FILED
08-05-2024
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
SUPREME COURT

Case No. 2024AP330-OA

PLANNED PARENTHOOD OF WISCONSIN, on behalf of itself, its employees, and its patients; KATHY KING, M.D. and ALLISON LINTON, M.D., M.P.H., on behalf of themselves and their patients; and MARIA L., JENNIFER S., LESLIE K., and ANAIS L.,

Petitioners,

v.

JOEL URMANSKI, in his official capacity as District Attorney for Sheboygan County, Wisconsin; ISMAEL R. OZANNE, in his official capacity as District Attorney for Dane County, Wisconsin; JOHN T. CHISHOLM, in his official capacity as District Attorney for Milwaukee County, Wisconsin,

Respondents.

PETITIONERS' RESPONSE IN OPPOSITION TO PROPOSED INTERVENOR-RESPONDENT JEROME E. LISTECKI'S PETITION TO INTERVENE

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INTRODUCTION

Petitioners oppose the motion to intervene filed by Archbishop Jerome E. Listecki ("Listecki") in this matter.

This matter seeks to determine whether Wisconsin's arcane abortion ban, Wis. Stat. § 940.04, if interpreted to prevent a woman from obtaining an abortion in all circumstances except to save the life of the pregnant person, violates the fundamental rights declared in Article I, Section 1 of the Wisconsin Constitution of persons who may become pregnant and of the physicians who provide care to them.

In his motion, Listecki alleges that this lawsuit threatens his own constitutional rights as well as those of all of the unborn in the Archdiocese of Milwaukee, on whose behalf he seeks to defend the ban. His arguments raise sweeping, novel claims that would require this Court to blaze new trails in federal constitutional law and third-party standing. He has not met the criteria for intervention, and the Court should deny his petition.

ARGUMENT

Listecki does not meet the criteria for intervention as of right under Section 803.09(1), nor should he permitted to intervene under Section 803.09(2). His petition to intervene can and should be denied solely because he lacks an interest sufficient to justify intervention in this action. In addition, the disposition of this action will not affect Listecki's ability to protect his alleged interests, and any asserted interested he may have are adequately represented by Respondent District Attorney Joel Urmanski.

I. Listecki does not meet the criteria for intervention as of right.

The Court may grant a petition to intervene upon a showing that the petitioner's interest meets the requirements of Sections 803.09(1), (2), or

(2m). Section 803.09(1) sets forth the requirements for intervention as of right:

> 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.

Wis. Stat. § 803.09(1). The statute imposes four requirements: (1) that the petition to intervene is timely; (2) that the petitioner claims an interest sufficiently related to the subject of the action; (3) that disposition of the action may as a practical matter impair or impede the petitioner's ability to protect that interest; and (4) that the existing parties do not adequately represent the petitioner's interest. *Helgeland v. Wisconsin Municipalities,* 2008 WI 9, ¶38, 307 Wis. 2d 1, 745 N.W.2d 1. Listecki's petition does not meet the latter three requirements.

A. Listecki's claims on his own behalf do not meet the criteria for intervention.

Listecki claims two interests of his own: an interest in his right to freely exercise his religion, and an interest in his right to practice his chosen profession. (Listecki Pet. at 21–24.) This suit implicates neither interest, so they cannot serve as the basis for his intervention.

1. Listecki's rights to free exercise and to practice his profession are not interests sufficiently related to this case.

The legal landscape around abortion in Wisconsin has no impact on Listecki's right to exercise his religion, and nor will this case. Since before Wisconsin was a state, abortions have been legally available in Wisconsin under some circumstances. And, for more than half a century, courts

recognized a woman's constitutional right to obtain an abortion—including without any restriction before the fetus was "viable." *See e.g., Babbitz v. McCann*, 310 F. Supp. 293, 302 (E.D. Wis. 1970); *Roe v. Wade*¸ 410 U.S. 113, 164–66, (1973); *Doe v. Bolton*, 410 U.S. 179 (1973) (*Babbitz, Roe, and Doe abrogated by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022)). It appears that Listecki has been practicing his profession and freely exercising his religious rights during these past several decades while abortion has been legally available in Wisconsin. He does not allege that his rights were impaired during that time. (*See generally,* Listecki Affidavit.)

