

RISE, INC., *and* JASON RIVERA,

Plaintiffs,

v.

Case No. 2022CV2446

WISCONSIN ELECTIONS COMMISSION,
MARIBETH WITZEL-BEHL, *in her official
capacity as City Clerk for the City of Madison,
Wisconsin,* TARA MCMENAMIN, *in her official
capacity as City Clerk for the City of Racine,
Wisconsin,* and CELESTINE JEFFREYS, *in her
official capacity as City Clerk for the City of Green
Bay, Wisconsin,*

Defendants.

**INTERVENOR DEFENDANT THE WISCONSIN STATE LEGISLATURE'S
REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

This Court should grant summary judgment to the Legislature because Plaintiffs' claims rely upon a legally incorrect, unadministrable view of "address" under Wis. Stat. § 6.87(2), as the Legislature explained in its Combined Opening and Response Brief, Dkt.224 ("Brief"). In their Combined Reply and Opposition Brief, Dkt.228 ("Opposition"), Plaintiffs ignore many of the Legislature's arguments, and the points that Plaintiffs do make are unconvincing. At bottom, Plaintiffs ask this Court to redraft the clear, objective statutory provision dealing with witness addresses into an amorphous regime that treats Wisconsinites differently based upon whether a specific clerk subjectively believes that the clerk has—perhaps—figured out where the witness lives.

ARGUMENT

A. As the Legislature explained, each of Plaintiffs' claims depend upon an incorrect definition of the term "address" in Section 6.87. Based upon Section 6.87's text, context, purpose, and history, an "address" is a witness's street number, street name, and name of municipality. Dkt.224 at 11–18. This tripart definition of "address" reflects the term's "common, ordinary, and accepted meaning," Dkt.224 at 12 (citing *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110), as these three components comprise "[t]he particulars of the place where a person lives . . . , typically consisting of a number, street name, the name of a town or district," Dkt.224 at 12 (citing *Address*, Oxford English Dictionary

Online¹). Section 6.87(2)'s statutory purpose confirms this understanding, as the witness-address requirement serves the State's goal of preventing "fraud" and "abuse" in the absentee-voting process. Dkt.224 at 13 (citing Wis. Stat. § 6.84(1)). The statutory context is in accord, as the three-component definition complies with Section 6.84's requirement that the absentee-voting laws be "strictly construed," Dkt.224 at 13 (citing Wis. Stat. § 6.84(2)), and corresponds to the language of other "closely-related statutes," Dkt.224 at 13–14 (citing Wis. Stat. §§ 6.15(2)(a), 6.34(3)(b)(2), 6.87(2), 8.10, 8.28). The history of Wisconsin's absentee-voting regime supports the three-component definition of "address" because, for as long as absentee voting has existed in Wisconsin, the State has required absentee voters to have their ballots witnessed and required those witnesses to provide an address—traditionally understood to mean the witness's street number, street name, and municipality name. Dkt.224 at 15–17. Finally, the three-component definition of a witness's "address" under Section 6.87 results in an administrable rule, as any clerk can readily determine whether a witness address on a ballot is complete, ensuring that every clerk treats each absentee ballot with "perfect equality," as Wisconsin law requires. Dkt.224 at 17 (citing *State v. Buer*, 174 Wis. 120, 126, 182 N.W. 855 (1921)).

B. In their Opposition, Plaintiffs ignore many of the Legislature's arguments. Plaintiffs largely avoid discussing the Legislature's points regarding Section 6.87's context and purpose, which both support the three-component definition of "address."

¹ Accessed at www.oed.com/view/Entry/2208 (subscription required) (all websites last visited Dec. 4, 2023).

Dkt.224 at 12–15; *see* Dkt.228 at 2–8 (failing to discuss these arguments). Plaintiffs similarly make no attempt to address the Legislature’s arguments on the history of Wisconsin’s absentee-voting regime. Dkt.224 at 15–17; *see* Dkt.228 at 2–8 (failing to discuss these arguments). This “failure to respond” to the Legislature on these fronts is “fatal to any argument” that Plaintiffs could have “ma[d]e on this issue,” *State v. Cundy*, 2023 WI App 41, ¶ 36, 409 Wis. 2d 34, 995 N.W.2d 266, and thus is a concession that these arguments from the Legislature are correct, *Hoffman v. Econ. Preferred Ins. Co.*, 2000 WI App 22, ¶ 9, 232 Wis. 2d 53, 606 N.W.2d 590 (“An argument to which no response is made may be deemed conceded.”).

The points that Plaintiffs do make are unconvincing.

