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SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN

NO: 2024AP000330--OA

PLANNED PARENTHOOD OF WISCONSIN,
KATHY KING, M.D.,
ALLISON LINTON, M.D., M.P.H.,
MARIA L.,
JENNIFER S.,
LESLIE K., and
ANAIS L.,

Petitioners,

v.

JOEL URMANSKI,
ISMAEL R. OZANNE, and
JOHN T. CHISHOLM,

Respondents.

**RESPONDENT JOHN T. CHISHOLM'S BRIEF IN OPPOSITION TO PETITION TO
INTERVENE OF PROPOSED INTERVENOR-RESPONDENT JEROME E. LISTECKI,
AS ROMAN CATHOLIC ARCHBISHOP OF MILWAUKEE, ON BEHALF OF
HIMSELF AND THE UNBORN OF THE ARCHDIOCESE OF MILWAUKEE**

NOW COMES Respondent, John T. Chisholm, by and through his attorney, Leib Knott Gaynor LLC by Samuel J. Leib and Aaron D. Birnbaum, and herein submit their opposition to Proposed Intervenor-Respondent, Jerome E. ListECKI, as Roman Catholic Archbishop of Milwaukee, on behalf of himself and the unborn of the Archdiocese of Milwaukee.

ARGUMENT

Proposed Intervenor moves to intervene pursuant to Wis. Stat. § 803.09(1)¹ which requires a movant to meet four elements: (1) the motion must be made in a timely fashion; (2) the movant claim an interest sufficiently related to the property or transaction which is the subject of the action; (3) the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest; (4) the movant's interest is not adequately represented by existing parties. *See State ex rel. Bilder v. Delavan Tp.*, 112 Wis. 2d 539, 545, 334 N.W.2d 252 (1983). Despite Proposed Intervenor's assertions, he fails to meet any of the statutory requirements to intervene as a matter of right.

I. Proposed Intervenor Has No Interest Related to this Action

Archbishop ListECKI has no legal basis to intervene by right to protect any distinct lawful interest, nor any interest not already adequately protected by the current defendants. The interest Proposed Intervenor must show as having relation to this action must be "of such direct and immediate character that the intervenor will either gain or lose by the direct operation of the judgment." *Lodge 78, Int'l Ass'n of Machinists v. Nickel*,

¹ Wis. Stat. 803.09(1) states:

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.

20 Wis. 2d 42, 46, 121 N.W.2d 297 (1963) Indirect interests are not enough to satisfy Proposed Intervenor's burden in showing that his interest is direct, substantial and legally protectable. "One whose interest is indirect cannot intervene as a matter of right." *Id.*

Proposed Intervenor's interest is a "religious" in nature and is not likely one recognized in the law as "indirect" but in its most favorable light could not be characterized as more than "indirect". Archbishop ListECKI claims he has several interests, yet none constitute a sufficient legal interest that would support intervention. Archbishop ListECKI claims he has interests in vindicating the Fourteenth Amendment rights of the unborn of the Archdiocese to life and to equal protection of the law; preventing violation of his state and federal constitutional rights to the free exercise of religion; preventing violation of his right to practice his chosen profession. Petition to Intervene - Jerome E. ListECKI at 14, 21, 23.

Without support, Proposed Intervenor claims that "[e]ach unborn life is a human 'person,'..." *Id* at 14. Respectfully, the religious view espoused by the Archdiocese does not automatically create a legally cognizable "personhood" which affords it Fourteenth Amendment protection. Proposed Intervenor provides no legal, scientific or medical basis to support a claim that a fertilized egg possesses a legally protected interest under the Fourteenth Amendment. Further, even if this Court addresses the question of Fourteenth Amendment protection for fetuses, i.e. that would be fetus of all religions, faiths, or those of no faith within the Archdiocese, Proposed Intervenor has failed to show why he is in the unique position to advocate on behalf of this "class". Proposed Intervenor has not presented evidence of medical training, experience or training specific to obstetrics or

neonatology; or activity dedicated to the healthcare for all women of all faiths (or no religious affiliation) within the Archdiocese.

Proposed Intervenor's claim that he has an interest in preventing violation of his state and federal constitutional rights to the free exercise of religion lacks any legal substance. The statutes in question do not force Proposed Intervenor to take any action, refrain from any action, nor do they prevent him from continuing in his mission in teaching his dogma to members of his parish. In arguing whether he would be substantially burdened, Proposed Intervenor is suggesting that his First Amendment Free Exercise right would outweigh a woman's right to be free from being forced to carry to term an unviable fetus that could potentially threaten her life. Proposed Intervenor's claim of being substantially burdened is not personal to him or to members of his parish.