Listecki cites no authority for the breathtaking assertion that a decision that could, hypothetically, result in the birth of fewer people in the Archdiocese violates his free exercise rights to act as a spiritual leader. (Listecki Pet. at 21–22.) Under this logic, any law or ruling that could affect the population growth or decline of the ten Wisconsin counties of the Archdiocese—whether by improving or worsening healthcare; investing or divesting in school funding; creating jobs that would bring people to the state; welcoming or discouraging immigrants or refugees; or any other of the endless policy decisions made by government that affect people's decisions on where, when, and how to grow their families—would violate Listecki's right to free exercise. For that matter, efforts by other faith leaders to attract and retain followers might also impair Listecki's "right" to free exercise. That cannot be correct. Listecki indisputably has a right to practice his faith and profession without state interference, but the state is not required to govern in a way that maximizes the size of his potential congregation.

The case Listecki cites for the proposition that harms to religion are of constitutional significance is helpful in highlighting what type of restriction on religion *can* amount to a harm, and how far short of that bar Listecki's argument falls here. In *James v. Heinrich*, several religious schools challenged the decision of the Public Health Department of Madison and Dane County to close all schools in the county as a measure against the Covid-19 pandemic. 2021 WI 58, ¶1, 397 Wis.2d 517, 960 N.W.2d 350. The Court found that the order "burdened the exercise of religious practices," because it prevented students from attending religious services and participating in religious activities with their peers. *Id.* ¶43 (emphasis in original). This material impact on the conduct of religious schools' activities is a far cry from the diffuse, speculative harms Listecki alleges here. Listecki identifies no concrete way in which his ministry or leadership of an Archdiocese will be affected by this lawsuit: he will not be prevented from holding religious services, working with clergy, administering programs, or performing any other religious function. The hypothetical loss of theoretical future parishioners does not infringe on Listecki's free exercise rights.

And unlike Petitioners, Listecki has not adequately alleged that the outcome of this litigation will affect his ability to practice his chosen profession. If abortion is banned (or significantly restricted) in Wisconsin, doctors would be prohibited from performing this safe and common medical procedure on patients who have selected those doctors to provide their healthcare. Listecki faces no such limits on his ability to perform his work for the Catholic Church. He is and will remain free to conduct his ministry as he sees fit, and preach to anyone who chooses him as a religious leader.

Taking Listecki's argument to its logical conclusion would require this Court to grant intervention to every religious leader or individual with a strongly held belief about their obligations to care for others in this or any case. (*See* Order, July 2, 2024, at 3.) That is not how standing works—and it is neither supported by precedent nor a tenable outcome.

2. Listecki's interests will not be impaired or impeded by the result of this lawsuit.

The disposition of this matter will not impair or impede Listecki's ability to protect his asserted interests. *See Helgeland*, ¶38. To the extent that he is concerned about the many laws governing abortion in Wisconsin, and any impact of this litigation, Listecki may and will continue to preach his religious views and govern his church as he sees fit. Moreover, concerns about how the decision could impact him in future cannot serve, without more, as the basis for his intervention. *Helgeland,* 2008 WI 9, ¶84 ("If *stare decisis* were enough of a justification for the municipalities' intervention in the present case without an unusually strong showing with respect to other requirements for intervention as of right, then constitutional litigation would… become unwieldy with parties intervening as a matter of right.").

