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11-04-2022  
Clerk of Circuit Court  
Waukesha County  
2022CV001336

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY  
BRANCH 8

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RICHARD BRAUN,

Plaintiff,

v.

Case No. 22-CV-1336

WISCONSIN ELECTIONS COMMISSION,

Defendant.

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**ANSWER AND DEFENSES OF  
DEFENDANT WISCONSIN ELECTIONS COMMISSION**

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Defendant Wisconsin Elections Commission (WEC), by its attorneys, Assistant Attorneys General Lynn K. Lodahl and Brian P. Keenan, answer Plaintiff Richard Braun's complaint as follows:

**INTRODUCTION**

1. Defendant admits.
2. Defendant lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph, and therefore deny.
3. Defendant is not required to respond to the allegations in this paragraph because they are legal conclusions. To the extent this paragraph misstates the law, Defendant denies.

4. Defendant is not required to respond to the allegations in this paragraph because they are legal conclusions. To the extent this paragraph misstates the law, Defendant denies.

5. Defendant is not required to respond to the allegations in this paragraph because they are legal conclusions. To the extent this paragraph misstates the law, Defendant denies.

6. Defendant is not required to respond to the allegations in this paragraph because they are legal conclusions. To the extent this paragraph misstates the law, Defendant denies.

7. Defendant denies the allegation of “noncompliance” in this paragraph. Defendant affirmatively alleges that its Election Administration Manual speaks for itself and denies the allegations in this paragraph to the extent they are inconsistent with that text. Notwithstanding the foregoing, Defendant admits that the Election Administration Manual states that Wisconsin accepts the National Mail Voter Registration Application Form (the “Form”).

8. Defendant is not required to respond to the allegations in this paragraph because they are legal conclusions and/or argument. To the extent this paragraph misstates the law, Defendant denies. Defendant affirmatively alleges that the Form speaks for itself and denies the allegations in this paragraph to the extent they are inconsistent with that text.

9. Defendant is not required to respond to the allegations in this paragraph because they are legal conclusions and/or argument. To the extent this paragraph misstates the law, Defendant denies.

10. Defendant admits only that it has not engaged in rulemaking with respect to use of the Form in Wisconsin. As to the remaining allegations, Defendant is not required to respond because they are legal conclusions and/or argument. To the extent these allegations misstate the law, Defendant denies.

11. Defendant is not required to respond to the allegations in this paragraph because they are legal conclusions and/or argument. To the extent this paragraph misstates the law or contains factual allegations, Defendant denies.

12. Defendant is not required to respond to the allegations in this paragraph because they are legal conclusions and/or argument. To the extent this paragraph misstates the law or contains factual allegations, Defendant denies.

### **PARTIES**

13. Defendant admits.

14. Defendant admits.

### **JURISDICTION AND VENUE**

15. Defendant does not dispute this Court's jurisdiction.

16. Defendant does not dispute that venue is proper in this Court.

## BACKGROUND

17. Defendant affirmatively alleges that its Election Administration Manual speaks for itself and denies the allegations in this paragraph to the extent they are inconsistent with that text. Defendant admits that the Election Administration Manual states that Wisconsin accepts the Form.

18. Defendant admits that Wisconsin residents have used the Form to register to vote in Wisconsin in more than one municipality and admits that Plaintiff's counsel provided certain records to WEC. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations in the paragraph, and therefore deny.

19. Defendant admits that Plaintiff's counsel sent a letter to WEC dated July 26, 2022, affirmatively alleges that the document speaks for itself, and denies the allegations in this paragraph to the extent that they are inconsistent with that text. Defendant further admits that the letter is attached to the complaint as Exhibit A. Defendant denies the remaining allegations.

20. Defendant admits that it sent Plaintiff's counsel an email on September 14, 2022, responding to the open records request and admits that, other than this email and the attached documents, it has provided no other substantive response to the letter. Defendant denies the remaining allegations.

