

FILED
10-03-2022
CIRCUIT COURT
DANE COUNTY, WI
2022CV002446

STATE OF WISCONSIN	CIRCUIT COURT BRANCH 10	DANE COUNTY
RISE, INC. and JASON RIVERA, Plaintiffs, v. WISCONSIN ELECTIONS COMMISSION and MARIBETH WITZEL-BEHL, Defendants, MICHAEL WHITE and EVA WHITE, Proposed Intervenor Defendants.		Case No. 2022-CV-002446 Case Code: 30701 Declaratory Judgment

[PROPOSED] INTERVENOR DEFENDANTS' [PROPOSED] ANSWER

Proposed Intervenor Michael White and Eva White, through their counsel, hereby submit the following answer to Plaintiffs' complaint:

INTRODUCTION

1. Proposed Intervenor deny that Wisconsin's system for evaluating and counting absentee ballots has been thrust suddenly into a state of disarray. Proposed Intervenor lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 1 of Plaintiffs' complaint, and therefore deny the same.

2. Proposed Intervenor admit that a Waukesha County circuit court enjoined Wisconsin Elections Commission (WEC) guidance. Proposed Intervenor deny the remaining allegations in paragraph 2 of Plaintiffs' complaint.

3. Proposed Intervenor admit that paragraph 3 of Plaintiffs' complaint quotes the Wisconsin statute, and further state that the statute speaks for itself. Paragraph 3 of Plaintiffs'

complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

4. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of Plaintiffs' complaint, and therefore deny the same.

5. Proposed Intervenors admit that paragraph 5 of Plaintiffs' complaint quotes the Wisconsin statute, and further state that the statute speaks for itself. Paragraph 5 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

6. The website Plaintiffs cite in Paragraph 6 of Plaintiffs' complaint speaks for itself. Proposed Intervenors otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of Plaintiffs' complaint, and therefore deny the same.

7. Proposed Intervenors admit that paragraph 7 of Plaintiffs' complaint quotes the Waukesha County Circuit Court's order, and further state that the court's order speaks for itself. To the extent a response is required, Proposed Intervenors deny the remaining allegations in paragraph 7 of Plaintiffs' complaint.

8. Deny.

9. Proposed Intervenors admit that paragraph 9 of Plaintiffs' complaint quotes WEC's communication to clerks on September 14, 2022, and further state that the communication speaks for itself. Proposed Intervenors deny that there is no operative WEC guidance on what constitutes an "address" under § 6.87(2). Proposed Intervenors lack knowledge or information sufficient to

form a belief as to the truth of the remaining allegations in paragraph 9 of Plaintiffs' complaint, and therefore deny the same.

10. Deny.

11. Proposed Intervenors deny that WEC's guidance lacks clarity or poses a significant threat to Plaintiff Rise. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 11 of Plaintiffs' complaint, and therefore deny the same.

12. Deny.

13. Proposed Intervenors admit that paragraph 13 of Plaintiffs' complaint quotes the Wisconsin statutes, and further state that the statutes speak for themselves. Paragraph 13 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

14. Deny.

PARTIES

15. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of Plaintiffs' complaint, and therefore deny the same.

16. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of Plaintiffs' complaint, and therefore deny the same.

17. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of Plaintiffs' complaint, and therefore deny the same.

18. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of Plaintiffs' complaint, and therefore deny the same.

19. Proposed Intervenors deny that there is a lack of guidance regarding the Witness Address Requirement or that Plaintiff Rise is harmed by such guidance. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 19 of Plaintiffs' complaint, and therefore deny the same.

20. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of Plaintiffs' complaint, and therefore deny the same.

21. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of Plaintiffs' complaint, and therefore deny the same.

22. Proposed Intervenors deny that voters will be disenfranchised without a judicial declaration settling the meaning of the Witness Address Requirement and accompanying guidance from WEC. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 22 of Plaintiffs' complaint, and therefore deny the same.

23. Proposed Intervenors admit that paragraph 23 of Plaintiffs' complaint quotes the Wisconsin statute, and further state that the statute speaks for itself. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 23 of Plaintiffs' complaint, and therefore deny the same.

24. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of Plaintiffs' complaint, and therefore deny the same. Paragraph 24 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

JURISDICTION AND VENUE

25. Paragraph 25 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

26. Paragraph 26 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

27. Paragraph 27 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

28. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of Plaintiffs' complaint, and therefore deny the same. Paragraph 28 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

BACKGROUND FACTS

29. Proposed Intervenors admit that paragraph 29 of Plaintiffs' complaint cites the Wisconsin statute, and further state that the statute speaks for itself.

30. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of Plaintiffs' complaint, and therefore deny the same.

31. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 of Plaintiffs' complaint, and therefore deny the same.

32. Proposed Intervenors admit that paragraph 32 of Plaintiffs' complaint quotes the Wisconsin statute and the court's order, and further state that the statute and the court's order speak for themselves.

33. Proposed Intervenors deny that the Waukesha court did not consider the issue of what constitutes an adequate address for the purposes of Wis. Stat. § 6.87(2). The court's order otherwise speaks for itself.

34. Deny.

35. Proposed Intervenors admit that paragraph 35 of Plaintiffs' complaint quotes WEC's September 14, 2022 communication to clerks, and further state that the communication speaks for itself.

36. Proposed Intervenors admit that paragraph 36 of Plaintiffs' complaint quotes WEC's September 14, 2022 communication, and further state that the communication speaks for itself. Proposed Intervenors otherwise deny the allegations in paragraph 36 of Plaintiffs' complaint.

37. Proposed Intervenors admit that paragraph 37 of Plaintiffs' complaint cites the Legislative Audit Bureau's report, and further state that the report speaks for itself. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 37 of Plaintiffs' complaint, and therefore deny the same.

38. Deny.

LEGAL PRINCIPLES

39. Proposed Intervenors admit that paragraph 39 of Plaintiffs' complaint quotes the Wisconsin statute, and further state that the statute speaks for itself. Paragraph 39 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

40. Proposed Intervenors admit that paragraph 40 of Plaintiffs' complaint quotes the Wisconsin statute, and further state that the statute speaks for itself. Paragraph 40 of Plaintiffs'

complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor deny the same.

41. Paragraph 41 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor deny the same.

42. Proposed Intervenor admit that paragraph 42 of Plaintiffs' complaint quotes the Wisconsin statute, and further state that the statute speaks for itself. Paragraph 42 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor deny the same.

43. Proposed Intervenor admit that paragraph 43 of Plaintiffs' complaint quotes the Wisconsin statute, and further state that the statute speaks for itself. Paragraph 43 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor deny the same.

44. Proposed Intervenor admit that paragraph 44 of Plaintiffs' complaint quotes the Wisconsin statute, and further state that the statute speaks for itself. Paragraph 44 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor deny the same.

45. Proposed Intervenor admit that paragraph 45 of Plaintiffs' complaint quotes the Wisconsin statute, and further state that the statute speaks for itself. Paragraph 45 of Plaintiffs'

complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

46. Proposed Intervenors admit that paragraph 46 of Plaintiffs' complaint quotes the Wisconsin statutes, and further state that the statutes speak for themselves. Paragraph 46 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

47. Proposed Intervenors admit that paragraph 47 of Plaintiffs' complaint quotes *State ex rel. Zignego v. Wisconsin Elections Commission*, 2020 WI App 17, ¶ 64, 391 Wis. 2d 441, 941 N.W.2d 284, and further state that the case speaks for itself. Paragraph 47 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

48. Proposed Intervenors admit that paragraph 48 of Plaintiffs' complaint cites the Wisconsin statute and quotes *Garcia v. Mazda Motor of America, Inc.*, 2004 WI 93, ¶ 14, 273 Wis. 2d 612, 682 N.W.2d 365, and further state that the statute and case speak for themselves. Paragraph 48 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

49. Proposed Intervenors admit that paragraph 49 of Plaintiffs' complaint quotes the Merriam-Webster website, and further states that the website speaks for itself.

