

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SUSAN LIEBERT, et al.,

Plaintiffs,

v.

Case No. 23-CV-672

WISCONSIN ELECTIONS
COMMISSION, et al.,

Defendants,

WISCONSIN STATE LEGISLATURE,

Intervenor-Defendant.

**COMMISSION DEFENDANTS' RESPONSE TO PLAINTIFFS'
PROPOSED FINDINGS OF FACT**

Commission Defendants respond to Plaintiffs' proposed findings of fact in support of their motion for summary judgment, as follows:

1. The Wisconsin Elections Commission (the "Commission") prescribes a standard absentee ballot certificate for municipalities to distribute to absentee voters. Ex. C. to Decl. of Uzoma N. Nkwonta ("Nkwonta Decl.") (Discovery Responses of Wis. Elections Comm'n, RFA Nos. 2, 6).

Response: No dispute that the Commission provides a standard absentee ballot certificate for municipalities to distribute to absentee voters. (Kehoe Decl. ¶ 5, Ex. 503.)

2. The standard absentee ballot certificate (Form EL-122) prescribed by the Commission is Exhibit A to the Nkwonta Declaration.

Response: No dispute that the standard absentee ballot certificate (Form EL-122) is Exhibit A to the Nkwonta Declaration. (Kehoe Decl. ¶ 5, Ex. 503.)

3. The Commission prepares and publishes the Wisconsin Election Administration Manual. Nkwonta Decl. Ex. C (Commission RFA Nos. 3, 7).

Response: No dispute.

4. The Election Administration Manual provides guidance to municipal and county officials about the proper administration of Wisconsin's absentee voting laws, including the requirement that absentee ballots be witnessed (the "witness requirement") and required contents of the absentee ballot certificate. Nkwonta Decl. Ex. O.

Response: No dispute.

5. The Commission prepares and publishes the Wisconsin Election Day Manual. Nkwonta Decl. Ex. P.

Response: No dispute.

6. The Election Day Manual provides guidance to municipal and county officials about the proper administration of Wisconsin's absentee voting laws, including the witness requirement and required contents of the absentee ballot certificate. Nkwonta Decl. Ex. P.

Response: No dispute.

7. The Commission's "Uniform Absentee Ballot Instructions" include instructions for completing the absentee ballot certificate. Nkwonta Decl. Ex. B.

Response: No dispute.

8. Michelle Luedtke, in her official capacity as city clerk for the City of Brookfield; Lorena Rae Stottler, in her official capacity as city clerk for the City of Janesville; and Maribeth Witzel-Behl, in her official capacity as city clerk for the City of Madison (collectively, the "Clerk Defendants") provide the uniform instructions prescribed by the Commission to absentee voters. Nkwonta Decl. Ex. D (Discovery Responses of the Clerk for the City of Brookfield, RFA No. 1); Nkwonta Decl. Ex. E (Discovery Responses of the Clerk of the City of Janesville, RFA No. 1); Nkwonta Decl. Ex. F (Discovery Responses of the Clerk for the City of Madison, RFA No. 1).

Response: No dispute.

9. The Clerk Defendants include with absentee ballots the absentee ballot certificate prescribed by the Commission. Nkwonta Decl. Ex. D (Brookfield RFA No. 2); Nkwonta Decl. Ex. E (Janesville RFA No. 2); Nkwonta Decl. Ex. F (Madison RFA No. 2); Nkwonta Decl. Ex. C (Commission RFA No. 8).

Response: No dispute that the Clerk Defendants include with absentee ballots the absentee ballot certificate provided by the Commission.

10. The Clerk Defendants deem absentee ballot certificates that lack a witness name, address, or signature to be “improperly completed” for purposes of Wis. Stat. § 6.87(9). Nkwonta Ex. D (Brookfield RFA No. 9); Nkwonta Decl. Ex. E (Janesville RFA No. 9); Nkwonta Decl. Ex. F (Madison RFA No. 9).

Response: This assertion is not supported by the cited evidentiary material and should, therefore, be disregarded by the Court.