## CAUSES OF ACTION

### **CLAIM I – Declaratory Judgment – Violation of Wis. Stat. § 6.33(1)**

21. Defendant restates and incorporates by reference its responses to the preceding allegations in the complaint.

22. Defendant is not required to respond to the allegation in this paragraph because it is a legal conclusion. To the extent this paragraph misstates the law, Defendant denies.

23. Defendant is not required to respond to the allegation in this paragraph because it is a legal conclusion. To the extent this paragraph misstates the law, Defendant denies.

24. Defendant is not required to respond to the allegation in this paragraph because it is a legal conclusion. To the extent this paragraph misstates the law, Defendant denies. Additionally, Defendant affirmatively alleges that the statute speaks for itself and denies the allegations in this paragraph to the extent that they are inconsistent with that text.

25. Defendant denies. Wisconsin Stat. § 6.33(1) states that a voter registration form shall be designed to “obtain from each elector information as to . . . whether the elector has resided within the ward or election district for

the number of consecutive days specified in s. 6.02(1).” Defendant affirmatively alleges that the Form requires the following certification from electors:

I have reviewed my state’s instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Further, the Form includes state specific instructions for Wisconsin electors,<sup>1</sup> including the following:

To register in Wisconsin you must:

- be a citizen of the United States
- be a resident of Wisconsin and have resided at the registration address for at least 28 days
- be at least 18 years old
- not have been convicted of treason, felony or bribery, or if you have, your civil rights have been restored after completion of your sentence or a pardon
- not have been found by a court to be incapable of understanding the objective of the electoral process
- not make or benefit from a bet or wage depending on the result of an election
- not have voted at any other location in the same election.

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<sup>1</sup> Available on page V of the National Mail Voter Registration Application Form and at <https://www.eac.gov/nvra-print-view/23435>.

26. Defendant is not required to respond to the allegation in this paragraph because it is a legal conclusion. To the extent this paragraph misstates the law, Defendant denies. Additionally, Defendant affirmatively alleges that the statute speaks for itself and denies the allegations in this paragraph to the extent that they are inconsistent with that text.

27. Defendant denies. Wisconsin Stat. § 6.33(1) states that a voter registration form shall be designed to “obtain from each elector information as to . . . whether the elector has been convicted of a felony for which he or she has not been pardoned, and if so, whether the elector is incarcerated, or on parole, probation, or extended supervision.” Defendant affirmatively alleges that the Form requires the following certification from electors:

I have reviewed my state’s instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Further, the Form includes state specific instructions for Wisconsin electors, including the following:

To register in Wisconsin you must:

- be a citizen of the United States
- be a resident of Wisconsin and have resided at the registration address for at least 28 days
- be at least 18 years old

- not have been convicted of treason, felony or bribery, or if you have, your civil rights have been restored after completion of your sentence or a pardon
- not have been found by a court to be incapable of understanding the objective of the electoral process
- not make or benefit from a bet or wage depending on the result of an election
- not have voted at any other location in the same election.

28. Defendant is not required to respond to the allegation in this paragraph because it is a legal conclusion. To the extent this paragraph misstates the law, Defendant denies. Additionally, Defendant affirmatively alleges that the statute speaks for itself and denies the allegations in this paragraph to the extent that they are inconsistent with that text.

29. Defendant admits that the Form does not contain the statement “Falsification of information on this form is punishable under Wisconsin Law as a Class I felony.” Defendant affirmatively alleges that the Form requires the following certification from electors:

I have reviewed my state’s instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.



Further, the Form includes state specific instructions for Wisconsin electors, including the following:

To register in Wisconsin you must:

- be a citizen of the United States
- be a resident of Wisconsin and have resided at the registration address for at least 28 days
- be at least 18 years old
- not have been convicted of treason, felony or bribery, or if you have, your civil rights have been restored after completion of your sentence or a pardon
- not have been found by a court to be incapable of understanding the objective of the electoral process
- not make or benefit from a bet or wage depending on the result of an election
- not have voted at any other location in the same election.