Turning first to Plaintiffs’ arguments about the statutory text, Plaintiffs claim that the “three-component definition” of “address” is “artificial and atextual,” Dkt.228 at 2, rather than representing the common, ordinary meaning of “address,” as *Kalal* requires, Dkt.228 at 2–5 (citing 2004 WI 58, ¶ 45). As a threshold matter, ***Plaintiffs still cannot point to any source adopting or recommending anything like their amorphous definition of address in any context***, *see* Dkt.228 at 2–5, despite having briefed the issue for two separate motions for temporary injunction and a previous motion for summary judgment, *see* Dkts.8, 75, 87, 104, 125. And Plaintiffs admit that their “functional definition” is “not in the statute” either, Dkt.228 at 3, making their criticism on this front strange.

The three-component definition of address, on the other hand, finds strong support in the Oxford English Dictionary’s definition of “address,” which defines the

term as “the particulars of the place where a person lives . . . typically consisting of a number, street name, the name of a town or district.” Dkt.224 at 12 (citing *Address*, Oxford English Dictionary Online, *supra*). Thus, the three-component definition reflects “the common, ordinary, and accepted meaning” of “address” “in light of [Section 6.87’s] textually manifest scope, context, [and] purpose.” *Kalal*, 2004 WI 58, ¶¶ 45–49 & n.8. Plaintiffs take issue with the Legislature’s reliance on the Oxford English Dictionary definition because “there is a qualifier [in the definition]—‘typically’—that makes clear that an ‘address’ does not always necessarily include those three components.” Dkt.228 at 4. This qualifier does not help Plaintiffs. The “typical” definition of a word is the word’s “ordinary” and “common” meaning. *Ordinary*, Historical Thesaurus, Oxford English Dictionary Online (July 2023)² (noting synonyms include “regular, usual, typical; ordinary, conventional” and “common”).³

Relatedly, Plaintiffs complain that the Legislature “cherry-picked” its definition of “address” from the Oxford English Dictionary because “the statutory text requires the witness to provide an ‘address,’ not any specific components,” Dkt.228 at 4–5, but that is wrong. The Legislature faithfully recited the applicable definition from the

² <https://doi.org/10.1093/OED/7778374412> (subscription required).

³ Plaintiffs claim in a footnote that the Legislature “omits the final part of the OED definition, ‘and often a postal code,’” but that does not help their cause either. Dkt.228 at 4 n.1. The Legislature has maintained throughout this litigation that its three-part definition reflects the *required* “address” components under Section 6.87, and information such as a zip code or a State are optional, additional information that a person “*may* include” as part of their address. Dkt.224 at 12.

Oxford English Dictionary, informed by the statutory context, purpose, and history. Dkt.224 at 11–18. That is, an “address” for the purposes of Section 6.87 is “the particulars of the place where a person lives . . . , typically consisting of a number, street name, the name of a town or district.” Dkt.224 at 12 (citing *Address*, Oxford English Dictionary Online, *supra*). The Legislature further explained that this definition includes the word “typically,” Dkt.224 at 20–21, which comports with *Kalal*’s instruction to search for the ordinary and best meaning, among other possible meanings, 2004 WI 58, ¶¶ 45–49. So, while in some other *non-typical* context, an “address” may refer to something other than the three-component definition, Section 6.87’s plain text, context, purpose, and history all show that the “typical” definition applies here. Dkt.224 at 11–18.

The new hypotheticals that Plaintiffs raise, Dkt.228 at 2–3; *see generally* Dkt.224 at 22 & n.11 (refuting prior list of hypotheticals that Plaintiffs put forward), do not help their position. The three-component definition applies in each of Plaintiffs’ new examples, as nothing precludes an absentee-ballot witness who lives with other people (opposition hypothetical 1), in a university residence hall (opposition hypothetical 2), or in senior housing (opposition hypothetical 3), *see* Dkt.228 at 2–3, from providing her street number, street name, and municipality name on the absentee-ballot witness certificate, *see* Dkt.224 at 22. While Plaintiffs assert that these three hypotheticals count as an “address,” that is mere *ipse dixit*, as they cite no source supporting this amorphous definition of “address.” *See* Dkt.228

at 2–3. And, of course, no one would understand “Waters Residence Hall Room 123” or “Capitol Lakes Room 123” as providing an “address.”

