

FILED
11-22-2022
Clerk of Circuit Court
Brown County, WI
2022CV001322

STATE OF WISCONSIN

CIRCUIT COURT

BROWN COUNTY

NATHAN D. DELOREY,
RANDY WERY, PATRICIA SCHICK,
and DENISE VETTER,

Plaintiffs,

v.

Case No. 22-CV-1322
Case Codes: 30704, 30701, 30952

CELESTINE JEFFREYS, in her official capacity
as City Clerk for the City of Green Bay, Wisconsin,

Defendant.

ANSWER

NOW COMES the Defendant, Celestine Jeffreys, in her official capacity as City Clerk for the City of Green Bay (hereinafter, "Clerk Jeffreys"), by Assistant City Attorney Lindsay J. Mather, as and for an answer to Plaintiffs' Complaint, admits, denies, alleges, and states to the Court as follows:

NATURE OF THE ACTION

1. Clerk Jeffreys admits that Paragraph 1 accurately quotes from a portion of *Teigen v. Wisconsin Elections Commission*, 2022 WI 64, ¶ 21, and further states that the language of that court opinion speaks for itself and denies any characterization of said court opinion contrary to its express terms. Answering further, Clerk Jeffreys states that Paragraph 1 asserts a legal conclusion to which no answer is required. Clerk Jeffreys denies all remaining allegations in Paragraph 1.

2. Clerk Jeffreys admits that Paragraph 2 accurately quotes from a portion of Wis. Const. art. III, § 2, and further states that the language of said constitutional provision speaks for itself and denies any characterization of said provision contrary to its express terms. Answering further, Clerk Jeffreys states that Paragraph 2 asserts a legal conclusion to which no answer is required. Clerk Jeffreys denies all remaining allegations in Paragraph 2.

3. Clerk Jeffreys admits that Paragraph 3 quotes from a portion of Wis. Stats. § 6.84. Clerk Jeffreys further states that the language of that statute speaks for itself and denies any characterization of said statute contrary to its express terms. Answering further, Clerk Jeffreys states that Paragraph 3 asserts a legal conclusion to which no answer is required. Clerk Jeffreys denies all remaining allegations in Paragraph 3.

4. Clerk Jeffreys admits that Paragraph 4 accurately quotes from a portion of Wis. Stats. § 7.41(1) but denies that said paragraph accurately quotes from Wis. Stats. § 7.41(2), which in fact reads, in relevant part, “to permit any election observer to readily observe all *public* aspects of the voting process.” (emphasis added to word omitted from Complaint.) Answering further, Clerk Jeffreys states that the actual language of Wis. Stats. § 7.41 speaks for itself and denies any characterization of said statute contrary to its express terms. Clerk Jeffreys further states that Paragraph 4 asserts a legal conclusion to which no answer is required. Clerk Jeffreys denies all remaining allegations in Paragraph 4.

5. Clerk Jeffreys denies that she prohibited members of the public from observing any *public* aspect of the voting process in contravention of Wis. Stat. § 7.41 during the period from October 25 to November 6, 2022, during which in-person absentee voting (IPAV) was occurring in the City Clerk’s office. Answering further, Clerk Jeffreys admits that members of the public were prohibited from observing the *private* aspects of voting, such as voters marking their ballots,

as is required by Wisconsin elections law. Clerk Jeffreys denies all remaining allegations in Paragraph 5.

6. Clerk Jeffreys admits Plaintiffs brought the instant action against Clerk Jeffreys seeking a temporary restraining order and injunction. Clerk Jeffreys denies all remaining allegations in Paragraph 6.

PARTIES

7. Clerk Jeffreys is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and therefore denies them.

8. Clerk Jeffreys admits that Nathan DeLorey's name did not appear on any absentee ballot to be cast at the Clerk's office for the November 8, 2022 election. Clerk Jeffreys denies all remaining allegations in Paragraph 8.

9. Clerk Jeffreys is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and therefore denies them.

10. Clerk Jeffreys is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and therefore denies them.

11. Clerk Jeffreys admits that Randy Wery's name did not appear on any absentee ballot to be cast at the Clerk's office for the November 8, 2022 election. Clerk Jeffreys denies all remaining allegations in Paragraph 11.

