

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 PLAINTIFF'S
ADDITIONAL PROPOSED FINDINGS OF FACT**

Commission Defendants respond to Plaintiff's additional proposed findings of fact in support of its motion for summary judgment (Dkt. 80), as follows:

1. 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. Second Decl. of Uzoma N. Nkwonta ("Nkwonta Decl."), Ex. B (Discovery Responses of the Clerk for the City of Brookfield, RFA No. 1); Nkwonta Decl., Ex. C (Discovery Responses of the Clerk of the City of Janesville, RFA No. 1);

Nkwonta Decl., Ex. D (Discovery Responses of the Clerk for the City of Madison, RFA No. 1).

Response: No dispute.

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

Response: No dispute.

3. 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 Decl., Ex. B (Brookfield RFA No. 9); Nkwonta Decl., Ex. C (Janesville RFA No. 9); Nkwonta Decl., Ex. D (Madison RFA No. 9).

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

4. 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. B (Brookfield RFA No. 10); Nkwonta Decl., Ex. C (Janesville RFA No. 10); Nkwonta Decl., Ex. D (Madison RFA No. 10).

Response: No dispute.

5. 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. B (Brookfield RFA No. 15); Nkwonta Decl., Ex. C (Janesville RFA No. 15); Nkwonta Decl., Ex. D (Madison RFA No. 15); see also Nkwonta Decl., Ex. A (Commission RFA No. 8); ECF No. 61-1 at 88–91.

Response: No dispute.

6. 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. ECF No. 70 (Haas Decl.) ¶ 7.

Response: No dispute.

7. 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. (Dkt. 60 ¶ 13; 60-9.) 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. (Dkt. 61 ¶ 3; 61-1:6.)

8. 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.

Dated this 22nd day of March 2024.

Respectfully submitted,

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