Notably, the U.S. Supreme Court has recently unanimously held that a group of pro-life associations and doctors did not have standing to sue the Food and Drug Administration over the availability of mifepristone, a drug used in abortions. *Food & Drug Admin. v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024). The Court wrote: "Under Article III of the Constitution, a plaintiff's desire to make a drug less available *for others* does not establish standing to sue." *Id.* at 374 (emphasis in original).

Similarly, Listecki's desire to make a medical procedure less available for others does not entitle him to intervene in this action.

The proposed intervenors before the U.S. Supreme Court attempted to base their claim to intervention on "conscience injuries" because the doctors claimed they could be forced to provide emergency treatment to women suffering adverse consequences of mifepristone. *Id.* at 386. The Court rejected this argument because the doctors already had a right under federal conscience laws to refuse to "perform abortions or to provide other treatment that violates their consciences." *Id.* at 387–88. Listecki has no greater conscience injury than the Texas physicians; he has no obligation to condone or facilitate abortion in any way. And, the First Amendment protects his right to religious freedom, which manifestly includes opposing abortion. The Court's opinion in *FDA v. Alliance* strongly supports a finding that Listecki's interests would not be impaired by this lawsuit.

3. DA Urmanski adequately represents Listecki's interests.

Although Listecki does not have interests sufficient to justify his intervention in this action, any interests he may arguably have are adequately represented by Urmanski. "[A]dequate representation is ordinarily presumed when a movant and an existing party have the same ultimate objective in the action." *Helgeland*, 2008 WI 9, ¶90. As indicated by DA Urmanski's Response in Opposition to Petition for an Original Action, DA Urmanski plans to vigorously defend the constitutionality of section 940.04 and argue against the recognition of a constitutional right to abortion. (*See, e.g.,* Urmanski Resp. at 18-24.) This puts DA Urmanski in alignment with Listecki's position.

When a proposed intervenor's interests are identical or even similar to the interests of a party, intervention is generally not warranted:

> If a movant's interest is identical to that of one of the parties… a compelling showing should be required to demonstrate that the representation is not adequate. When the potential intervenor's interests are substantially similar to interests already represented by an existing party, such similarity will weigh against the potential intervenor. In determining whether an existing party adequately represents a movant's interest, we look to see if 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.

Helgeland, ¶¶86-87. In the context of this final factor for intervention of as of right, the relevant "interest" referenced is the party's and proposed intervenor's "ultimate objective," not whatever tangential legal interest the proposed intervenor claims as the basis for their intervention. *Id.* ¶¶85–91. Here, Listecki cannot meet the necessary standard.

Listecki has not properly alleged or demonstrated an inadequate alignment of his and DA Urmanski's interests. Again, they seek the same goal: an upholding of the abortion ban. Listecki does not allege any collusion between the Petitioners and DA Urmanski, nor that DA Urmanski has failed or will fail in fulfilling his duty in this matter. He notes that DA Urmanski has stated, in responding to the Petition for Original Action, that our state Constitution "does not take sides on the issue of abortion." (Listecki Pet. at 25, citing Urmanski Resp. at 6.) Listecki claims this establishes that their interests diverge, because in contrast to DA Urmanski, Listecki intends to make constitutional claims. (Listecki Pet. at 25.)

But DA Urmanski's response in opposition to the original action *does* preview his position that the Wisconsin Constitution does not protect abortion rights. DA Urmanski argues that Article I, Section I of the Wisconsin Constitution must be interpreted in lockstep with the Fourteenth Amendment to the U.S. Constitution, and after *Dobbs*, thus does not protect the right to abortion. (Urmanski Resp. at 18–19, 22–23.) He also makes originalist and historical arguments against finding the right. (*Id*. at 20–21.) District Attorney Urmanski will have an opportunity to expand on these arguments through further briefing and oral argument. There is no indication that DA Urmanski has failed or will fail to represent Listecki's interest in preventing the recognition of a right to abortion, much less that their interests are adverse. *See Helgeland*, ¶¶86-87.