11. The Clerk Defendants deem absentee ballots that lack a completed certificate to have “no certificate” for purposes of Wis. Stat. § 6.87(9). Nkwonta Decl. Ex. D (Brookfield RFA No. 10); Nkwonta Decl. Ex. E (Janesville RFA No. 10); Nkwonta Decl. Ex. F (Madison RFA No. 10).

Response: No dispute.

12. If the Clerk Defendants determine that an absentee ballot does not comply with the witness requirement, they either (1) return the ballot to the voter for correction, time permitting, or (2) set aside the ballot for rejection. Nkwonta Decl. Ex. D (Brookfield RFA No. 15); Nkwonta Decl. Ex. E (Janesville RFA No. 15); Nkwonta Decl. Ex. F (Madison RFA No. 15); see also Nkwonta Decl. Ex. C (Commission RFA No. 8); Nkwonta Decl. Ex. O at 88–91.

Response: No dispute.

13. Plaintiff Susan Liebert is a qualified Wisconsin voter registered to vote in the City of Janesville, Rock County. Decl. of Susan Liebert, ¶ 3.

Response: Assuming “qualified” means a qualified or eligible elector pursuant to Wis. Stat. § 6.02, **no dispute.**

14. Plaintiff Liebert is a senior citizen with significant health problems and disabilities. Id. ¶ 4.

Response: No dispute.

15. Plaintiff Liebert is a permanent absentee voter and so automatically receives an absentee ballot for each election. Id. ¶ 6.

Response: No dispute.

16. Plaintiff Liebert plans to vote by absentee ballot in all future Wisconsin elections, including the November 2024 general election. Id. ¶ 8.

Response: No dispute.

17. Plaintiff Liebert lives alone, and because of her age, health, and disabilities, is largely confined in her home. Id. ¶ 9.

Response: No dispute.

18. Plaintiff Liebert's age, disabilities, health concerns, and confinement in her home make it difficult for her to procure the assistance of an absentee ballot witness. She generally must arrange for someone to visit her at her home to serve as the witness. Id. ¶ 10.

Response: No dispute.

19. The COVID-19 pandemic has compounded Plaintiff Liebert's health concerns and difficulties voting by absentee ballot. During the height of the pandemic, she primarily relied on her son to serve as witness. Id. ¶ 11.

Response: No dispute.

20. Plaintiff Liebert's son now resides in Waukesha County, not Janesville, meaning he must make an hour-plus trip to serve as her witness. Id. ¶ 12.

Response: No dispute.

21. Plaintiff Anna Haas is a qualified Wisconsin voter registered to vote in the City of Brookfield, Waukesha County. Decl. of Anna Haas, ¶ 3.

Response: Assuming "qualified" means a qualified or eligible elector pursuant to Wis. Stat. § 6.02, **no dispute.**

22. Plaintiff Haas routinely votes by absentee ballot. Id. ¶ 4.

Response: No dispute.

23. Plaintiff Haas plans to vote by absentee ballot in future elections, including the November 2024 general election. Id. ¶ 5.

Response: No dispute.

24. Plaintiff Haas's work entails long-term travel outside the state, which requires her to vote by absentee ballot when such travel overlaps with an election. Id. ¶ 6.

Response: No dispute.

25. Plaintiff Haas is engaged to be married to a noncitizen and must vote by absentee ballot whenever her travel overseas to visit his family overlaps with an election. Id. ¶ 7.

Response: No dispute.

26. Plaintiff Haas plans to be traveling overseas around the time of the November 2024 general election and plans to vote by absentee ballot in that election. Id. ¶ 7.

Response: No dispute.

27. Though he is often the most convenient witness available to her, Plaintiff Haas's fiancé is not eligible to serve as her absentee ballot witness because he is not a citizen. *Id.* ¶ 10.

Response: No dispute that Haas's fiancé is often the most convenient witness available to her. **Dispute** that he is not eligible to serve as her absentee ballot witness because he is not a citizen. The State of Wisconsin and the United States have entered into a consent decree that provides the federal Uniformed and Overseas Citizens Absentee Voting Act, *see* 52 U.S.C. §§ 20301, *et seq.*, protections for voters who, like Haas, may not qualify for the state exemption to the U.S. citizen witness requirement, by allowing them to be treated as permanent overseas and military voters who, under Wisconsin law, still need a witness for the absentee ballot but that witness does not need to be a U.S. citizen. (Kilpatrick Decl. ¶ 13, Ex. 512.) The Commission's current guidance is that temporary overseas voters do not need their witness to be a U.S. citizen when voting in any state or federal election. (Kehoe Decl. ¶ 3, Ex. 501, at 86.)

