

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

DEMOCRATIC NATIONAL COMMITTEE
and DEMOCRATIC PARTY OF
WISCONSIN,

Plaintiffs,

v.

Marge BOSTELMANN, et al.,

Defendants,

REPUBLICAN NATIONAL COMMITTEE
and REPUBLICAN PARTY OF WISCONSIN,
Intervenor-Defendants.

Case No. 3:20-cv-249-wmc

Sylvia GEAR, et al.,

Plaintiffs,

v.

Dean KNUDSON, et al.,

Defendants,

REPUBLICAN NATIONAL COMMITTEE
and REPUBLICAN PARTY OF WISCONSIN,
Intervenor-Defendants.

Case No. 3:20-cv-278-wmc

Reverend Greg LEWIS, et al.,

Plaintiffs,

v.

Dean KNUDSON, et al.,

Defendants,

REPUBLICAN NATIONAL COMMITTEE
and REPUBLICAN PARTY OF WISCONSIN,
Intervenor-Defendants.

Case No. 3:20-cv-284-wmc

**INTERVENOR-DEFENDANTS' RESPONSE TO
LEWIS PLAINTIFFS' NOTICE OF VOLUNTARY DISMISSAL**

Under the order of this Court dated May 21, Intervenor-Defendants, the Republican National Committee and Republican Party of Wisconsin, submit the following response to the Lewis Plaintiffs' Motion for Judgment of Dismissal Pursuant to Rule 41(a)(2) (Doc. 205):

Intervenor Defendants do not object to dismissal of the *Lewis* Complaint, although given the extensive proceedings conducted to date (including an evidentiary hearing), and the expiration of the

election period that was the focus of the action, the appropriate disposition of the motion should be a dismissal with prejudice. *See, e.g., Pace v. Southern Exp. Co.*, 409 F.2d 331, 334 (7th Cir. 1969) (noting that the “factors justifying” dismissal with prejudice include “the defendant's effort and expense of preparation for trial”); *Timothy B. O'Brien LLC v. Knott*, 2019 WL 4722483, at *1 (W.D. Wis. 2019) (noting that “because defendants had to defend against [plaintiff's] motion for preliminary injunction, the court required [plaintiff] to either accept dismissal *with* prejudice or withdraw its motion” to dismiss); *see also Ratkovich By & Through Ratkovich v. Smith Kline*, 951 F.2d 155, 157 (7th Cir. 1991) (affirming a dismissal with prejudice by a trial court that used as a factor the fact “that the defendants had expended considerable effort and expense in defending the case”).

Intervenor Defendants further object to any claim by the *Lewis* Plaintiffs that they are entitled to costs or attorneys' fees. To begin, any award of costs would be precluded if dismissal is with prejudice; because “a voluntary dismissal with prejudice renders the opposing party a ‘prevailing party’ within the meaning of Rule 54.” *Mother and Father v. Cassidy*, 338 F.3d 704, 708 (7th Cir. 2003). But even if dismissal were to be granted without prejudice, costs and fees would not be appropriate because the *Lewis* plaintiffs are not prevailing parties. The relief sought in their complaint, in their pre-hearing filings, and in the arguments presented to the court almost exclusively revolved around their request that this Court “postpone the current April 7, 2020 election to a date no earlier than the expiration of Emergency Order #12 issued by Wisconsin Governor Tony Evers on March 24, 2020[.]” *See* No. 20-cv-00284 Doc. 1 at ¶ 1; *id.* at 65-67; Doc. 105 at 2 (describing Plaintiffs’ “request that the Court enjoin Defendants from holding the Wisconsin Spring elections currently scheduled for April 7, 2020”). This Court rejected that relief. Doc. 113 at 36. The *Lewis* Plaintiffs therefore cannot qualify

as a “prevailing party” for purposes of costs or fees.* *See, e.g., Riviera Distributors, Inc. v. Jones*, 517 F.3d 926, 928 (7th Cir. 2008).

Dated: May 28, 2020

Respectfully submitted,

/s/ Patrick Strawbridge
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* Although the *Lewis* Plaintiffs also requested that certain voter ID, residency, and witness requirements be suspended, *see* No. 20-cv-00284 Doc. 1 at 66, they did not ultimately prevail on any of those requests, either.