

MICHAEL WHITE, EVA WHITE,
EDWARD WINIECKE, and REPUBLICAN
PARTY OF WAUKESHA COUNTY

Plaintiffs,

v.

Case No. 22-CV-1008

Case Code No.: 30701

WISCONSIN ELECTIONS COMMISSION,

Defendants.

**ANSWER AND AFFIRMATIVE DEFENSES OF INTERVENOR-
DEFENDANT LEAGUE OF WOMEN VOTERS OF WISCONSIN**

Proposed Intervenor-Defendant League of Women Voters of Wisconsin (“LWVWI”) by and through its counsel, Law Forward, Inc. and Fair Elections Center, pursuant to Wis. Stat. §§ 802.09(3), 802.06(1)(a), and 802.06(2), submits this Answer and Affirmative Defenses (“Answer”):

NATURE OF THIS ACTION¹

1. Answering Paragraph 1 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. To the extent an answer is required, LWVWI admits that this is an action filed against the Wisconsin Elections

¹ Headings are included for purposes of clarity only and should not be construed as an admission of any of the allegations contained in the Complaint.

Commission seeking a declaratory judgment. LWVWI denies all remaining allegations in this paragraph.

PARTIES

2. Answering Paragraph 2 of the Complaint, LWVWI is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in that paragraph and, therefore, denies.

3. Answering Paragraph 3 of the Complaint, LWVWI is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in that paragraph and, therefore, denies.

4. Answering Paragraph 4 of the Complaint, LWVWI is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in that paragraph and, therefore, denies.

5. Answering Paragraph 5 of the Complaint, LWVWI admits.

6. Answering Paragraph 6 of the Complaint, LWVWI is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in that paragraph and, therefore, denies.

7. Answering Paragraph 7 of the Complaint, LWVWI admits.

JURISDICTION AND VENUE

8. Answering Paragraph 8 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

9. Answering Paragraph 9 of the Complaint, LWVWI admits that this paragraph quotes from the statute cited, with omissions, and further states that the statute speaks for itself. LWVWI denies the remaining allegations in this paragraph.

10. Answering Paragraph 10 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

11. Answering Paragraph 11 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

12. Answering Paragraph 12 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

BACKGROUND FACTS

13. Answering Paragraph 13 of the Complaint, LWVWI admits.

14. Answering Paragraph 14 of the Complaint, LWVWI admits that this paragraph accurately quotes from the document cited, and further states that the document speaks for itself. LWVWI denies the remaining allegations in this paragraph.

15. Answering Paragraph 15 of the Complaint, LWVWI admits that this paragraph quotes from the document cited, and further states that the document speaks for itself. LWVWI denies the remaining allegations in this paragraph.

Clerks Altering Witness Address Information on Absentee Ballot Certification

16. Answering Paragraph 16 of the Complaint, LWVWI denies.

17. Answering Paragraph 17 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

18. Answering Paragraph 18 of the Complaint, LWVWI admits.

19. Answering Paragraph 19 of the Complaint, LWVWI admits that this paragraph quotes from the statute cited and further states that the statute speaks for itself. LWVWI denies the remaining allegations in this paragraph.

20. Answering Paragraph 20 of the Complaint, LWVWI admits that the certificate form (form EL-122) is available on the WEC website and is reproduced in this paragraph, and further states that the document speaks for itself. LWVWI denies the remaining allegations in this paragraph.

21. Answering Paragraph 21 of the Complaint, LWVWI admits.

22. Answering Paragraph 22 of the Complaint, LWVWI admits.

23. Answering Paragraph 23 of the Complaint, LWVWI admits that this paragraph quotes from the statute cited and further states that the statute speaks for itself. LWVWI denies the remaining allegations in this paragraph.

24. Answering Paragraph 24 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

25. Answering Paragraph 25 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

26. Answering Paragraph 26 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

27. Answering Paragraph 27 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

28. Answering Paragraph 28 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

29. Answering Paragraph 29 of the Complaint, LWVWI admits that this paragraph accurately quotes from the document cited and further states that the document speaks for itself. LWVWI denies the remaining allegations in this paragraph.

30. Answering Paragraph 30 of the Complaint, LWVWI denies and further states that the document speaks for itself.

31. Answering Paragraph 31 of the Complaint, LWVWI admits that this paragraph accurately quotes from the document cited and further states that the document speaks for itself. LWVWI denies the remaining allegations in this paragraph.