50. Proposed Intervenors admit that paragraph 50 of Plaintiffs' complaint quotes the Wisconsin statute, and further state that the statute speaks for itself. Paragraph 50 of Plaintiffs'

complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor deny the same.

51. Paragraph 51 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor deny the same.

52. Proposed Intervenor admit that paragraph 52 of Plaintiffs' complaint quotes the Civil Rights Act, and further state that the Act speaks for itself. Paragraph 52 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor deny the same.

53. Deny.

FIRST CLAIM FOR RELIEF
Declaratory Judgment under Wis. Stat. § 806.04
(Against all Defendants)

54. Proposed Intervenor reincorporate by reference the previously alleged paragraphs as if fully set forth herein.

55. Proposed Intervenor admit that paragraph 55 of Plaintiffs' complaint quotes the Wisconsin statute, and further state that the statute speaks for itself. Paragraph 55 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor deny the same.

56. Paragraph 56 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor deny the same.

57. Paragraph 57 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

58. Paragraph 58 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

59. Paragraph 59 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

60. Paragraph 60 of Plaintiffs' complaint characterizes Plaintiffs' prayer for relief, to which no response is required. To the extent a response is required, Proposed Intervenors respond as follows:

- a. Deny.
- b. Deny.
- c. Deny.

SECOND CLAIM FOR RELIEF
Injunctive Relief under Wis. Stat. § 806.04
(Against Defendant WEC Only)

61. Proposed Intervenors reincorporate by reference the previously alleged paragraphs as if fully set forth herein.

62. Proposed Intervenors admit that paragraph 62 of Plaintiffs' complaint quotes the Wisconsin statute and *Lewis v. Young*, 162 Wis. 2d 574, 470 N.W.2d 328 (Wis. Ct. App. 1991), and further state that the statute and case speak for themselves. Paragraph 62 of Plaintiffs' complaint otherwise contains mere characterizations, legal contentions, conclusions, and opinions

to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

63. Paragraph 63 of Plaintiffs' complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

64. Paragraph 64 of Plaintiffs' complaint characterizes Plaintiffs' prayer for relief, to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations in paragraph 64 of Plaintiffs' complaint.

PRAYER FOR RELIEF

Paragraphs 1-3 characterize Plaintiffs' prayer for relief, to which no response is required. To the extent a response is required, Proposed Intervenors respond as follows:

1. Deny.
2. Deny.
3. Deny.

AFFIRMATIVE DEFENSES

Proposed Intervenors assert the following affirmative defenses without accepting any burdens regarding them:

1. Plaintiffs' claims are barred in whole or in part because this Court lacks competency to adjudicate Plaintiffs' claims.
2. Plaintiffs lack standing to assert their claims.
3. Plaintiffs' claims are not ripe.
4. Plaintiffs' complaint fails, in whole or in part, to state a claim upon which relief can be granted.

5. Plaintiffs' claims are barred in whole or in part because this Court lacks jurisdiction to grant Plaintiffs' requested relief.

6. Plaintiffs' claims against Defendant Maribeth Witzel-Behl are precluded by Wis. Stat. § 5.06(2), which requires Plaintiffs to, first, file a complaint with the Wisconsin Elections Commission, and which Plaintiffs failed to do prior to filing this suit.

7. Plaintiffs have failed to exhaust their administrative remedies and/or allege satisfaction of certain conditions precedent to filing this present lawsuit, such as complying with and satisfying Wis. Stat. § 5.06(2).

8. Proposed Intervenors reserve the right to assert any further defenses that may become evident during the pendency of this matter.

PROPOSED INTERVENORS' REQUEST FOR RELIEF

Having answered Plaintiffs' complaint, Proposed Intervenors request that the Court:

1. Deny Plaintiffs any relief;
2. Dismiss Plaintiffs' complaint with prejudice;
3. Award Proposed Intervenors their costs and attorneys' fees incurred in defending against Plaintiffs' claims; and
4. Grant such other further relief as the Court deems just and proper.

Dated: October 3, 2022

Respectfully submitted,

Electronically signed by Bryant M. Dorsey
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*Application for admission *pro hac vice*
forthcoming

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