Listecki thus not only does not allege that his interests are adverse to DA Urmanski's, but he overlooks the fact that DA Urmanski is already making the very arguments he himself would make. At best he may disagree with DA Urmanski over how exactly to make these arguments, but "mere disagreements over trial strategy… are not sufficient to demonstrate inadequacy of representation." *Helgeland*, ¶112.

B. Listecki's claims on behalf of "the unborn" do not meet the criteria for intervention.

Listecki also claims an interest on behalf of the unborn, on a theory of their personhood under the Fourteenth Amendment. (Listecki Pet. at 14–21.) The Court should reject this bold attempt to shoehorn multiple novel constitutional claims into this lawsuit about a woman's right to make her own decisions about her healthcare and whether or when to have children.

Personhood under the Fourteenth Amendment does not begin before birth, contrary to Listecki's assertions. The unborn are not persons who can bring legal claims. And, Listecki cannot legally represent the class of unborn on whose behalf he purports to speak. Nor can he show the interests of the unborn would be impaired or impeded, or that DA Urmanski's defense of the statute is somehow inadequate.

1. **"The unborn" are not persons under the Fourteenth Amendment to the U.S. Constitution and so cannot assert any claims.**

No Court has ever held that embryos, zygotes, or fetuses (collectively, "the unborn") are persons entitled to the protections of the Fourteenth Amendment. The Court in *Roe v. Wade* explicitly found that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn."410 U.S. 113, 157–58, 93 S. Ct. 705, 729, 35 L. Ed. 2d 147 (1973), *overruled on different grounds by Dobbs*, 597 U.S. 215. This portion of *Roe* has not been overturned because the *Dobbs* majority disclaimed "any view about if and when prenatal life is entitled to any of the rights enjoyed after birth." *Dobbs,* 597 U.S. at 263. Soon after deciding *Dobbs*, the Court declined to hear a suit based on a fetal personhood theory. See *Benson v. McKee*, 273 A.3d 121, 131 (R.I. 2022), cert. denied sub nom. *Doe ex rel. Doe*, 143 S. Ct. 309 (2022). Indeed, if the Fourteenth Amendment recognized fetuses as people, the robust "fetal personhood" movement, which includes efforts to amend state and federal constitutions and statutes, would have no purpose.[1]

Theories of fetal personhood ignore the text, context, and history of the Fourteenth Amendment. Nowhere does the United States Constitution

[1] *See Legal Fetal Personhood Timeline*, Legal Voice (https://legalvoice.org/legal-fetal-personhood-timeline/).

define "person" at all, much less in a way that includes zygotes, embryos, or fetuses. There is no textualist basis for this argument.[2] Nor is there a viable historical or originalist argument for fetal personhood. The Thirteenth, Fourteenth, and Fifteenth Amendments, also known as the Reconstruction Amendments, were ratified after the Civil War. Their purpose was to confer full citizenship on formerly enslaved persons who were now free. Leading Reconstruction historian Eric Foner explains:

> [T]he aims of the Fourteenth Amendment can only be understood within the political and ideological context of 1866: the break with the President, the need to find a measure upon which all Republicans could unite, and the growing consensus within the party around the need for strong federal action to protect the freedmen's rights, short of the suffrage.[3]

Suffrage was, of course, soon granted to Black men with the passage of the Fifteenth Amendment. The U.S. Supreme Court has at key points confirmed its understanding that the Fourteenth Amendment's original purpose was to protect the rights of the formerly enslaved.[4] The historical record does not support an argument that when the Fourteenth Amendment passed, it would have been understood to apply to the unborn.[5]

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[2] *See* Kenneth Wyatt II, *Fetal Personhood: The Door Left Open*, 53 U. Balt. L. Rev. 515, 529–30 (2024).

[3] Eric Foner, *Reconstruction: America's Unfinished Revolution 1863–1877* (1988).

