form complies with Wisconsin's voter

[3] As to the nonprofits' repeated urging that this court "overrule or narrow" our holding in ***Braun v. Vote.org***, 2024 WI App 42, ¶26, 413 Wis. 2d 88, 11 N.W.3d 106, *review denied*, 2025 WI 1, 15 N.W.3d 767, we first note that only our supreme court can overrule a published decision of this court. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997). We further note that our supreme court denied the petition for review in ***Braun***, and ***Braun*** is consistent with the supreme court's decision in ***Helgeland v. Wisconsin Municipalities***, 2008 WI 9, 307 Wis. 2d 1, 745 N.W.2d 1.

registration laws." ***Id.***, ¶34. We further concluded "that the WEC was 'charged by law with the duty of representing the rights of electors so that all may enjoy the benefits of the correct application of the laws governing elections.'" ***Id.*** (citation omitted).

Here, as in ***Braun***, both the WEC and the nonprofits seek to prevent the DOT from sharing citizenship information with the WEC. Similarly, they are united in their goal to prevent the WEC's subsequent use of that information to remove non-citizens from the Wisconsin voter list. Additionally, the WEC and the DOJ are charged with representing the rights of all electors, including the nonprofits. *See* ***id.*** Thus, the presumption applies. Accordingly, the circuit court did not err in denying the motion to intervene as of right.

The nonprofits also appeal from the denial of their motions for permissive intervention. We review a decision regarding a motion for permissive intervention under an erroneous exercise of discretion standard. ***Helgeland***, 307 Wis. 2d 1, ¶120. We will affirm a discretionary decision as long as the circuit court examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. ***Industrial Roofing Servs., Inc. v. Marquardt***, 2007 WI 19, ¶41, 299 Wis. 2d 81, 726 N.W.2d 898.

WISCONSIN STAT. § 803.09(2) requires circuit courts to consider three factors in making its discretionary determination. A person "may," in the discretion of the court, "be permitted to intervene in an action": (1) "[u]pon timely motion"; (2) when "movant's claim or defense and the main action have a question of law or fact in common"; and (3) after the court "[i]n exercising its discretion" considers "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." ***Id.***

The circuit court here made specific findings in determining that "[p]ermissive [i]ntervention in this case is not warranted." We conclude that the circuit court examined the relevant facts, applied a proper standard of law, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach in denying permissive intervention. *See* ***Marquardt***, 299 Wis. 2d 81, ¶41. For reasons explained above in addressing intervention as of right, we conclude that the circuit court could reasonably reach the conclusion that the nonprofits had little of value to add to the case. As the circuit court found, "[d]ue to the time sensitive-nature of this case, there is a risk of undue delay and prejudice to the parties. Respondents[']representation is more than adequate and [the nonprofits'] participation would be largely unnecessary."

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

LOCOCO, J. (*dissenting*). Before forcing a private citizen to rely on an agency for the defense of his own rights, a court should assure itself that the agency will pursue vindication of those rights with the citizen's single-mindedness. Thus in ***Trbovich*** a union member could intervene because the Secretary of Labor was of two minds, responsible for protecting not only that member's individual rights but also the broader public interest in free elections. A foreseeable conflict of interest rendered the state's representation inadequate. ***Trbovich v. United Mine Workers of Am.***, 404 U.S. 528, 538-39 (1972).

So too here. WEC's duties, broadly speaking, include not only the protection of voting rights but also the enforcement of laws designed to prevent fraudulent voting; the nonprofits' mandate includes only the former. Yet these interests will likely come into tension as the parties litigate necessary and appropriate measures for ensuring clean voter rolls without accidentally removing active voters. In particular, Cerny's slate of requested remedies—new administrative rules, procedures, investigations, and interagency arrangements—would seem to require the exercise of discretion as much as the application of law. That alone distinguishes this case from ***Braun v. Vote.org***, 2024 WI App 42, ¶¶3-4, 413 Wis. 2d 88, 11 N.W.3d 106, a comparatively simple declaratory judgment action involving the question of whether a single voter registration form complied with a pair of statutes. The narrow scope of the claims in ***Braun*** kept the defendants' interests aligned. Because this lawsuit sweeps much more broadly, the nonprofits should have the opportunity to make their own case.

Samuel A. Christensen
Clerk of Court of Appeals