

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

SUSAN LIEBERT; ANNA HAAS; ANNA POI;
and ANASTASIA FERIN KNIGHT,

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION;
DON M. MILLIS, ROBERT F. SPINDELL,
MARGE BOSTELMANN, ANN S. JACOBS,
MARK L. THOMSEN, *and* JOSEPH J.
CZARNEZKI, *in their official capacities as*
commissioners of the Wisconsin
Elections Commission; Meagan Wolfe,
in her official capacity as administrator
of the Wisconsin Elections Commission;
MICHELLE LUEDTKE, *in her official*
capacity as city clerk for the City of
Brookfield; MARIBETH WITZEL-BEHL, in
her official capacity as city clerk for the
City of Madison; and LORENA RAE
STOTTLER, in her official capacity as city
clerk for the City of Janesville,

Case No. 3:23-cv-00672-jdp

Defendants.

THE WISCONSIN STATE LEGISLATURE'S
RESPONSE TO PLAINTIFFS' PROPOSED FINDINGS OF FACT

I. Response To Facts In Section Titled “Defendants administer Wisconsin’s absentee ballot witness requirement.”

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: Not disputed.

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

Response: Not disputed.

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

Response: Not disputed.

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: Disputed as to the term “proper.” The Election Administration Manual provides the Commission’s interpretation of

Wisconsin's absentee voting laws. The Legislature does not dispute, however, that the Manual includes copies of the absentee ballot certificate.

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

Response: Not disputed.

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: Disputed as to the term "proper." The Election Day Manual provides municipal and county officials with the Commission's interpretation of Wisconsin's absentee voting laws. The Legislature does not dispute, however, that the Manual includes copies of the absentee ballot certificate.

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

Response: Not disputed.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

II. Response To Facts in Section Titled “Plaintiffs are injured by Wisconsin’s absentee ballot witness requirement.”

A. Susan Liebert

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: Not disputed for purposes of this litigation.

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

Response: Not disputed for purposes of this litigation.

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

Response: Not disputed for purposes of this litigation.

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

Response: Not disputed for purposes of this litigation.

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

Response: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

B. Anna Haas

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: Not disputed for purposes of this litigation.

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

Response: Not disputed for purposes of this litigation.

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

Response: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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.

Response: Not disputed for purposes of this litigation.

C. Anna Poi

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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

Response: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

D. Anastasia Ferin Knight

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

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: Not disputed for purposes of this litigation.

Dated: March 8, 2024.

Respectfully submitted,

/s/Misha Tseytlin

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2024, a true and accurate copy of the foregoing was served via the Court's CM/ECF system upon all counsel of record.

/s/Misha Tseytlin
MISHA TSEYTLIN

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