[4] *See, e.g.,* "But, [the 13th] amendment having been found inadequate to the protection of the rights of those who had been in slavery, it was followed by the fourteenth amendment, which added greatly to the dignity and glory of American citizenship, and to the security of personal liberty…."*Plessy v. Ferguson*, 163 U.S. 537, 555 (1896) (Harlan, J. dissenting), *overruled by Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954); *Brown*, 347 U.S. at 490; *United States v. Price*, 383 U.S. 787, 801 (1966)

[5] *See, e.g.,* Reva B. Siegel*, Memory Games: Dobbs' Originalism As Anti-Democratic Living Constitutionalism-and Some Pathways for Resistance*, 101 Tex. L. Rev. 1127, 1170–75 (2023) ("*Dobbs* does not employ the methods of academic originalists; it shows no interest in

Listecki's argument that the Court cannot deny his petition by concluding that the merits of his "fetal personhood" fail misconstrues precedent. "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Listecki cites two cases that he says preclude this court from denying his intervention.

In *ASARCO Inc. v. Kadish*, the plaintiff-respondent raised federal claims in Arizona state court, which heard them even though the plaintiff-respondent did not meet federal standing requirements. 490 U.S. 605, 612–14 109 S. Ct. 2037 (1989). Defendant-petitioners sought review at the U.S. Supreme Court, which agreed to hear the case, explaining that the defendant-petitioners now had Article III standing because the judgment below was adverse to them: "The state proceedings ended in a declaratory judgment adverse to petitioners, an adjudication of legal rights which constitutes the kind of injury cognizable in this Court on review from the state courts." *Id.* at 618. Even if the plaintiff-respondents ultimately won, that would be acceptable to the Court: just because they lacked federal standing below, did not mean their claims lacked merit. *Id.* at 617–624.

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the original public meaning of the Fourteenth Amendment. But *Dobbs* is the expression of originalism that has developed in the conservative legal movement and the Republican Party over the last forty years."); Aaron Tang, *After Dobbs: History, Tradition, and the Uncertain Future of A Nationwide Abortion Ban,* 75 Stan. L. Rev. 1091, 1126–56 (2023) (exposing flaws in the *Dobbs* majority's version of history and explaining: "The fetal personhood claim was already difficult to sustain on the majority's version of history because the presence of nine states that allowed abortions throughout early pregnancy suggests that the Fourteenth Amendment did not remove that choice from democratically elected state legislatures. But if a *majority* of states actually allowed early-term abortions, then fetal personhood is untenable: To accept it would mean that a majority of the states were blithely violating the very Amendment they had just ratified").

Similarly, in *Booker-El v. Superintendent, Indiana State Prison*, the court noted that a prison inmate had adequately alleged that he might have property rights that had been violated, which is a "colorable claim" that conferred standing. 668 F.3d 896, 900 (7th Cir. 2012). These cases do *not* stand for the proposition that a party has standing—let alone third-party standing—to bring an unrecognizable claim based on a novel idea that such a claim exists.

The purpose of the intervention statute is "to strike a balance between allowing the original parties to a lawsuit to conduct and conclude their own lawsuit and allowing persons to join a lawsuit in the interest of the speedy and economical resolution of controversies without rendering the lawsuit fruitlessly complex or unending." *Helgeland*, 2008 WI 9, ¶44. Adding Listecki's fetal personhood claim, not to mention his novel third-party-standing claim (see next section), into this case would inject needless complexity and delay—something the intervention statute seeks to foreclose.

2. Listecki does not have standing to speak on behalf of the unborn.

Listecki cannot legally speak for all the unborn in the Archdiocese, even if the unborn did have legally cognizable claims, which they do not (see I.B.1, *supra*). Throughout his petition, Listecki is unable to cite a single case in which a representative of any other organized religion was permitted to intervene in litigation based on the individual's sincerely held belief that he is responsible for ministering to unborn souls—the belief that he asserts supports his contention that he can represent the interests of the unborn. Nor have Petitioners been able to find such a case. Allowing Listecki's belief to become the basis of intervention in a lawsuit would be

unprecedented and could have far-reaching consequences. The Court should decline to take such a radical step.

