

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

THE ANDREW GOODMAN FOUNDATION,

Plaintiff,

v.

Case No. 19-CV-955

MARGE BOSTELMANN, JULIE M.
GLANCEY, ANN S. JACOBS, DEAN
KNUDSON, ROBERT F. SPINDELL, JR.,
and MARK L. THOMSEN, in their official
capacities as Wisconsin Elections
Commissioners,

Defendants.

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Defendants Marge Bostelmann, Julie M. Glancey, Ann S. Jacobs, Dean Knudson, Robert F. Spindell, Jr., and Mark L. Thomsen, in their official capacities as Wisconsin Elections Commissioners (Defendants), answer Plaintiff's Complaint for Declaratory and Injunctive Relief as follows:

Response to unnumbered paragraph on page 1 of the Complaint for Declaratory and Injunctive Relief: Defendants ADMIT these allegations.

NATURE OF THE CASE

1. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 1.

2. Defendants ADMIT the allegations in the first sentence of paragraph 2 and those in footnote 1. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 2.

3. Defendants AFFIRMATIVELY ALLEGE that the requirements in Wis. Stat. § 5.02(6m)(f) speak for themselves. To the extent the allegations in paragraph 3 misstate the law or include factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 3.

4. Defendants AFFIRMATIVELY ALLEGE that the requirements in Wis. Stat. § 5.02(6m) speak for themselves. To the extent the allegations in paragraph 4 misstate the law or include factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 4.

5. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 5.

6. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 6.

7. Defendants ADMIT that 2011 Wisconsin Act 23 (Act 23) has been the subject of legal challenges and that appeals addressing Act 23 are pending in *One Wisconsin Institute, Inc. v. Thomsen*, Nos. 16-3083 & 16-3091 (7th Cir.), and *Frank v. Walker*, Nos. 16-3003 & 16-3052 (7th Cir.). Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 7.

8. Defendants DENY the allegations in the first sentence of paragraph 8. Defendants AFFIRMATIVELY ALLEGE that the provisions of Act 23 that Plaintiff seeks to challenge in the instant case were challenged under the Twenty-Sixth Amendment to the U.S. Constitution by the plaintiffs in *One Wisconsin Institute, Inc. v. Thomsen*, 15-CV-324 (W.D. Wis.). Defendants further AFFIRMATIVELY ALLEGE that U.S. District Judge James D. Peterson rejected the *One Wisconsin Institute* plaintiffs' Twenty-Sixth Amendment challenge to Act 23. *One Wis. Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 925–27 (W.D. Wis. 2016), and that decision was appealed. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 8.

JURISDICTION AND VENUE

9. Defendants ADMIT that Plaintiff brings its action under 42 U.S.C. §§ 1983 and 1988. Defendants DENY that there is any need for this Court to

redress a deprivation, under color of state law, of a right secured by the United States Constitution.

10. Defendants AFFIRMATIVELY ALLEGE that 28 U.S.C. §§ 1331 and 1343 speak for themselves. To the extent the allegations in paragraph 10 misstate the law or include factual allegations, Defendants DENY the allegations in paragraph 10 because Plaintiff lacks Article III standing.

11. Defendants ADMIT the allegations in paragraph 11.

12. Defendants ADMIT the allegations in paragraph 12.

13. Defendants AFFIRMATIVELY ALLEGE that 28 U.S.C. §§ 2201 and 2202 speak for themselves. To the extent the allegations in paragraph 13 misstate the law or include factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 13.

PARTIES

14. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 14.

15. Defendants ADMIT that they are the six Commissioners of the Wisconsin Elections Commission, that they are named as defendants in their official capacities in this lawsuit, and that they comprise the Wisconsin Elections Commission, which is a body that administers and enforces Wisconsin's election laws. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 15.

16. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 16.

17. Defendants AFFIRMATIVELY ALLEGE that Wis. Stat. § 6.79(2)(a) speaks for itself. To the extent the allegations in paragraph 17 misstate the law or include factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 17.

18. Defendants AFFIRMATIVELY ALLEGE that Act 23 and Wis. Stat. § 5.02(6m) speak for themselves. To the extent the allegations in paragraph 18 misstate the law or include factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 18.

19. Defendants AFFIRMATIVELY ALLEGE that Act 23 and Wis. Stat. § 5.02(6m)(f) speak for themselves. To the extent the allegations in paragraph 19 misstate the law or include factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 19.

20. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 20.

21. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 21.

22. Defendants AFFIRMATIVELY ALLEGE that Act 23 and Wis. Stat. § 6.79(2)(a) speak for themselves. To the extent the allegations in paragraph 22 misstate the law or include factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 22.

23. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 23.

24. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 24.

25. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 25.

CLAIMS FOR RELIEF

COUNT I

Twenty-Sixth Amendment U.S. Const. Amend. XXVI, 42 U.S.C. § 1983, 28 U.S.C. §§ 2201, 2202 Undue Burden on the Right to Vote on the Basis of Age

26. Defendants reassert and incorporate by reference their answers to all prior paragraphs of this Answer and the responses in the paragraphs that follow as they are set forth herein.

27. Defendants DENY that paragraph 27 contains any factual allegations. Paragraph 27 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegation in paragraph 27

misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 27.

28. Defendants DENY that paragraph 28 contains any factual allegations. Paragraph 28 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegation in paragraph 28 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 28.

29. Defendants DENY the allegations in paragraph 29.

RESPONSE TO PRAYER FOR RELIEF AND WHEREFORE
CLAUSE: Defendants DENY that Plaintiff is entitled to the relief it has requested.

FURTHER RESPONSE: Defendants DENY all factual allegations in the Complaint for Declaratory and Injunctive Relief not expressly admitted in this Answer.

AFFIRMATIVE DEFENSES

1. This Court lacks jurisdiction over the subject matter of the Complaint for Declaratory and Injunctive Relief because Plaintiff lacks standing.

2. The Complaint for Declaratory and Injunctive Relief fails to state a claim upon which relief can be granted.

3. To the extent Plaintiff might seek damages, Defendants are entitled to sovereign immunity.

WHEREFORE, Defendants respectfully request that judgment be entered in their favor dismissing this action with prejudice, denying all the relief requested, and granting them such further relief as the Court deems appropriate.

Dated this 6th day of January, 2020.

Respectfully submitted,

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