12. Clerk Jeffreys is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and therefore denies them.

13. Clerk Jeffreys is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and therefore denies them.

14. Clerk Jeffreys admits that Patricia Schick's name did not appear on any absentee ballot to be cast at the Clerk's office for the November 8, 2022 election. Clerk Jeffreys denies all remaining allegations in Paragraph 14.

15. Clerk Jeffreys is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and therefore denies them.

16. Clerk Jeffreys is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and therefore denies them.

17. Clerk Jeffreys admits that Denise Vetter's name did not appear on any absentee ballot to be cast at the Clerk's office for the November 8, 2022 election. Clerk Jeffreys denies all remaining allegations in Paragraph 17.

18. Clerk Jeffreys is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and therefore denies them.

19. Clerk Jeffreys is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and therefore denies them.

20. Admits.

21. Clerk Jeffreys admits the allegations in Paragraph 21 to the extent they recite her responsibilities during the IPAV period for the November 8, 2022 election. Clerk Jeffreys denies all remaining allegations in Paragraph 21.

JURISDICTION AND VENUE

22. Denies.

23. Clerk Jeffreys admits that venue is appropriate in Brown County only if the Court has jurisdiction to hear this action.

BACKGROUND FACTS

24. Clerk Jeffreys states that the language of Wis. Stat. §§ 6.86(1)(a)2., (1)(ar), (1)(b), and 6.87 speaks for itself and denies any characterization of said statutes contrary to their express terms. Clerk Jeffreys further states that Paragraph 24 asserts a legal conclusion to which no answer is required.

25. Admits.

26. Admits.

27. Clerk Jeffreys admits that Paragraph 27 accurately quotes from a portion of Wis. Stat. § 6.84. Clerk Jeffreys further states that the language of that statute speaks for itself and denies any characterization of said statute contrary to its express terms. Answering further, Clerk Jeffreys states that Paragraph 27 asserts a legal conclusion to which no answer is required. Clerk Jeffreys denies all remaining allegations in Paragraph 27.

28. Clerk Jeffreys admits that Paragraph 28 accurately quotes from a portion of Wis. Stat. § 7.41(2) and further states that the language of that statute speaks for itself and denies any characterization of said statute contrary to its express terms. Answering further, Clerk Jeffreys states that Paragraph 28 asserts a legal conclusion to which no answer is required. Clerk Jeffreys denies all remaining allegations in Paragraph 28.

29. Clerk Jeffreys states that the language of the Election Administration Manual provided by the Wisconsin Elections Commission (referred to in Paragraph 29 of the Complaint as “Election Day Manual”) speaks for itself and denies any characterization of said document contrary to its express terms. Clerk Jeffreys further states that Paragraph 29 asserts a legal conclusion to which no answer is required. Clerk Jeffreys denies all remaining allegations in Paragraph 29.

30. Denies.

31. Clerk Jeffreys admits that the in-person absentee voting process took place partially in the Clerk's office and partially in the hallway. Clerk Jeffreys denies all remaining allegations in Paragraph 31, and further denies the accuracy of Exhibit A and puts Plaintiffs to their proof. Clerk Jeffreys affirmatively states that due to considerations such as increased numbers of IPAV voters, the need for additional election inspectors as a result, and the realities of the spatial limitations of the Clerk's office itself, it was necessary for IPAV to take place partially in the Clerk's office and partially in the hallway.

32. Admits.

33. Clerk Jeffreys admits that three parts of the IPAV process occurred in the hallway: the elector marked their ballot; an election inspector completed the witness certification on the absentee ballot certificate envelope; and the elector deposited their ballot into a ballot box. Clerk Jeffreys expressly denies all remaining allegations in Paragraph 33.

34. Denies.

35. Denies.

36. Denies.

37. Based on the lack of specificity of the allegation in Paragraph 37, Clerk Jeffreys is without information or knowledge sufficient to form a belief as to the truth of said allegation and therefore denies.

38. Denies.

39. Denies.

40. Clerk Jeffreys states that Paragraph 40 does not contain any allegations to which a response is required. To the extent that a response is required, Clerk Jeffreys denies all allegations in Paragraph 40.

41. Clerk Jeffreys states that Paragraph 41 does not contain any allegations to which a response is required. To the extent that a response is required, Clerk Jeffreys denies all allegations in Paragraph 41.

42. Clerk Jeffreys states that Paragraph 42 does not contain any allegations to which a response is required. To the extent that a response is required, Clerk Jeffreys denies all allegations in Paragraph 42.

