

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

Democratic National Committee and
Democratic Party of Wisconsin,
Plaintiffs,

v.

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,

Case No. 3:20-cv-249-wmc
(consolidated with Case Nos.
3:20-cv-278-wmc and
3:20-cv-284-wmc)

and

Republican National Committee,
Republican Party of Wisconsin, and the
Wisconsin State Legislature,
Intervenor-Defendants.

**THE WISCONSIN LEGISLATURE'S ANSWER AND AFFIRMATIVE
DEFENSES TO THE SECOND AMENDED COMPLAINT IN *DNC***

Intervenor-Defendant the Wisconsin Legislature ("Legislature") provides its Answer And Affirmative Defenses To Plaintiffs Democratic National Committee And Democratic Party Of Wisconsin's Second Amended Complaint, Dkt. 198-1, as follows:

NATURE OF THE CASE

1. Denied.
2. Paragraph 2 cites public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent this paragraph asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

3. Paragraph 3 cites public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent this paragraph asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

4. Paragraph 4 cites Wisconsin statutes, this Court's orders, the Seventh Circuit's order in *Democratic National Committee v. Republican National Committee*, Nos. 20-1538, 20-1546, 2020 WL 1638374 (7th Cir. Apr. 3, 2020), and the Supreme Court's opinion in *Republican National Committee v. Democratic National Committee*, 140 S. Ct. 1205 (2020), which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these cited legal sources. The Legislature admits that Plaintiffs filed suit on March 18, 2020, and that certain preliminary injunction proceedings occurred. To the extent this paragraph asserts additional factual allegations, the Legislature denies those assertions either because they are false or because the Legislature lacks sufficient information to admit or deny.

5. Paragraph 5 cites public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent this paragraph asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

6. The Legislature admits that Wisconsin will hold additional elections in 2020, but denies the remainder of the allegations in paragraph 6. To the extent the allegations cite publicly filed documents in this case, those documents speak for

themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources.

7. Paragraph 7 cites publicly filed documents in this case and Wisconsin statutes, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources.

8. Denied.

9. The Legislature admits that Plaintiffs seek the relief mentioned in paragraph 9, but denies that they are entitled to any relief on their claims. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

JURISDICTION AND VENUE

10. The Legislature admits that Plaintiffs purport to bring this action under 42 U.S.C. §§ 1983 and 1988, but denies that they are entitled to any relief.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Paragraph 15 is a legal conclusion that requires no response. To the extent that a response is required, the Legislature denies the allegations. The allegations in this paragraph also cite Wisconsin statutes, federal statutes, this Court's orders, the Seventh Circuit's order in *Democratic National Committee v. Republican National Committee*, Nos. 20-1538, 20-1546, 2020 WL 1638374 (7th Cir.

Apr. 3, 2020), and the Supreme Court’s opinion in *Republican National Committee v. Democratic National Committee*, 140 S. Ct. 1205 (2020), which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with the cited legal sources and further denies that Plaintiffs are entitled to any such relief.

PARTIES

16. Admitted.

17. Admitted that the Democratic National Committee “has members and constituents across the United States.” Denied in all other respects.

18. The Legislature admits the allegations in paragraph 18 except for the portion of the last sentence beginning with “including,” which is denied.

19. This paragraph cites legal authorities that speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with the cited legal sources. The Legislature denies all allegations of harm specific to the challenged provisions. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

20. The Legislature admits that Plaintiffs have sued the various Defendants in their official capacities. The remaining allegations in paragraph 20 cite Wisconsin statutes and federal authorities, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with the cited legal sources.

21. Admitted.

22. Admitted.

23. Admitted.

STATEMENT OF FACTS AND LAW

A. Wisconsin Registration and Absentee Laws

24. Paragraph 24 is a legal conclusion that requires no response. This paragraph cites a statute that speaks for itself.

25. Paragraph 25 is a legal conclusion that requires no response. The allegations in this paragraph cite Wisconsin statutes, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with the cited legal sources and specifically denies that Wis. Stat. § 6.34(2m) is the “only exception” to the identification requirement.

26. Paragraph 26 is a legal conclusion that requires no response. The allegations in this paragraph cite Wisconsin statutes, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with the cited legal sources.

27. Paragraph 27 cites public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. The Legislature lacks sufficient information to admit or deny the remaining factual assertions, and so denies.

28. Paragraph 28 is a legal conclusion that requires no response. The allegations in this paragraph cite Wisconsin statutes, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with the cited legal sources.

29. Paragraph 29 is a legal conclusion that requires no response. The allegations in this paragraph cite Wisconsin statutes, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with the cited legal sources.

30. Paragraph 30 is a legal conclusion that requires no response. The allegations in this paragraph cite Wisconsin statutes, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with the cited legal sources.

B. The COVID-19 Pandemic and the April 7 Spring Election

31. The Legislature admits that COVID-19 infections present health issues worldwide. This paragraph also cites certain public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with the cited sources. The Legislature lacks sufficient information to admit or deny the remaining allegations in paragraph 31, and so denies.