30. Defendant is not required to respond to the allegation in this paragraph because it is a legal conclusion. To the extent this paragraph misstates the law, Defendant denies. Additionally, Defendant affirmatively alleges that the statute speaks for itself and denies the allegations in this paragraph to the extent that they are inconsistent with that text.

31. Defendant denies.

32. Defendant is not required to respond to the allegation in this paragraph because it is a legal conclusion. To the extent this paragraph misstates the law, Defendant denies. Additionally, Defendant affirmatively alleges that the statute speaks for itself and denies the allegations in this paragraph to the extent that they are inconsistent with that text.

33. Defendant denies.

34. Defendant is not required to respond to the allegation in this paragraph because it is a legal conclusion. To the extent this paragraph misstates the law, Defendant denies. Additionally, Defendant affirmatively alleges that the statute speaks for itself and denies the allegations in this paragraph to the extent that they are inconsistent with that text.

35. Defendant denies.

36. Defendant is not required to respond to the allegation in this paragraph because it is a legal conclusion. To the extent this paragraph misstates the law, Defendant denies. Additionally, Defendant affirmatively alleges that the statute speaks for itself and denies the allegations in this paragraph to the extent that they are inconsistent with that text.

37. Defendant denies.

38. Defendant is not required to respond to the allegation in this paragraph because it is a legal conclusion. To the extent this paragraph misstates the law, Defendant denies. Additionally, Defendant affirmatively alleges that the statute speaks for itself and denies the allegations in this paragraph to the extent that they are inconsistent with that text.

39. Defendant denies.

40. Defendant is not required to respond to the allegation in this paragraph because it is a legal conclusion. To the extent this paragraph misstates the law, Defendant denies.

41. Defendant is not required to respond to the allegation in this paragraph because it is a legal conclusion. To the extent this paragraph misstates the law, Defendant denies.

42. Defendant admits that it has approved the Form for use in Wisconsin and denies the remaining allegations.

43. Defendant denies.

**CLAIM II – Declaratory Judgment – Violation of Wis. Stat. § 227.10**

44. Defendant restates and incorporates by reference its responses to the preceding allegations in the complaint.

45. Defendant affirmatively alleges that the statute speaks for itself and denies the allegations in this paragraph to the extent that they are inconsistent with that text.

46. Defendant affirmatively alleges that the statute speaks for itself and denies the allegations in this paragraph to the extent that they are inconsistent with that text.

47. Defendant denies. Defendant affirmatively alleges that the Form includes boxes in which an elector may state his or her political party and race if such information is required by the elector's state. The Form's application

instructions explain that this information is not required by all states, and both Box 7, titled “Choice of Party,” and Box 8, titled “Race or Ethnic Group,” direct the elector to review the instructions specific to his or her state. Further, the state specific instructions for Wisconsin electors states that “Choice of Party” and “Race or Ethnic Group” information is “[n]ot required” from the elector.

48. Defendant is not required to respond to the allegation in this paragraph because it is a legal conclusion and/or argument. To the extent this paragraph misstates the law, Defendant denies.

49. Defendant admits only that it has not engaged in rulemaking with respect to use of the Form in Wisconsin. As to the remaining allegations, Defendant is not required to respond because they are legal conclusions and/or argument. To the extent these allegations misstate the law, Defendant denies.

50. Defendant denies.

51. Defendant denies.

## DEFENSES

1. The complaint fails to state a claim upon which relief can be granted.

2. Plaintiff lacks standing on one or more claims.

3. One or more of Plaintiff’s claims and/or forms of relief sought are barred by sovereign immunity.

4. Defendant reserves the right to name additional defenses as they may become known through further discovery or otherwise in this action.

Dated this 4th day of November 2022.

Respectfully submitted,

JOSHUA L. KAUL  
Attorney General of Wisconsin

Electronically signed by:

Lynn K. Lodahl  
LYNN K. LODAHL  
Assistant Attorney General  
State Bar #1087992

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## CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed the *Answer and Defenses of Defendant Wisconsin Elections Commission* with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 4th day of November 2022.

Electronically signed by:

Lynn K. Lodahl

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LYNN K. LODAHL

Assistant Attorney General

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