43. Clerk Jeffreys admits that she received a phone call from the Wisconsin Elections Commission in which WEC representatives told Clerk Jeffreys about information that observers of the City's IPAV process had conveyed to the WEC. Clerk Jeffreys denies all remaining allegations in Paragraph 43. Clerk Jeffreys affirmatively states that the observers in question had provided the WEC with inaccurate and/or false information and that she provided the WEC with an accurate summary of the setup for the IPAV process in the City of Green Bay. Clerk Jeffreys further affirmatively states that the WEC did not instruct her to make any changes to said setup.

44. Clerk Jeffreys states that Paragraph 44 asserts a legal conclusion to which no answer is required. To the extent a response is required, Clerk Jeffreys denies all allegations in Paragraph 44.

45. Clerk Jeffreys states that Paragraph 45 asserts a legal conclusion to which no answer is required. To the extent a response is required, Clerk Jeffreys denies all allegations in Paragraph 45.

46. Clerk Jeffreys states that Paragraph 46 asserts a legal conclusion to which no answer is required. To the extent a response is required, Clerk Jeffreys denies all allegations in Paragraph 46.

COUNT 1: INJUNCTIVE RELIEF

47. Clerk Jeffreys realleges and incorporates by reference the foregoing responses to Paragraphs 1 through 46.

48. Denies.

49. Denies.

50. Denies.

51. Clerk Jeffreys states that Paragraph 51 asserts a legal conclusion to which no answer is required. To the extent a response is required, Clerk Jeffreys denies all allegations in Paragraph 51.

52. Clerk Jeffreys states that Paragraph 52 asserts a legal conclusion to which no answer is required. To the extent a response is required, Clerk Jeffreys denies all allegations in Paragraph 52.

COUNT II: DECLARATORY RELIEF

53. Clerk Jeffreys realleges and incorporates by reference the foregoing responses to Paragraphs 1 through 52.

54. Admits.

55. Denies.

56. Clerk Jeffreys states that Paragraph 56 asserts a legal conclusion to which no answer is required. To the extent a response is required, Clerk Jeffreys denies all allegations in Paragraph 56.

57. Clerk Jeffreys states that Paragraph 57 asserts a legal conclusion to which no answer is required. To the extent a response is required, Clerk Jeffreys denies all allegations in Paragraph 57.

COUNT III: WRIT OF MANDAMUS

58. Clerk Jeffreys realleges and incorporates by reference the foregoing responses to Paragraphs 1 through 57.

59. Clerk Jeffreys states that Paragraph 59 asserts a legal conclusion to which no answer is required. To the extent a response is required, Clerk Jeffreys denies all allegations in Paragraph 59.

60. Clerk Jeffreys states that Paragraph 60 asserts a legal conclusion to which no answer is required. To the extent a response is required, Clerk Jeffreys denies all allegations in Paragraph 60.

61. Clerk Jeffreys states that Paragraph 61 asserts a legal conclusion to which no answer is required. To the extent a response is required, Clerk Jeffreys denies all allegations in Paragraph 61.

62. Clerk Jeffreys states that Paragraph 62 asserts a legal conclusion to which no answer is required. To the extent a response is required, Clerk Jeffreys denies all allegations in Paragraph 62.

AFFIRMATIVE DEFENSES

As and for affirmative defenses, Defendant alleges and states to the court as follows:

1. The Court lacks subject matter jurisdiction over Plaintiffs' Complaint.
2. Plaintiffs have failed to comply with a mandatory administrative review process and have failed to exhaust administrative remedies.

3. Some or all of Plaintiffs' claims are moot, do not present a justiciable controversy, and this Court therefore lacks competency to adjudicate such claims.

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

PRAYER FOR RELIEF

WHEREFORE, Defendant Celestine Jeffreys hereby requests the following:

- A. Deny Plaintiffs' unauthorized requests for declaratory and injunctive relief;
- B. Enter judgment in favor of Defendant Jeffreys and against Plaintiffs on all claims alleged in the Complaint;
- C. Award Defendant Jeffreys costs and disbursements of this action, including actual attorney's fees; and
- D. Grant such other relief as the Court may deem just and equitable.

Dated at Green Bay, Wisconsin, this 22nd day of November, 2022.

By: /s/ Lindsay J. Mather
Lindsay J. Mather, Assistant City Attorney
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State Bar No. 1086849

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