32. The Legislature admits that the Governor issued the “Safer-at-Home Order” on March 24, 2020, the contents of which speak for themselves, and extended the Order on April 16. The allegations in this paragraph cite Wisconsin statutes, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with the cited legal sources. The Legislature denies the remainder of the allegations in paragraph 32, including because they appear to refer to the situation in Wisconsin only as of April, and ignore entirely developments after April,

including that the Wisconsin Supreme Court invalidated the extension of the Governor's Order.

33. The Legislature admits that Wisconsin will hold additional elections in 2020, but lacks sufficient information to admit or deny the remaining allegations in paragraph 33, and so denies.

34. Paragraph 34 cites publicly filed documents in this case, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. The Legislature lacks sufficient information to admit or deny the remaining allegations, and so denies.

35. Paragraph 35 cites publicly filed documents in this case, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. The Legislature lacks sufficient information to admit or deny the remaining allegations, and so denies.

36. Paragraph 36 cites public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent it asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

37. Paragraph 37 cites public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent it asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies

38. Paragraph 38 cites public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent it asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

39. Paragraph 39 cites public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent it asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

40. Paragraph 40 cites public sources and a Wisconsin Supreme Court opinion, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent it asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

41. Paragraph 41 cites public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent it asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

42. Paragraph 42 cites public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent it asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

43. Paragraph 43 cites public sources and publicly filed documents in this case, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent it asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

44. Paragraph 44 cites public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent it asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

45. Paragraph 45 cites public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent it asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

C. The Impact of the Challenged Statutory Provisions During the COVID-19 Pandemic

46. Denied.

47. Denied.

a. Extension of Deadline for Receipt of Absentee Ballots

48. Denied.

49. The Legislature lacks sufficient information to admit or deny the allegations in paragraph 49, and so denies.

50. Paragraph 50 cites public filings in this case, as well as certain public sources. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent it asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

51. Denied.

52. Denied.

53. Paragraph 53 cites the Supreme Court's opinion in *Republican National Committee v. Democratic National Committee*, 140 S. Ct. 1205 (2020), which speaks for itself. The Legislature denies the allegations to the extent they are inconsistent with this cited legal source. The Legislature denies the remaining allegations.

b. Relief from Requirement of Witness Signature for Absentee Ballots

54. Denied.

55. Paragraph 55 cites the Seventh Circuit's order in *Democratic National Committee v. Republican National Committee*, Nos. 20-1538, 20-1546, 2020 WL 1638374 (7th Cir. Apr. 3, 2020), which speaks for itself. The Legislature denies the allegations to the extent they are inconsistent with this cited legal source. To the extent this paragraph asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

56. Paragraph 56 cites public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources. To the extent it asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

57. Paragraph 57 cites Wisconsin statutes and the Seventh Circuit's order in *Democratic National Committee v. Republican National Committee*, Nos. 20-1538, 20-1546, 2020 WL 1638374 (7th Cir. Apr. 3, 2020), which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with the cited legal sources. The Legislature denies the remaining allegations.

58. Paragraph 58 cites the Seventh Circuit's order in *Democratic National Committee v. Republican National Committee*, Nos. 20-1538, 20-1546 (7th Cir. Apr. 3, 2020), and public sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with the cited legal sources. To the extent it asserts factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

59. Denied. The Legislature further denies that Plaintiffs are entitled to relief.

c. Relief from Proof of Identification Provision

60. Paragraph 60 cites Wisconsin statutes, which speak for themselves. The Legislature denies the allegations to the extent they contradict these sources, and otherwise denies the allegations in this paragraph.

61. The Legislature lacks sufficient information to admit or deny the allegations in paragraph 61, and so denies.

62. Paragraph 62 cites Wisconsin statutes, a Wisconsin Supreme Court opinion, and this Court's order, which speak for themselves. The Legislature denies

the allegations to the extent they are inconsistent with the cited legal sources. The Legislature otherwise denies the allegations in this paragraph.

63. Paragraph 63 contains a description of certain government sources, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with the cited government sources. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

64. Denied.

d. Relief from Proof of Residence Provision

65. Paragraph 65 cites Wisconsin statutes, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with the cited legal sources. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

66. Paragraph 66 cites this Court's order, which speaks for itself. The Legislature denies the allegations to the extent they are inconsistent with this order.

67. Denied.

68. Denied.

e. Extension of Mail-In and Electronic Registration Deadlines

69. Paragraph 69 cites Wisconsin statutes, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these cited legal sources. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

70. Paragraph 70 cites publicly filed documents in this case, which speak for themselves. The Legislature lacks sufficient information to admit or deny the remaining allegations, and so denies.

71. Denied.

72. Paragraph 72 cites this Court's March 20, 2020 Opinion and Order, which speaks for itself. The Legislature denies the allegations to the extent they are inconsistent with that Opinion and Order. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

73. Paragraph 73 cites this Court's March 20, 2020 Opinion and Order, which speaks for itself. The Legislature denies the allegations to the extent they are inconsistent with that Opinion and Order. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

74. Paragraph 74 cites this Court's March 20, 2020 Opinion and Order, which speaks for itself. The Legislature denies the allegations to the extent they are inconsistent with that Opinion and Order. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

75. Denied.

76. Denied.

CLAIMS FOR RELIEF

COUNT I

**First and Fourteenth Amendments
U.S. Const. Amend I and XIV, 42 U.S.C. § 1983, 28 U.S.C. §§ 2201, 2202
Undue Burden on the Right to Vote**

77. The Legislature realleges and incorporates by reference all prior paragraphs of this Answer and the paragraphs in the counts below as though fully set forth herein.