Under Wisconsin law, "a party has standing to raise constitutional issues only when his or her own rights are affected. He or she may not vindicate the constitutional rights of a third party." *Mast v. Olsen*, 89 Wis. 2d 12, 16, 278 N.W.2d 205, 206–07 (1979). Listecki is thus fully barred from raising state constitutional claims on behalf of anyone else, including the unborn. He also does not fall into the exception to the similar federal doctrine, which allows litigants to raise constitutional claims on behalf of third parties under two conditions: if "the party asserting the right has a 'close' relationship with the person who possesses the right," and if "there is a 'hindrance' to the possessor's ability to protect his own interests." *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (citation omitted). Listecki cannot possibly establish a close relationship with every present and potential future fetus in the Archdiocese.

It is worth noting here the staggering number and range of "unborn souls" Listecki proposes to represent in this litigation. He states that he believes life begins "at the moment of conception" (Listecki Pet. at 5), which means that to him, personhood begins once a sperm fertilizes an egg. He seeks to represent zygotes and embryos not just before viability, but well before their parents know they exist. And he claims a "close relationship" to *all* the unborn within the ten counties of the Archdiocese of Milwaukee, which covers most of southeastern Wisconsin. His claim is not limited to all the unborn children of churchgoing Catholics, or of people who identify as Catholic; instead he claims he can represent the zygotes, embryos, and fetuses—present and future—of all the people living in Dodge, Fond du Lac, Kenosha, Milwaukee, Ozaukee, Racine,

Sheboygan, Walworth, Washington, and Waukesha counties, regardless of the religious beliefs held by the parents of the unborn. This is a tremendous claim to a "close relationship." Although Listecki may sincerely feel close to all the souls in his Archdiocese, the law simply cannot recognize "close relationships" on such a large scale.[6]

Listecki certainly has not alleged, and cannot allege, a contractual or economic relationship with each and every unborn child in the Archdiocese, the theory underlying most of the third-party standing cases he cites in his brief. *See U.S. Dep't. of Lab. v. Triplett,* 494 U.S. 715, 720 (1990); *Carey v. Population Services*, 431 U.S. 678, 683–84 (2010); *Craig v. Boren*, 429 U.S. 190, 195 (1976); *Racine Steel Castings, Div. of Evans Prod. Co. v. Hardy*, 144 Wis. 2d 553, 563–64 (1988). In the case Listecki cites involving a Wiccan prison chaplain, the court "assume[d] without deciding that the relationship between a prison chaplain and an inmate to whom he ministers has the requisite degree of closeness to allow for third party standing." *McCollum v. California Dep't of Corr. & Rehab.*, 647 F.3d 870, 879 (9th Cir. 2011). But that was a relationship between a small number of individuals occupying the same space and time, not a diffuse claim to represent the interests of all potential practitioners of Wiccan faith, which would be the equivalent of Listecki's claim. His argument finds no support there, either.

[6] Petitioners Planned Parenthood of Wisconsin and Drs. King and Linton assert claims on behalf of a much smaller class of third parties: their patients, whose relationship is threatened by the abortion ban which some law enforcement officials believe forbids the physicians from providing specific forms of health care to their patients. This concrete injury to existing, specific relationships is different in kind from the diffuse, hypothetical relationship Listecki claims, and it has already been recognized as a source of third-party standing. *See Planned Parenthood of Wisconsin, Inc. v. Van Hollen*, 738 F.3d 786, 794 (7th Cir. 2013).