28. When Plaintiff Haas travels outside the United States to visit her family, she does not have reliable access to an adult U.S. citizen to serve as her absentee ballot witness. *Id.* ¶¶ 9, 11.

Response: No dispute that when Plaintiff Haas travels outside the United States to visit her family, she does not have reliable access to an adult

U.S. citizen to serve as her absentee ballot witness. **Dispute** that Haas, as a temporary overseas voter, is required to have a U.S. citizen serve as her absentee ballot witness.

29. Plaintiff Anna Poi is a qualified Wisconsin voter registered to vote in the City of Madison, Dane County. Decl. of Anna Poi, ¶ 3.

Response: Assuming “qualified” means a qualified or eligible elector pursuant to Wis. Stat. § 6.02, **no dispute.**

30. Plaintiff Poi is an undergraduate student at the University of Minnesota-Twin Cities and relies on absentee voting to cast her ballot in Wisconsin elections. Id. ¶¶ 4–5.

Response: No dispute.

31. Plaintiff Poi plans to vote by absentee ballot in all Wisconsin elections in 2024. Id. ¶¶ 5–6.

Response: No dispute.

32. Because Wisconsin requires that a voter produce the original absentee ballot witness to cure a defective absentee ballot certificate, Plaintiff Poi generally has another Wisconsin elector witness her ballot. Id. ¶ 7.

Response: No dispute.

33. Using a Wisconsin elector as her witness ensures that Plaintiff Poi will be able to locate and rely on the witness if it becomes necessary to cure the certificate and minimizes the risk that her ballot will be rejected. Id. ¶¶ 7–8.

Response: No dispute.

34. Coordinating a meeting with another Wisconsin voter to cast her absentee ballot imposes a significant logistical burden on Plaintiff Poi in every election in which she casts an absentee ballot. Id. ¶ 8.

Response: No dispute.

35. Plaintiff Poi will be studying abroad over the summer and so plans to vote by absentee ballot in the August 13 partisan primary election. Id. ¶ 6.

Response: No dispute.

36. Plaintiff Anastasia Ferin Knight is a qualified Wisconsin voter registered to vote in the City of Madison, Dane County. Decl. of Anastasia Ferin Knight, ¶ 3.

Response: Assuming “qualified” means a qualified or eligible elector pursuant to Wis. Stat. § 6.02, **no dispute.**

37. Plaintiff Knight is a graduate student at the School of the Art Institute of Chicago and relies on absentee voting to cast her ballot in Wisconsin elections. Id. ¶ 4.

Response: No dispute.

38. Plaintiff Knight plans to vote absentee in future elections, including, in particular, the February 20 and April 2, 2024, spring elections, both of which will occur while she is in Chicago for the academic term. Id. ¶ 6.

Response: No dispute.

39. Because Plaintiff Knight lives alone, she must identify a willing U.S. citizen witness and coordinate a meeting at a location where she can fill out her ballot in the presence of the witness—but no one else—in order to vote absentee. Id. ¶ 7.

Response: No dispute.

40. Because many of Plaintiff Knight's acquaintances in Chicago are also graduate students who rely on public transportation, arranging a meeting to cast an absentee ballot is a logistical burden. Id. ¶ 8.

Response: No dispute.

Dated this 8th day of March 2024.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

s/Charlotte Gibson
CHARLOTTE GIBSON
Assistant Attorney General
State Bar #1038845

KARLA Z. KECKHAVER
Assistant Attorney General
State Bar #1028242

STEVEN C. KILPATRICK
Assistant Attorney General
State Bar #1025452

Attorneys for Commission Defendants

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 957-5218 (CG)
(608) 264-6365 (KZK)
(608) 266-1792 (SCK)
(608) 294-2907 (Fax)
gibsoncj@doj.state.wi.us
keckhaverkz@doj.state.wi.us
kilpatricksc@doj.state.wi.us

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