

**FILED**  
**11-21-2023**  
**CIRCUIT COURT**  
**DANE COUNTY, WI**  
**2023CV001900**

**BY THE COURT:**

**DATE SIGNED: November 21, 2023**

Electronically signed by Ann Peacock  
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 12

DANE COUNTY

PRIORITIES USA, et al.,

Plaintiffs,

v.

Case No. 23-CV-1900

WISCONSIN ELECTIONS  
COMMISSION, et al.,

Defendants.

**ORDER**  
**FOR SUPPLEMENTAL BRIEFING**

In this declaratory judgment action, the Plaintiffs—Priorities USA, Wisconsin Alliance for Retired Americans, and William Franks, Jr. (collectively Plaintiffs)—allege that particular statutory provisions related to absentee voting are unconstitutional under the Wisconsin Constitution. The Defendants—Wisconsin Elections Commission (WEC) and the Wisconsin State Legislature (Legislature)—filed motions to dismiss.

A declaratory action states a claim when a controversy is justiciable. A controversy is justiciable when four factors are present: “(1) A controversy in which a claim of right is asserted

against one who has an interest in contesting it. (2) The controversy must be between persons whose interests are adverse. (3) The party seeking declaratory relief must have a legal interest in the controversy—that is to say, a legally protectable interest. (4) The issue involved in the controversy must be ripe for judicial determination.” *Loy v. Bunderson*, 107 Wis. 2d 400, 410, 320 N.W.2d 175 (1982)).

The parties dispute whether there is a right to absentee voting protected by the Wisconsin Constitution. Pl. Br., Dkt. 85:15-18; Legislature Br., Dkt. 65:14-21; WEC Br., Dkt.86:2. On October 31, 2023, the Court heard oral arguments on the motions to dismiss. In those arguments, the Legislature opened its argument with a citation to paragraph 52, footnote 25 of the decision in *Teigen v. Wisconsin Elections Comm'n*, 2022 WI 64, 403 Wis. 2d 607, 644, 976 N.W.2d 519. The Legislature argued that this footnote in *Teigen* “specifically resolves this case.” But the citation was *the first time* in the above-captioned case that any party cited the footnote. Given the belated citation to what the Legislature argues is a dispositive precedent, fairness dictates that the parties be given an opportunity to brief the significance of the footnote with respect to the pending motions. As such, the Court orders further briefing on the footnote’s significance in the determination of whether Plaintiffs have stated “at least one ‘right’ satisfying the first factor and at least one ‘legally protectable interest’ satisfying the third factor in order to maintain this declaratory judgment action.” See *Wisconsin Manufacturers & Com. v. Evers*, 2021 WI App 35, ¶ 14, 398 Wis. 2d 164, 960 N.W.2d 442, 451, *review granted*, 2022 WI 90, ¶ 14, 991 N.W.2d 117, *and aff’d*, 2022 WI 38, ¶ 14, 977 N.W.2d 374, *reconsideration denied*, 2023 WI 5, ¶ 14, 405 Wis. 2d 478, 984 N.W.2d 402. **Briefs on this issue are due on or before December 22, 2023.**