Further, Proposed Intervenor's claim that he has an interest in preventing violation of his right to practice his chosen profession lacks any legal merit. As admitted by Proposed Intervenor, his primary role is for the care of the Archdiocese and for spiritual leadership as laid out in the Code of Canon Law and the catechism of the Catholic Church. *Listecki Aff.* ¶ 14-17. Proposed Intervenor has no direct interest in this original action before this Court. Proposed Intervenor does not enforce any statute, nor provide any healthcare to any Wisconsin citizens. Proposed Intervenor is the Archbishop of the Catholic Diocese of Milwaukee who asserts that its mission is "[t]o proclaim the Gospel of Jesus Christ through His saving death and resurrection..." *Id* at 3. Nothing in the practice of his personal religious beliefs or his duties as Archbishop is so sufficiently and directly related to the subject of this action—providing necessary healthcare to women in

Wisconsin without the fear of criminal prosecution. Therefore, Proposed Intervenor has failed to show any direct legally cognizable interest showing a gain or loss by direct operation of any judgment and his motion should be denied.

II. The Disposition of this Action Would Not Impair or Impede Proposed Intervenor's Interest

Contrary to Proposed Intervenor's claim, their interests would not be impaired or impeded by the disposition of this action. His remote, indirect interest in teaching the Gospel of Jesus Christ would not be affected by this Court's ruling. To the contrary, civil law would not change the mission. He would still retain his right to both exercise his religion and practice his profession, including his First Amendment rights, and nothing in the Court's ruling would prevent Proposed Intervenor from continuing to exercise both. Proposed Intervenor cannot show more than, at most, an indirect interest in the outcome of this action and therefore, his motion to intervene should be denied.

III. Proposed Intervenor's Interest is Already Adequately Represented by Existing Parties

In order to "intervene in a suit in which a state is already a party, [one] must overcome this presumption of adequate representation through more than a minimal showing that the representation might be inadequate." *Hegeland v. Wis. Municipalities*, 2008 WI 9, ¶ 21, 307 Wis. 2d 1, 745 N.W.2d 1, citing *Environmental Defense Fund, Inc. v. Higginson*, 631 F.2d 738, 749 (D.C. Cir. 1979). Further, "[i]t is not enough to show that the movant could bring additional, cumulative arguments to the table; there must be actual

divergence between the state's position on the primary issue and the potential intervenor's position." *Id.*

Proposed Intervenor admits that he and DA Urmanski share the same objective of obtaining a declaration that the Wisconsin Constitution does not protect a right to abortion. Petition to Intervene – Jerome E. ListECKI at 25. At this stage, it is unclear what DA Urmanski's position will be so Proposed Intervenor's justification for intervention is premature. Proposed Intervenors have failed to show any actual divergence between DA Urmanski's position and his own. Further, Respondent Urmanski will likely take the same position as Proposed Intervenors, making their interest already adequately represented. Any further argument would be redundant and superfluous. "Such cumulative arguments may always be brought forward through amicus curiae briefs..." *Id.* Thus, Proposed Intervenor has failed to show how his interest is not already represented by existing parties and his motion is better suited as an amicus curiae brief.

IV. The Court has an Interest in Striking a Balance Between Efficiency and Due Process

As stated in the previous opposition to intervention, Wisconsin Courts have evaluated motions to intervene in a practical rather than technical manner "with toward 'disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.'" *Wolff v. Town of Jamestown*, 229 Wis. 2d 738, 742-743, 601 N.W.2d 301 (Ct. App. 1999) The *Wolf* Court saw the purpose of this approach is to strike a balance between two conflicting objectives underlying Wis. Stat. 803.09(1): "the protection of an efficient judiciary through the resolution of related issues in a single

lawsuit, and the protection of an original party's ability to conduct its own lawsuit without undue complications." *Hegeland*, at ¶ 6, *citing Wolff*, at 743. Ultimately, courts "allow intervention as a matter of right only where the intervenor is 'necessary to the adjudication of the action.'" *Id.*, *citing City of Madison v. WERC*, 2000 WI 39, ¶11 n.11, 234 Wis 2d 550, 610 N.W.2d 94 (*citing White House Milk Co. v. Thomson*, 275 Wis. 243, 247, 81 N.W.2d 725 (1957)).

Allowing Proposed Intervenor to join would not only permit Proposed Intervenor to file responsive briefs, but also respond to any and all motions as the properly joined parties. Thus, intervention of Proposed Intervenor is not necessary for this action and his involvement should not be allowed to complicate or overburden this process.

CONCLUSION

For the foregoing reasons and for the same reasons Wisconsin Right to Life, Wisconsin Family Action and Pro-Life Wisconsin were denied intervention, Respondent Chisholm requests that Proposed Intervenor's Motion to Intervene be denied.

Dated this 5th day of August, 2024.

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Electronically signed by Samuel J. Leib
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