

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

WILLIAM FEEHAN,

Plaintiff,

CASE NO. 2:20-cv-1771

v.

**WISCONSIN ELECTIONS COMMISSION,
and its members ANN S. JACOBS,
MARK L. THOMSEN, MARGE
BOSTELMAN, JULIE M. GLANCEY,
DEAN KNUDSON, ROBERT F.
SPINDELL, JR., in their official
capacities, GOVERNOR TONY EVERS,
in his official capacity,**

Defendants.

**PLAINTIFF'S MOTION FOR CONSOLIDATED
EVIDENTIARY HEARING AND TRIAL ON THE MERITS**

COMES NOW Plaintiff, William Feehan by and through his undersigned counsel, and moves the Court to schedule an evidentiary hearing on the merits at 9 a.m., Wednesday, December 9, 2020, or at the Court's earliest opportunity other than on Thursday, December 10, 2020. This Motion is brought pursuant to FRCP 65.

In support, Plaintiff shows:

1) FRCP 65(a) provides:

(a) Preliminary Injunction.

(1) *Notice.* The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

2) As the Court is likely aware, prior to filing this Case No. 2:20-cv-1771, Plaintiffs' Counsel commenced similar actions in several other jurisdictions, based upon evidence provided in the Affidavits and Declarations the same or similar to those of Plaintiff's expert witnesses supporting Plaintiff's Amended Complaint in this case.

3) Because Plaintiff's counsel had concluded that December 8 was the final date for determining injunctive relief and because Plaintiff's expert witnesses could not be available in multiple courts at once, Plaintiff proposed to proceed based on the expert witness and other documentary evidence provided in the Exhibits to his Complaint, which Plaintiff asserts satisfies the evidentiary standard for a Temporary Restraining Order in any event. Pl. Amended Memorandum at 5 – 8.

4) However, pursuant to its Order dated December 4, ECF Docket No. 29, the Court has determined that December 14 is the final date for determination rather than December 8. Further, except for Thursday, December 10, scheduling ordered in the other jurisdictions has now made it possible for Plaintiff's experts to appear before this Court on Wednesday, December 9 or thereafter.

5) Also, counsel who have appeared on behalf of Defendants and *amici* proposed intervenors in this action have appeared on behalf of similarly situated defendants in other jurisdictions. Based upon their filings in those jurisdictions and the responsive pleadings proposed by *amici* in this action, it is clear that defendants intend to argue, *inter alia*, that relief should not be granted apart from an evidentiary determination on the merits.

6) In its December 4 Order, the Court contemplated “exercis[ing] its discretion whether to hold an evidentiary hearing or hear argument.” *Id.* at 3 – 4.

7) Plaintiff's reply briefing will be submitted by 5:00 p.m., Tuesday, December 8.

8) A consolidated hearing/trial on December 9 under Rule 65(a)(2) would provide the Court a more thorough basis for its decision than the documentary evidence available to date, and would make possible a final order with at least a minimal window of several days available for appeal.

9) Plaintiff would present three witnesses and estimates the entire hearing could be concluded in three hours.

CONCLUSION

Accordingly, the Plaintiff respectfully requests the Court to schedule a consolidated hearing/trial on the merits commencing at 9 a.m., December 9, 2020.

Respectfully submitted, this 6th day of December, 2020.

ATTORNEYS FOR PLAINTIFF

/s Sidney Powell
Texas Bar No. 16209700
Sidney Powell PC
2911 Turtle Creek Blvd.
Suite 300
Dallas, Texas 75219
(517) 763-7499
sidney@federalappeals.com

Howard Kleinhendler
New York Bar No. 2657120
Howard Kleinhendler, Esquire
369 Lexington Avenue, 12th Floor
New York, New York 10017
(917) 793-1188
howard@kleinhendler.com

Local Counsel for Plaintiffs

Michael D. Dean
Wis. Bar No.01019171
P.O. Box 2545
Brookfield, WI 53008
(262) 798-8044
miked@michaelddeanllc.com

Daniel J. Eastman
Wis. Bar No.1011433
P.O. Box 158
Mequon, Wisconsin 53092
(414) 881-9383
daneastman@me.com