Listecki's beliefs do not supersede state laws governing intervention. Listecki has not established an interest in this case sufficient to merit intervention. And this is why the Court need not determine if constitutional rights begin before birth or evaluate the sincerity or correctness of Listecki's religious beliefs in order to deny Listecki's intervention. In responding to Listecki's petition, Petitioners do not seek "to minimize, reject, or ignore Listecki's sincerely-held religious beliefs." (Listecki Pet. at 22 n.4.) His beliefs simply do not justify intervention into this litigation.

3. **Listecki's asserted interests on behalf of the unborn will not be impaired or impeded by the outcome of this litigation.**

Listecki argues that this lawsuit will interfere with the right of the unborn to be born. (*See, e.g.,* Listecki Pet. at 5, 10–13.) But as discussed above, the unborn have no rights at all under the Fourteenth Amendment, including the right to be born. So, there is no right to impede or impair.

As this Court knows, when it comes to the four criteria for intervention as of right, "there is interplay between the requirements; the requirements must be blended and balanced to determine whether [a party has] the right to intervene." *Helgeland*, 2008 WI 9, ¶39. Here, the fact that the unborn cannot raise claims or assert interests in this suit renders impossible, or at least circular, any analysis of how their interests would be affected by this action. Hypothetical beings without an interest in an action cannot be affected by the action.

4. **DA Urmanski adequately represents Listecki's interests on behalf of the unborn.**

See section I.A.3, *supra*. Listecki's goal is to obtain a ruling that the Wisconsin Constitution does not protect the right to abortion. DA

Urmanski has shown that he will fight vigorously to obtain such a ruling.

C. Listecki also does not meet the standard for permissive intervention.

A court may allow permissive intervention if the petitioners' "claim or defense and the main action have a question of law or fact in common," the request is timely made, and intervention will not unduly delay or prejudice the parties. Wis. Stat. § 803.09(2). Listecki's Petition does not meet these criteria.

In particular, the unnecessary addition of Listecki as a party to this matter is likely to cause significant unwarranted delay without a corresponding benefit. "Where… the interests of the applicant in every manner match those of an existing party and the party's representation is deemed adequate, [a] court is well within its discretion in deciding that the applicant's contributions to the proceedings would be superfluous and that any resulting delay would be undue." *Nat'l Collegiate Athletic Ass'n v. Corbett*, 296 F.R.D. 342, 350 (M.D. Pa. 2013) (quoting *Hoots v. Pennsylvania*, 672 F.2d 1133, 1136 (3d Cir. 1982)); *Stuart v. Huff*, 706 F.3d 345, 355 (4th Cir. 2013) (upholding denial of permissive intervention where court found intervention would cause delay without a corresponding benefit as existing defendants adequately represented interests).

The federal constitutional fetal personhood claim and third-party standing argument that Listecki seeks to raise are unrelated to the claims in this case. They are beyond the scope of the questions presented to the Court and would require a completely different set of written and oral arguments. Moreover, opening the door to Listecki would open the same Pandora's box that led this Court to deny the previous petition to intervene:

> [I]f we were to permit intervention by the Proposed Intervenors, there would be no logical distinction that would preclude intervention by all of the many other lobbying and education organizations on both sides of the abortion debate. Permitting intervention to all such parties would create the very real possibility that the case would be unduly delayed or that the ability of the original parties to litigate the issues presented would be prejudiced."

(Order, July 2, 2024, at 3.) Substitute "religious" for "lobbying and education," and the reasoning holds.

For these reasons, the Petitioners request that the Proposed Intervenors' request for permissive intervention also be denied.

CONCLUSION

Proposed Intervenor Archbishop Listecki does not meet the criteria for intervention as of right or permissive intervention. For the reasons stated above,

Archbishop Listecki's Petition to Intervene should be denied.

Respectfully submitted on this 5th day of August, 2024.

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CERTIFICATION

I hereby certify that this document conforms to the requirements set forth under Wis. Stat. § 809.81.

Dated this 5th day of August 2024.

PINES BACH LLP

Electronically signed by Diane M. Welsh
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