32. Answering Paragraph 32 of the Complaint, LWVWI denies and further states that the document speaks for itself.

33. Answering Paragraph 33 of the Complaint, LWVWI admits that this paragraph accurately quotes from the document cited and further states that the document speaks for itself. LWVWI denies the remaining allegations in this paragraph.

34. Answering Paragraph 34 of the Complaint, LWVWI denies.

35. Answering Paragraph 35 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

36. Answering Paragraph 36 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

37. Answering Paragraph 37 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

38. Answering Paragraph 38 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

39. Answering Paragraph 39 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

40. Answering Paragraph 40 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

CLAIM FOR RELIEF: DECLARATORY RELIEF

41. LWVWI incorporates by reference its responses to all preceding paragraphs in the Complaint.

42. Answering Paragraph 42, LWVWI admits that the October 18, 2016 and October 19, 2020 memoranda explain WEC's interpretations of election statutes and provide guidance and advice with respect to how WEC will apply the statutes. LWVWI denies all remaining allegations in this paragraph.

43. Answering Paragraph 43 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

44. Answering Paragraph 44 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

45. Answering Paragraph 45 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

46. Answering Paragraph 46 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

47. Answering Paragraph 47 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

48. Answering Paragraph 48 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

49. Answering Paragraph 49 of the Complaint, this paragraph asserts a legal conclusion to which no answer is required. LWVWI denies all remaining allegations in this paragraph.

AFFIRMATIVE DEFENSES

LWVWI further responds to the Complaint by alleging the following Affirmative Defenses. LWVWI reserves all rights to supplement these defenses and does not accept the burden of proof as to any defense except as required by law.

50. LWVWI incorporates by reference its responses to all preceding paragraphs in the Complaint.

51. Plaintiffs' requested relief would violate and is preempted by Title I of the 1964 Civil Rights Act, which provides that:

No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election[.]

52 U.S.C. § 10101(a)(2)(B). Rejecting a ballot because of errors or omissions that are immaterial to determining a voter's eligibility is prohibited by federal law.

52. Plaintiffs' requested relief would violate the First and Fourteenth Amendments to the U.S. Constitution by imposing an undue burden on the right to vote—the most severe burden, denying an eligible voter's vote—not justified by a compelling state interest. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

53. Plaintiffs' requested relief would violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, as *all* absentee voters must be provided with adequate notice of any deficiency or omission that will result in the rejection of their ballot and an adequate opportunity to cure that deficiency or omission. *Morrell v. Mock*, 270 F.3d 1090, 1095 (7th Cir. 2001).

54. Plaintiffs' claims are barred by the doctrine of laches. The challenged absentee ballot cure guidance has been in place since October 18, 2016 and was even raised in litigation over the 2020 presidential election. *See, e.g., Trump v. Biden*, 2020 WI 91, ¶10, 394 Wis. 2d 629, 951 N.W.2d 568, *cert. denied*, 141 S. Ct. 1387 (2021).

55. Plaintiffs' claims do not present a justiciable controversy, and this Court therefore lacks competency to adjudicate Plaintiffs' claims.

56. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

57. Plaintiffs failed to comply with Wis. Stat. § 5.06(2), which bars individual voters from commencing an action without first filing a complaint with the WEC under section 5.06(1) and precludes an action in this Court “prior to disposition of the complaint by the commission.” Plaintiffs' claims are therefore barred by the doctrine of sovereign immunity.

58. Plaintiffs lack standing to bring their claims.

59. Plaintiffs' requested relief is not authorized by Wisconsin law.

WHEREFORE, Proposed Intervenor-Defendant League of Women Voters of Wisconsin request relief as follows:

- A. Dismiss the Complaint in full and with prejudice;
- B. Deny Plaintiffs' request for a temporary or permanent injunction or declaratory relief;
- C. Enter judgment in favor of the League and against Plaintiffs on all claims;
- D. Award the League their costs and fees as allowed by law;
- E. Grant such other relief as the Court deems appropriate.

Dated this 15th day of August, 2022.

By: /s/ Daniel S. Lenz
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**Motion for admission pro hac vice forthcoming.*