78. Paragraph 78 consists of legal conclusions to which no response is required. This paragraph cites United States Supreme Court precedent, which speaks for itself. The Legislature denies the allegations to the extent they are inconsistent with these cited legal sources. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Paragraph 83 cites Wisconsin statutes, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these cited legal sources, and further denies the remaining allegations.

84. Denied.

COUNT II

**Due Process
U.S. Const. Amend. XIV, 42 U.S.C. § 1983
Denial of Procedural Due Process**

85. The Legislature realleges and incorporates by reference all prior paragraphs of this Answer and the paragraphs in the counts below as though fully set forth herein.

86. Paragraph 86 consists of legal conclusions to which no response is required. This paragraph cites the United States Constitution and United States Supreme Court precedent, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these cited legal sources. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

87. Paragraph 87 consists of legal conclusions to which no response is required. This paragraph cites federal precedents, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these cited legal sources. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

88. Paragraph 88 consists of legal conclusions to which no response is required. This paragraph cites federal precedent, which speaks for itself. The Legislature denies the allegations to the extent they are inconsistent with this cited legal source. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

89. Denied.

90. Denied.

COUNT III

Equal Protection U.S. Const. Amend. XIV, 42 U.S.C. § 1983

91. The Legislature realleges and incorporates by reference all prior paragraphs of this Answer and the paragraphs in the counts below as though fully set forth herein.

92. Paragraph 92 consists of legal conclusions to which no response is required. This paragraph cites the United States Constitution and United States Supreme Court precedent, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these cited legal sources. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

93. Paragraph 93 consists of legal conclusions to which no response is required. This paragraph cites United States Supreme Court precedent, which speaks for itself. The Legislature denies the allegations to the extent they are inconsistent with this cited legal source. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

94. Paragraph 94 cites publicly filed documents in this case, which speak for themselves. The Legislature denies the allegations to the extent they are

inconsistent with these sources. The Legislature lacks sufficient information to admit or deny the remaining allegations, and so denies.

95. Paragraph 95 cites and quotes the Supreme Court's opinion in *Republican National Committee v. Democratic National Committee*, 140 S. Ct. 1205 (2020), which speaks for itself. The Legislature denies the allegations to the extent they are inconsistent with this cited legal source. The Legislature lacks sufficient information to admit or deny the remaining allegations, and so denies.

96. Paragraph 96 cites Wisconsin statutes and United States Supreme Court and Wisconsin Supreme Court precedent, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these cited legal sources. The Legislature denies the remaining allegations.

97. Denied.

98. Denied.

PRAYER FOR RELIEF

The Legislature denies that Plaintiffs are entitled to their requested relief.

AFFIRMATIVE DEFENSES

1. The allegations in the Second Amended Complaint fail to state a claim upon which relief may be granted, including the requirement for extraordinary injunctive relief, because none of Wisconsin's election laws impose an undue burden on Wisconsin voters' ability to vote, deny voters procedural due process, or deny them the equal protection of the law.

2. All Counts are barred in whole or in part by the doctrine of abstention under the United States Supreme Court's *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), opinion and its progeny.

3. Plaintiffs' claims are unripe as they are wholly contingent on future events, uncertain progress in the State's fight against COVID-19, and ongoing efforts by the Wisconsin Elections Commission.

Dated: June 30, 2020.

ERIC M. MCLEOD
LANE E. RUHLAND
HUSCH BLACKWELL LLP
P.O. Box 1379
33 East Main Street,
Suite 300
Madison, WI 53701-1379
(608) 255-4440
(608) 258-7138 (fax)
eric.mcleod@huschblackwell.com
lane.ruhland@huschblackwell.com

LISA M. LAWLESS
HUSCH BLACKWELL LLP
555 East Wells Street,
Suite 1900
Milwaukee, WI 53202-3819
(414) 273-2100
(414) 223-5000 (fax)
lisa.lawless@huschblackwell.com

Respectfully Submitted,

/s/ Misha Tseytlin

MISHA TSEYTLIN
Counsel of Record
ROBERT E. BROWNE, JR.
KEVIN M. LEROY
SEAN T.H. DUTTON
TROUTMAN SANDERS LLP
227 W. Monroe Street,
Suite 3900
Chicago, IL 60606
(608) 999-1240
(312) 759-1939 (fax)
misha.tseytlin@troutman.com
robert.browne@troutman.com
kevin.leroy@troutman.com
sean.dutton@troutman.com

*Attorneys for Intervenor-Defendant
Wisconsin Legislature*

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June, 2020, 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
TROUTMAN SANDERS LLP
227 W. Monroe Street
Suite 3900
Chicago, IL 60606
(608) 999-1240
(312) 759-1939 (fax)
misha.tseytlin@troutman.com