Plaintiffs’ attempt to refute the import of Section 6.34 is unconvincing. Dkt.228 at 3–4. Section 6.34—which requires a qualified elector to prove his or her residence to register to vote by presenting a document that contains an “address, including a numbered street address, if any, and the name of a municipality,” Wis. Stat. § 6.34(3)(b)(2)—provides statutory context in which “address” in Section 6.87 must be understood, *see Kalal*, 2004 WI 58, ¶ 46. Specifically, Section 6.34 confirms that an “address,” as that term is most commonly understood—both in Section 6.87 and in other related election law provisions—contains three component parts. Plaintiffs claim that because Section 6.34 requires a “complete residential address, including a numbered street address, *if any*,” there are circumstances where “even a ‘complete address’ will lack some of” the three component parts. Dkt.228 at 3–4. But this “if any” qualifier does not defeat Section 3.4’s contextual support: Section 6.34’s reference to a “numbered street address” and “the name of a municipality” remain relevant to the interpretation of “address” in Section 6.87 because Section 6.34 is another election-law statute concerning individuals’ addresses that must be interpreted “as a coherent whole.” *Kalal*, 2004 WI 58, ¶¶ 46, 49.

Plaintiffs have no serious answer to the Legislature’s core criticism that Plaintiffs’ “functional” definition of “address” would mean that the statute could not be fairly and equally administered throughout Wisconsin. Plaintiffs argue that a clerk receiving a ballot with an insufficient witness address can either accept it if she

determines it “adequately communicates where the witness may be communicated with,” or, alternatively, attempt to discern the complete address from “outside sources” or using “common sense.” Dkt.228 at 6–7. But in so arguing, Plaintiffs concede that that the administration of their proposed definition will depend on the personal knowledge of the reviewing clerk, thus embracing the very problems the Legislature highlighted in its Brief. Dkt.228 at 8. In other words, Plaintiffs admit that the 1,800 clerks throughout the State will have differing levels of knowledge, willingness, and ability to investigate vague information that witnesses provide, and different thresholds for accepting certain location descriptions while rejecting others. Dkt.224 at 17. This disparity in the administration of Plaintiffs’ definition demonstrates “why [it] is a problem” for clerks to implement Plaintiffs’ definition. Dkt.228 at 8. And Plaintiffs’ suggestion that their proposed definition is no less administrable than the standard endorsed by WEC in guidance from 2016, which guidance had required clerks to remedy unilaterally witness-address errors when they could “reasonably . . . discern any missing information from outside sources,” Dkt.228 at 6–7, is irrelevant. After all, Plaintiffs cite no evidence that this illegal guidance, *see* Order, *White v. WEC*, No.2022CV1008 (Waukesha Cnty. Cir. Ct. Sept. 7, 2022), was administered fairly and equally to voters statewide.

While Plaintiffs briefly claim that their definition of “address” does not conflict with the requirement that each absentee voter’s ballot be treated with “perfect equality,” as mandated by *State v. Buer*, 174 Wis. 120, 126, 182 N.W. 855 (1921), Dkt.228 at 8–10, this too fails. Plaintiffs characterize *Buer* as a “century-old case”

with a “dubious” conclusion, Dkt.228 at 9 n.5, but they offer no reason to deviate from *Buer*’s clear pronouncement of a “perfect equality” requirement, nor any explanation for why the age of the case would render its holding any less binding today. Further, far from creating a “clear and facially uniform directive,” as Plaintiffs state, Dkt.228 at 8, their proposed definition guarantees disparate treatment of witnesses’ addresses throughout the State, based upon each clerk’s knowledge and inclination. In contrast, requiring clerks to determine whether an address contains the three component parts, as the statute requires, is an easy task that promotes “perfect equality” as between voters throughout Wisconsin. *Buer*, 174 Wis. at 126.⁴

CONCLUSION

This Court should grant the Legislature’s Motion For Summary Judgment.

⁴ Plaintiffs claim that the Wisconsin Elections Commission (“WEC”) has supported a “functional” definition of “address” by admitting that an absentee-ballot certification satisfies the witness-address requirement if it includes “information from which it is possible to determine a street number, street name, and name of municipality.” Dkt.228 at 5. While WEC previously endorsed the three-component definition of “address” in official guidance, Dkt.4, Ex.2 at 1; *see* Dkt.183 at 13, its current position on the meaning of Section 6.87—regardless of whom it supports—is not entitled to any deference, *see* Wis. Stat. § 227.57(11); *Tetra Tech EC, Inc. v. Wisconsin Dep’t of Revenue*, 2018 WI 75, ¶¶ 80, 108, 382 Wis. 2d 496, 914 N.W.2d 21.

Dated: December 4, 2023

Respectfully submitted,

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